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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN DIEGO**

EDUARDO TOVAR, on behalf of himself,  
other aggrieved employees, and the State of  
California,

Plaintiff,

vs.

SUNSHINE COMMUNICATIONS, INC., an  
Arizona corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00042998-CU-OE-CTL

*[Case assigned for all purposes to the Hon.  
Timothy Taylor, Dept. C-72]*

**PLAINTIFF EDUARDO TOVAR'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  
ENHANCEMENT AWARD**

Date: December 17, 2021  
Time: 1:30 p.m.  
Dept.: C-72

Complaint Filed: November 23, 2020  
Trial Date: None Set

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

3           PLEASE TAKE NOTICE that on December 17, 2021 at 1:30 p.m., or as soon thereafter  
4 as the matter may be heard in Department C-72 of the above-entitled Court, located at 330 West  
5 Broadway, San Diego, California, 92101, Plaintiff Eduardo Tovar (“Plaintiff”), individually and  
6 on 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 \$110,000 and an award  
20           of litigation costs to Plaintiff’s counsel in the amount of \$9,498.96;
- 21           6. Approving an award of \$5,000 as Plaintiff’s Enhancement Award; and
- 22           7. Approving \$4,150 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 Eduardo Tovar; 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: November 23, 2021

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 Eduardo Tovar (“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 Sunshine Communications,  
6 Inc. (“Defendant” or “Sunshine”).<sup>1</sup> This PAGA representative action seeks civil penalties  
7 predicated on Sunshine’s alleged failure to pay all minimum wages, failure to pay all overtime  
8 wages owed, failure to provide all legally required meal and rest periods, failure to reimburse all  
9 necessary business expenditures, and alleged failure to issue accurate itemized wage statements  
10 from April 6, 2019 through the sooner of (1) the date the Court grants approval of the Settlement,  
11 or (2) November 30, 2021 (the “PAGA Period”). The proposed Settlement, under which Sunshine  
12 has agreed to pay a non-reversionary Gross Settlement Amount (“GSA”) of \$275,000.00, will  
13 resolve Plaintiff’s representative claim filed on behalf of the State of California and all  
14 “Aggrieved Employees,” which include all current and former non-exempt employees of  
15 Sunshine who worked for Sunshine in California at any time during the PAGA Period.

16 Notably, the relief provided for under the Settlement, and the claims released thereunder,  
17 are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor  
18 Code violations. The release also encompasses only PAGA civil penalties based upon the factual  
19 allegations and theories alleged by Plaintiff in this Action, and only for claims arising during the  
20 PAGA Period, which as noted above, ends no later than November 30, 2021.

21 In deciding whether to grant approval of the Settlement, the primary issue is whether the  
22 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement  
23 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the  
24 product of arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-  
25 hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was  
26 negotiated after undertaking sufficient discovery and investigation to evaluate the relative

27 \_\_\_\_\_  
28 <sup>1</sup> The proposed Settlement is attached as Exhibit 1 to the Declaration of Paul K. Haines filed herewith. The Explanatory Letter to accompany Aggrieved Employees’ Individual PAGA Payments is attached as Exhibit A to the Settlement.

1 strength and value of Plaintiff's PAGA claim and Defendant's defenses thereto; and (4) reflects  
2 a reasoned compromise based on the relative strength and value of the PAGA claim, as well as  
3 the risks, expenses, complexity and likely duration of further litigation.

4 As noted, the Settlement provides for a GSA of \$275,000.00. After deducting amounts for  
5 requested attorneys' fees (\$110,000), attorney costs (\$9,498.96), Plaintiff's Enhancement Award  
6 (\$5,000), and administration costs (\$4,150), the Settlement provides for distribution of a Net  
7 Settlement Amount ("NSA") of approximately \$146,351.04 to be paid to Aggrieved Employees  
8 and the California Labor & Workforce Development Agency ("LWDA"). Settlement, § III.2-5;  
9 see also Declaration of Paul K. Haines, ¶ 24 & Exh. 4; Declaration of Jodey Lawrence, ¶ 16 &  
10 Exh. B.

11 The NSA shall be distributed 75% (approximately \$109,763.28) to the LWDA, and 25%  
12 (approximately \$36,587.76) to Aggrieved Employees, pursuant to the requirements of the PAGA  
13 as codified in Lab. Code § 2699(i). See Settlement, § III.5. There are approximately 387  
14 Aggrieved Employees, resulting in average payments of approximately \$94.54 to each Aggrieved  
15 Employee. Haines Decl., ¶ 15.

16 The GSA of \$275,000.00 represents a positive result for the State of California and  
17 Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no  
18 recovery at all, based on the defenses asserted by Sunshine Communications and significant  
19 ongoing litigation risks. Moreover, the GSA is greater than other PAGA penalty awards that have  
20 been approved as reasonable. See, e.g., *Penaloza v. PPG Industries Inc.*, Case No. BC471369,  
21 2013 WL 2917624 at \*2 (Super. Ct. L.A. County, May 20, 2013) (approving total PAGA set-  
22 aside of \$5,000, or \$7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No.  
23 BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-  
24 aside of \$10,000, or \$3.33 per employee). The amounts requested for attorneys' fees and costs,  
25 enhancement award, and administration costs are all fair, adequate, and reasonable. Thus, Plaintiff  
26 respectfully requests that the Court enter the [Proposed] Judgment and Order submitted  
27 concurrently herewith.

28 ///

1 **II. SUMMARY OF THE LITIGATION**

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

3 Sunshine provides installation and construction services to the cable television industry.  
4 Plaintiff worked as a non-exempt employee for Sunshine Communications from approximately  
5 October 2019 to approximately July 2020.

6 Plaintiff's PAGA claim is predicated primarily on allegations that he and other technicians  
7 were paid pursuant to a pay plan that was ostensibly hourly, but was in fact a piece-  
8 rate/commission pay plan that, among other things, failed to separately pay for non-productive  
9 time or for rest periods. Plaintiff also alleges that Sunshine failed to reimburse business expenses  
10 incurred by Aggrieved Employees, and failed to provide proper meal and rest periods. As  
11 explained below, Sunshine denies Plaintiff's allegations and asserted several affirmative defenses  
12 to his claims.

13 **B. Relevant Procedural History**

14 On September 17, 2020, Plaintiff submitted his notification letter to Sunshine and to the  
15 LWDA regarding Sunshine's alleged Labor Code violations, as required by Labor Code § 2699.3.  
16 See Haines Decl., ¶ 12 & Exh. 2; Settlement, § II.2. On November 23, 2020, after the 65-day  
17 waiting period under Labor Code § 2699.3(a)(2)(A), Plaintiff filed a Representative Action  
18 Complaint ("Complaint") in this Court, alleging a single cause of action for PAGA civil penalties.  
19 Haines Decl., ¶ 13.

20 The parties subsequently agreed to mediate with Jeffrey Krivis, Esq. in an effort to resolve  
21 Plaintiff's PAGA claim. Haines Decl., ¶ 14. In connection with mediation, Sunshine informally  
22 produced information and documents pertaining to Plaintiff and other Aggrieved Employees,  
23 including but not limited to payroll and timekeeping records for Plaintiff and a sample of  
24 Aggrieved Employees; several data points including the number of Aggrieved Employees and the  
25 number of pay periods worked during the PAGA period; and relevant wage and hour policy  
26 documents, in order for Plaintiff's counsel to investigate Plaintiff's allegations and value the  
27 claims prior to mediation. *Id.* The parties attended mediation with Mr. Krivis on September 1,  
28 2021. *Id.* During mediation, the parties vigorously debated the legal bases for Plaintiff's claims

1 and Sunshine’s defenses, the manageability of the case as a representative action, the potential  
2 amount of penalties, and the parties’ data analyses and conclusions based thereon. *Id.* With the  
3 assistance of Mr. Krivis, the Parties agreed to fully and finally resolve Plaintiff’s PAGA claim.  
4 *Id.* The Parties subsequently negotiated and finalized the Settlement now before the Court. *Id.*

### 5 **III. SUMMARY OF THE SETTLEMENT**

#### 6 **A. “Aggrieved Employees” Defined**

7 As noted above, the “Aggrieved Employees” under the Settlement consist of all current  
8 and former non-exempt employees of Sunshine who worked for Sunshine in California at any  
9 time during the PAGA Period. *See* Settlement, § I.2.

#### 10 **B. Monetary Terms**

11 The Settlement provides for Sunshine’s payment of a non-reversionary Gross Settlement  
12 Amount (“GSA”) of \$275,000.00. *See* Settlement, § III.2. After deducting attorneys’ fees,  
13 litigation costs, Plaintiff’s enhancement award, and administration costs, the Settlement provides  
14 for the Net Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to  
15 Aggrieved Employees, per Labor Code § 2699(i). *Id.*, §§ III.4-5. The Aggrieved Employees’  
16 portion of the NSA is estimated to be \$36,587.76 and will be distributed to all Aggrieved  
17 Employees based on the number of pay periods worked by each Aggrieved Employee during the  
18 PAGA Period. *See* Settlement, § III.5.

#### 19 **1. *Attorneys’ Fees and Costs, Administration Costs, and Plaintiff’s*** 20 ***Enhancement award***

21 Plaintiff’s counsel request \$110,000 in attorneys’ fees, and \$9,498.96 in litigation costs.  
22 *See* Settlement, § III.4(a); Haines Decl., ¶¶ 20-24 & Exh. 4. As discussed in detail below, a fee  
23 award of \$110,000 is fair, adequate, and reasonable under the lodestar method.

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

1 *Id.*, § IV.2. Plaintiff requests that the Court approve \$4,150 in administration costs to Phoenix,  
2 which will cover all costs incurred by Phoenix in connection with the Settlement. *Id.* at § III.4(c);  
3 *see also* Declaration of Jodey Lawrence (“Lawrence Decl.”) and attached exhibits.

4 Finally, Plaintiff requests an enhancement award of \$5,000, in recognition of Plaintiff’s  
5 contributions to this case and her efforts in bringing this case to successful resolution. *See*  
6 Settlement, § III.4(b); Declaration of Eduardo Tovar (“Tovar Decl.”), ¶¶ 2-6.

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

8 The NSA will be distributed 75% to the LWDA and 25% to Aggrieved Employees,  
9 pursuant to Labor Code § 2699(i). Based on the above requested distributions, the NSA is  
10 estimated to be \$146,351.04 with \$109,763.28 paid to the LWDA and \$36,587.76 distributed to  
11 Aggrieved Employees. Haines Decl., ¶ 15. As noted, there are approximately 387 total Aggrieved  
12 Employees. *Id.* Thus, it is anticipated that overall, Aggrieved Employees will receive average  
13 Settlement payments of approximately \$94.54. *Id.*

14 **3. Funding of the Settlement**

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

20 Funds from any settlement checks remaining uncashed after 180 days will be sent by  
21 Phoenix to the Controller of the State of California for deposit in the Unclaimed Property Fund,  
22 in the name of the Aggrieved Employees whose checks were not cashed. *See* Settlement, § IV.4.

23 **IV. LEGAL ARGUMENT**

24 **E. 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,<sup>2</sup> “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL 1340777 at \*5; *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).

## **2. 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.*

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<sup>2</sup> “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. Sunshine asserted several  
affirmative defenses to Plaintiff’s claims. For example, Sunshine argues that its pay plan is not a

1 piece-rate plan and therefore it did not need to separately compensate for rest periods or non-  
2 productive time and that even if it did, employees worked little to no “non-productive time” since  
3 all of their work time was directly related to their commission-earning activities. *Id.* Sunshine  
4 further argues it has always maintained compliant wage and hour policies, including legally-  
5 compliant meal and rest period policies and has always provided meal and rest periods in  
6 accordance with those lawful policies. *Id.* Moreover, Sunshine maintains that employees  
7 consistently reported on their time sheet that they were provided with all meal and rest periods to  
8 which they were entitled, and that any missed meal or rest periods were the result of voluntary  
9 waiver, not any policy or practice of Sunshine. *Id.* Lastly, Sunshine asserts that it reimburses any  
10 necessary business expenses and that any alleged violations did not occur in every pay period. *Id.*

11 Sunshine further maintains that even if the Court awarded PAGA penalties for any of the  
12 alleged violations, it would substantially reduce the penalties based on the discretionary factors  
13 in Labor Code § 2699(e)(2) (authorizing reduction in penalties “if, based on the facts and  
14 circumstances of the particular case, to do otherwise would result in an award that is unjust,  
15 arbitrary and oppressive, or confiscatory.”). Haines Decl., ¶ 18. Indeed, Sunshine argues, many  
16 courts have reduced PAGA penalties drastically where, as here, the employer presented good-  
17 faith defenses and attempted to comply with the law. *See Thurman v. Bayshore Transit Mgmt.,*  
18 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because  
19 “defendants took their obligations...seriously and attempted to comply with the law”); *Fleming*  
20 *v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at \*4 (C.D. Cal. Aug. 12, 2011)  
21 (reducing PAGA penalties by over 82%, in part because employer “not aware” of violations);  
22 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just  
23 \$5 per pay period where employer made “good faith attempts” to comply with the law).

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

25 Although the parties had engaged in significant informal discovery, the parties still had  
26 more formal discovery, including potential written and deposition discovery, to conduct if the  
27 case did not settle. Moreover, potential additional substantive motion work and trial preparation  
28 remained for the parties, as well as potential appeals. As a result, the parties would likely incur

considerably more attorneys' fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

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

The proposed Settlement provides a fair and reasonable monetary recovery for the State of California and Aggrieved Employees in the face of hotly disputed claims, when compared with the potential realistic exposure. Based on data provided by Sunshine, there were approximately 21,510 pay periods during the PAGA Period. Haines Decl., ¶ 19. Assuming an "initial" violation rate of \$100 per pay period under Labor Code § 2699(f) (*see Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (holding "initial" violation rate applies to PAGA penalties until employer is notified by Labor Commissioner or a court that it violated Labor Code)), Plaintiff estimated a total potential PAGA exposure of \$2,150,000. *Id.* However, because the Court maintains discretion to reduce these penalties, and in light of Sunshine's arguments and defenses described above, Plaintiff discounted that figure by 50% for a risk of losing on the merits and/or failing to show a violation in each and every pay period, and by an additional 65% for risk of the Court reducing penalties and/or finding that a lower potential civil penalty applied, to arrive at a realistic exposure of \$376,425. Haines Decl., ¶ 24; *see, e.g., Thurman*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming*, 2011 WL 7563047 at \*5 (reducing PAGA penalties by over 82%); *Carrington*, 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just \$5 per pay period for a total of \$150,000, just 0.21% of the \$70 million in maximum penalties alleged by the plaintiff).

The proposed \$275,000 GSA therefore represents over 73% of Plaintiff's reasonably forecasted total recovery, while avoiding the risks of proceeding through trial. Haines Decl., ¶ 19. "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 P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and the State of California while avoiding the risks and costs of continued litigation and trial.

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

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

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

9           “Parties represented by competent counsel are better positioned than courts to produce a  
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter. Sec.*  
11 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiff is represented by experienced counsel with  
12 decades of combined experience, who believe this Settlement to be fair and adequate for all  
13 involved. Haines Decl., ¶¶ 3-11. This factor strongly supports settlement approval. *Kullar*, 168  
14 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency  
15 and integrity of counsel and the involvement of a neutral mediator in assuring itself that a  
16 settlement agreement represents an arm’s length transaction entered without self-dealing or other  
17 potential misconduct.”).

18                               **F.     The Requested Award of Attorneys’ Fees is Reasonable**

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

1 A fee award is justified where the legal action has produced its benefits by way of  
2 settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for*  
3 *Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). In fixing fees under the lodestar  
4 method, successful attorneys should recover “all attorney fees reasonably expended, without  
5 limiting the fees to a proportion of [the] actual recovery.” *Graciano, . Robinson Ford Sales*, 144  
6 Cal. App. 4th 140, 164 (2006) (emphasis added). “[T]here is ‘no mathematical rule requiring  
7 proportionality between compensatory damages and attorneys’ fees award.’” *Harman v. City and*  
8 *Cty. of San Francisco*, 158 Cal.App.4th 407, 421 (2007) (citation omitted).

9 The non-proportionality rule applies generally to attorneys prosecuting employment  
10 cases. *See, e.g., Taylor v. Nabors Drilling U.S.A.*, 222 Cal.App.4th 1228 (2014) (affirming  
11 \$680,520 in attorneys’ fees on a \$150,000 recovery in an employment discrimination case). And  
12 it applies with equal force to PAGA cases. *See Charles v. JPMorgan Chase Bank*, No. CGC-14-  
13 538933 (San Francisco Cty. Sup. Ct., June 18, 2019) (awarding \$2.88 million in attorneys’ fees,  
14 amounting to over 48% of total PAGA settlement, plus over \$281,000 in costs); *Salas v. Hallmark*  
15 *Aviation Services LP*, No. BC586585 (Los Angeles Cty. Sup. Ct. Feb. 17, 2017) (awarding  
16 \$600,000 in attorneys’ fees, amounting to 48% of total settlement); *Monroe v. Continental Design*  
17 *Co., Inc.*, No. RG16817667 (Alameda Cty. Sup. Ct. June 21, 2017)(awarding \$110,000 in  
18 attorneys’ fees, amounting to about 49% of settlement, plus \$7,500 in litigation costs, and total  
19 PAGA penalties of just \$90,000); *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los  
20 Angeles Cty. Sup. Ct. Jan. 3, 2019) (awarding \$750,000 in attorneys’ fees and costs, amounting  
21 to about 43% of settlement); *see also Rippee v. Boston Market Corp.*, No. 05-cv-1359-BTM  
22 (JMA), 2006 WL 8455400 at \*5 (S.D. Cal. Oct. 10, 2006) (approving attorneys’ fee award of  
23 40% of \$3.75 million wage and hour class action settlement, resulting in a positive lodestar  
24 multiplier of 3.23).

25 In determining reasonable fees in this case, Plaintiff requests the Court apply the lodestar  
26 method. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1136 (2001) (holding court should presume that  
27 the Legislature intended courts to use the prevailing lodestar adjustment method in fixing  
28 statutory fees). This method most effectively compensates successful counsel for all the hours

1 reasonably spent. *Id.* at 1133. The base lodestar is produced by multiplying the number of hours  
2 reasonably expended by counsel by a reasonable hourly rate. *Id.* at 1134-36. The base lodestar  
3 then may be adjusted by a multiplier to account for contingent risk and other factors.

4 For hourly rates, the Court must evaluate whether that rate is within the range of  
5 reasonable rates charged by and judicially awarded comparative attorneys for comparable work.  
6 *Children’s Hospital & Med. Ctr. v. Bonta*, 97 Cal. App. 4th 740, 783 (2002). Determination of a  
7 reasonable rate is derived from the community “where the services are rendered.” *MBNA Am.*  
8 *Bank v. Gorman*, 147 Cal. App. 4th Supp. 1, 13 (2006). As explained below, Plaintiff’s counsel’s  
9 rates are reasonable and are within the range of rates that have been awarded to other attorneys in  
10 Southern California, including in the San Diego area. As the requested rates are within the range  
11 of market rates, they should be approved.

12 In evaluating hours worked, the general principle is that the attorney who takes [a statutory  
13 fee-shifting] case can anticipate receiving full compensation for every hour spent litigating a  
14 claim even against the most polemical opponent. *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th  
15 1128, 1175 (1998). However, courts should not become “enmeshed in a meticulous analysis of  
16 every detailed facet of the professional representation.” *Serrano v. Unruh*, 32 Cal. 3d 621, 642  
17 (1982). Rather, “[t]he essential goal in shifting fees (to either party) is to do rough justice, not to  
18 achieve auditing perfection.” *Fox v. Vice*, 563 U.S. 826, 837 (2011).

19 In determining the reasonableness of the hours expended, “the court should defer to the  
20 winning lawyer’s professional judgment as to how much time he was required to spend on the  
21 case; after all, he won, and might not have, had he been more of a slacker.” *Kerkeles v. City of*  
22 *San Jose*, 243 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d  
23 1106, 1112 (9th Cir. 2008)). Whether attorneys expended reasonable hours in pursuit of the  
24 litigation is the major building block of any fee award. *See Serrano v. Unruh*, 32 Cal. 3d at 632  
25 (“absent facts rendering the award unjust, parties who qualify for a fee should recover for all  
26 hours reasonably spent.”) Typically, all time reasonably spent by prevailing attorneys during the  
27 course of litigation should be awarded if it is the type of work that would be paid by a fee-paying  
28 client. *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983).

The chart below provides a summary of the hours worked by Plaintiff’s counsel in this case:

| Lawyer                | Title             | Law School Grad Year | Rate  | Hrs          | Fees                |
|-----------------------|-------------------|----------------------|-------|--------------|---------------------|
| Paul K. Haines        | Partner/Principal | 2006                 | \$650 | 42.8         | \$27,820.00         |
| Tuvia Korobkin        | Partner           | 2009                 | \$625 | 83.7         | \$52,312.50         |
| Alexandra R. McIntosh | Associate         | 2017                 | \$375 | 109.2        | \$40,950.00         |
| Paralegals            |                   |                      | \$175 | 25.6         | \$4,480.00          |
| <b>Total</b>          |                   |                      |       | <b>261.3</b> | <b>\$125,562.50</b> |

(Haines Decl., ¶¶ 20-22.) The hourly rates listed above are reasonable based on rates at which Plaintiff’s counsel have previously been approved, and based on hourly rates that have been approved by courts in the San Diego area. For example, just over a year ago in *Jamil v. Workforce Resources, LLC*, No. 18-cv-27-JLS (NLS), 2020 WL 6544660 at \*4 (S.D. Cal. Nov. 5, 2020), Judge Sammartino of the U.S. District Court for the Southern District of California accepted hourly rates of \$750 for a senior attorney, and between \$450 and \$750 for associates, in approving attorneys’ fees in a wage and hour class action settlement. Similarly, nearly two years ago in *Hunter v. Nature’s Way Products, LLC*, No. 3:16-cv-532-WQH-AGS, 2020 WL 71160 at \*8 (Jan. 6, 2020), Judge Hayes of the Southern District approved hourly rates of between \$500 to \$750, including a \$600 hourly rate for an 8th-year attorney and \$750 for a 16th-year attorney. And more than six years ago in *Makaeff v. Trump University, LLC*, No. 10-cv-0940-GPC (WVG), 2015 WL 1579000 at \*4 (S.D. Cal. Apr. 9, 2015), Judge Curiel of the Southern District approved hourly rates “ranging from \$250 to \$440 for associates, and \$600 to \$825 for partners.”

These rates are also reasonable based on the *Laffey* Matrix (Haines Decl., Exh. 3), which has been recognized by California courts as “a widely recognized compilation of attorney and paralegal rates based on various levels of experience.” *Theme Promotions, Inc. v. News America Mktg. FSI, Inc.*, 731 F.Supp.2d 937, 948 (N.D. Cal. 2010); *see also Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359 JM (BGS), 2014 WL 29011 at \*\*8-9 (S.D. Cal. Jan. 2, 2014) (cross-checking requested hourly rates against the *Laffey* Matrix and finding that “the Laffey matrix lends further credibility” to counsel’s requested hourly rates).

1 As shown above, multiplying Plaintiff's counsel's hourly rates by hours worked on the  
2 litigation yields a lodestar of \$125,562.50, which is more than 1.14 times the amount of attorney's  
3 fees sought, resulting a *negative* multiplier of about 0.88.

4 Plaintiff's counsel would otherwise be entitled to a *positive* multiplier based on factors  
5 most commonly cited by courts, including: (1) the results obtained; (2) the contingent nature of  
6 the fee award; and (3) the novelty and difficulty of the questions involved. *See Serrano III*, 20  
7 Cal. 3d at 49; *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 835 (2001) (recognizing "results  
8 obtained" as a factor). California courts often award significant positive multipliers, range from  
9 2 to 4 or even higher. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 49-50 (2008)  
10 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest v. Bd.*  
11 *of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of approximately 12.8);  
12 *Rippee, supra*, 2006 WL 8455400 at \*5 (approving attorneys' fee award of 40% of \$3.75 million  
13 wage and hour class action settlement, resulting in a positive lodestar multiplier of 3.23).  
14 However, because Plaintiff's counsel's lodestar is *higher* than their fee request, they would  
15 effectively be receiving a *negative* multiplier.

16 Critically, Plaintiff's recovery for the State of California and Aggrieved Employees of  
17 approximately \$146,351.04 significantly exceeds other PAGA awards approved by California  
18 courts in this district and others. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx),  
19 2012 WL 11875296 at \*3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000 PAGA payment); *Jamil,*  
20 *supra*, 2020 WL 6544660 at \*6 (S.D. Cal. Nov. 5, 2020) (approving \$10,000 total PAGA  
21 payment, finding the amount "fair and adequate in view of the purposes and policies of PAGA");  
22 *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at \*7 (E.D.  
23 Cal. Oct. 31, 2012) ("approving \$10,000 total PAGA payment, finding that "[t]his comports with  
24 settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*,  
25 No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at \*8 (C.D. Cal. Nov. 18, 2014) (approving  
26 \$18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL  
27 5941801 at \*14 (E.D. Cal. Nov. 27, 2012) (approving \$10,000 PAGA payment); *Chu v. Wells*  
28 *Fargo Inv., LLC*, 2011 WL 672645 at \*1 (N.D. Cal. Feb. 16, 2011) (\$10,000 PAGA payment).

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

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

16 **G. The Requested Litigation Costs and Settlement Administration Costs**  
17 **Are Fair, Reasonable, and Adequate**

18 Plaintiff's request for reimbursement of litigation costs of \$9,498.96 is also fair and  
19 reasonable. All of Plaintiff's litigation costs are reasonably incurred. See Haines Decl., ¶ 24 &  
20 Exh. 4. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts.  
21 See, e.g., *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-  
22 of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011  
23 WL 825713 at \* 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits  
24 are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of*  
25 *Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-  
26 59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497  
27 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal  
28 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

1 Likewise, the request for administration costs of \$4,150 is also fair and reasonable.  
2 Phoenix was selected because it is an experienced settlement administrator and returned a  
3 reasonable bid. *See* Declaration of Jodey Lawrence & Exhibits. Moreover, Phoenix will perform  
4 several important functions that are integral to the implementation of the Settlement. *Id.* Its  
5 modest requested fee is therefore reasonable.

6 **H. The Court Should Approve Plaintiff's Requested Enhancement**  
7 **Award Because It Is Fair, Adequate, and Reasonable in View of**  
8 **Plaintiff's Efforts and the Risks He Assumed in This Litigation.**

9 Courts routinely approve enhancement awards to compensate named plaintiffs for the  
10 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*  
11 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named  
12 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving  
13 \$50,000 incentive payment); *see also* Plaintiff's Request for Judicial Notice, Exhs. 1-7 (PAGA  
14 settlement approval orders awarding incentive payments to representative PAGA plaintiffs  
15 ranging from \$5,000 to \$20,000). Here, Plaintiff seeks an enhancement award of \$5,000. *See*  
16 Settlement, § III.4.b. This request is reasonable given Plaintiff's efforts in this case and the  
17 risks he undertook on behalf of Aggrieved Employees. Tovar Decl., ¶¶ 2-6. Plaintiff  
18 provided substantial factual information and documents to counsel, assisted in identifying  
19 potential witnesses, and participated in numerous discussions with Plaintiff's counsel regarding  
20 the case. *Id.*; *see also* Haines Decl., ¶ 26. Accordingly, Plaintiff's requested enhancement  
21 award is appropriate and justified as part of the Settlement.

22 **V. CONCLUSION**

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

26 Dated: November 23, 2021

Respectfully submitted,  
HAINES LAW GROUP, APC

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