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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11 THOMAS BREWER, as a proxy for the
State of California,

12 Plaintiffs,

13 v.
14

ELM ADHC, an unknown California
15 entity; and DOES 1 through 50, inclusive,

16 Defendants.

CASE NO. 37-2020-00018551-CU-OE-NC

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE THE PARTIES'
SETTLEMENT AGREEMENT PURSUANT
TO THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Reservation No. 247202724720272472027

Date: April 8, 2022
Time: 1:30 p.m.
18 Dept.: 28
19

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

2 PLEASE TAKE NOTICE that on April 8, 2022, at 1:30 p.m., or as soon thereafter as the
3 matter be heard in Department N-28 of the Superior Court of the State of California for the
4 County of San Diego located at 325 S. Melrose, Vista, CA 92081, Plaintiff Thomas Brewer
5 (“Plaintiff”) will, and hereby does, move the Court for entry of an order approving the proposed
6 Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement Agreement and Release
7 (“Settlement Agreement”) entered into in the above-captioned civil action between Plaintiff and
8 Defendant CA Reliable Medical Systems, Inc. (erroneously sued as Elm ADHC) (“Defendant”)
9 (Plaintiff and Defendant shall collectively be referred to as the “Parties”) under the Labor Code
10 Private Attorneys General Act of 2004 (the “PAGA”).

11 This motion is made pursuant to California Labor Code section 2699(l)(2), which requires
12 trial courts to “review and approve any settlement of any civil action filed pursuant to [PAGA],”
13 *see* Cal. Lab. Code § 2699(l)(2), and on the grounds that the parties’ settlement is fundamentally
14 fair, adequate, and reasonable in light of the PAGA’s policies and purposes. As set forth in the
15 concurrently-filed declaration of Dennis S. Hyun, a copy of the Parties’ proposed Settlement
16 Agreement and this Motion was electronically submitted to the Labor and Workforce
17 Development Agency in accordance with California Labor Code sections 2699(l)(2) and
18 2699(l)(4) concurrent with the filing of this motion.

19 This motion is based on this notice of motion and motion for approval of the Parties’
20 Settlement Agreement attached to the Declaration of Dennis S. Hyun and the Settlement
21 Agreement attached thereto as Exhibit “C,” concurrently-filed herewith; the attached
22 memorandum of points and authorities in support of this motion; the concurrently-filed
23 declarations of Mr. Hyun (and any exhibits attached thereto) and Plaintiff in support of this
24 motion; all pleadings, records, and files in this action; and upon such other matters as may be
25 properly presented to, or received by, the Court at or before the hearing on this motion.

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DATED: January 10, 2022

POLARIS LAW GROUP

By: William L. Marder
William L. Marder
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Thomas Brewer (“Plaintiff”) respectfully requests the
4 Court’s approval of the Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement
5 Agreement and Release (the “Settlement Agreement”). On February 28, 2020, Plaintiff sent
6 notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of his intent to
7 pursue a representative PAGA action, on behalf of himself and the State of California as well as
8 on behalf of other aggrieved employees (the “PAGA Notice”). On May 27, 2020, Plaintiff filed
9 the Action against Defendant asserting a single claim under Labor Code §§ 204 and 210. Labor
10 Code Section 204(d) provides that wages must be paid no later than 7 days following the close of
11 the payroll period. Labor Code § 210 provides for penalties for violation of Section 204.
12 Plaintiff alleges that Defendant paid its employees late beyond 7 days.

13 After this lawsuit was commenced, the Parties agreed to engage in arms’ length
14 negotiations between highly experienced counsel. As part of their privileged settlement
15 negotiations, Defendant produced data regarding the entire putative class, from which Plaintiff’s
16 counsel calculated the maximum PAGA penalties exposure at a 100% failure rate and based on
17 maximum potential penalties. (Declaration of Dennis Hyun (“Hyun Decl.”) ¶ 8). Defendant
18 further produced evidence in the form of sample wage statements showing that the alleged and
19 disputed violation rate was in any case not 100% even if liability was established, such that even
20 if the maximum penalties were awarded, the calculated exposure was overstated. (*Id.*) Based on
21 this information and substantial evidence of Defendant’s deteriorating financial condition, the
22 Parties have settled this case on a representative PAGA basis for \$75,000.00, or approximately
23 20% of the originally calculated maximum exposure. (*Id.*)

24 Moreover, given Defendant’s financial condition, the Parties have agreed that Defendant
25 will fund the Gross Settlement Amount with an initial payment of \$15,000.00, with monthly
26 installments of \$3,000.00 over 20 months until the Gross Settlement Amount is paid in full.
27 (Settlement Agreement at §§ 29(a)-(b)). The Settlement Agreement allocates one-third of the
28 Gross Settlement Amount for attorneys’ fees, or \$25,000.00, up to \$10,000.00 in litigation costs

1 incurred by Plaintiffs' counsel, \$5,000.00 to Plaintiff for a service award, and up to \$2,400.00 for
2 settlement administration costs. (*Id.* at §§ 21(a)-(d)). The remainder, or the "PAGA Penalty
3 Fund," is allocated to the payment of civil penalties under PAGA, 75 percent of the civil penalties
4 for distribution to the Labor and Workforce Development Agency (the "LWDA") and 25 percent
5 of the civil penalties for distribution to the "aggrieved employees" on whose behalf Plaintiffs
6 filed this action as required by PAGA. (*Id.* at § 22).

7 Under PAGA, the Settlement Agreement cannot become effective until it is "review[ed]
8 and approv[ed]" by this Court. *See* Cal. Lab. Code § 2699(1)(2). Accordingly, Plaintiffs bring this
9 motion to request approval of the Settlement Agreement on the grounds it is fundamentally fair,
10 adequate, and reasonable in light of PAGA's policies and purposes.

11 **II. FACTUAL AND PROCEDURE BACKGROUND**

12 On February 28, 2020, Plaintiff sent his PAGA Notice to the LWDA giving notice of his
13 intent to pursue a representative PAGA action, on behalf of himself and the State of California as
14 well as on behalf of other aggrieved employees. On May 27, 2020, Plaintiff filed the Action
15 against Defendant asserting a single claim under Labor Code §§ 204 and 210. Labor Code
16 Section 204(d) provides that wages must be paid no later than 7 days following the close of the
17 payroll period. Labor Code § 210 provides for penalties for violation of Section 204. Plaintiff
18 alleges that Defendant paid its employees late beyond 7 days.

19 After this lawsuit was commenced, the Parties agreed to engage in arms' length
20 negotiations between highly experienced counsel. As part of their privileged settlement
21 negotiations, Defendant produced data regarding the entire putative class, from which Plaintiff's
22 counsel calculated the maximum PAGA penalties exposure at a 100% failure rate and based on
23 maximum potential penalties. (Hyun Decl. ¶ 8). Defendant further produced evidence in the
24 form of sample wage statements showing that the alleged and disputed violation rate was not
25 100% even if liability was established, such that even if the maximum penalties were awarded,
26 the calculated exposure was overstated. (*Id.*) Based on this information and substantial evidence
27 of Defendant's deteriorating financial condition, the Parties have settled this case on a
28 representative PAGA basis for \$75,000.00, or approximately 20% of the originally calculated

1 maximum exposure. (*Id.*)

2 Given Defendant's financial condition, the Parties have agreed that Defendant will fund
3 the Gross Settlement Amount with an initial payment of \$15,000.00, with monthly installments of
4 \$3,000.00 over 20 months until the Gross Settlement Amount is paid in full. (Settlement
5 Agreement at §§ 29(a)-(b)). The Settlement Agreement allocates one-third of the Gross
6 Settlement Amount for attorneys' fees, or \$25,000.00, up to \$10,000.00 in litigation costs
7 incurred by Plaintiffs' counsel, \$5,000.00 to Plaintiff for a service award, and up to \$2,400.00 for
8 settlement administration costs. (*Id.* at §§ 21(a)-(d)). The remainder, or the "PAGA Penalty
9 Fund," is allocated to the payment of civil penalties under PAGA, 75 percent of the civil penalties
10 for distribution to the Labor and Workforce Development Agency (the "LWDA") and 25 percent
11 of the civil penalties for distribution to the "aggrieved employees" on whose behalf Plaintiffs
12 filed this action as required by PAGA. (*Id.* at § 22).

13 The Settlement Agreement provides the following release:

14 Upon the approval by the Court of this Agreement, each of the
15 PAGA Members, including Plaintiff, shall, for the period from
16 February 28, 2019 to the date that the Court approves this
17 Agreement, fully release and forever discharge the Released
18 Parties, subject to the terms and conditions hereof and the approval
of the Court, from the Covered Claims and any other form of relief
or remedy in law, equity, or whatever kind or nature that were
asserted or could have been asserted for penalties pursuant to Labor
Code § 2698 *et seq.*

19 (*Id.* at § 26). The Settlement Agreement defines "Covered Claims" as

20 [A]ny and all claims, demands, rights, liabilities, and/or causes of
21 action for PAGA penalties pursuant to Labor Code § 2698 *et seq.*,
22 arising from any and all alleged violations of Labor Code § 204 and
23 § 210, and any other claims construed to be asserted in the Action
and PAGA Notice or which could have been brought as a PAGA
claim within the Covered Period based on the allegations contained
in the Action and PAGA Notice.

24 (*Id.* at § 9). Plaintiff also executed a general release as part of the Settlement Agreement,
25 including a waiver of Civil Code § 1542. (*Id.* at § 27).

26 Each PAGA Member will receive an individual payment proportionate to the number of
27 Eligible Pay Periods worked. (*See id.* § 22(a)). Each Individual Sentiment Award will be
28 considered the payment of a civil penalty and treated as IRS Form 1099 income. (*See id.*)

1 **III. STANDARD OF REVIEW**

2 Although PAGA requires courts to “review and approve” the settlement of any civil action
3 filed under PAGA, *see* Cal. Lab. Code § 2699(l)(2), neither the Legislature, the California
4 Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard
5 PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959,
6 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a PAGA
7 settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL 1899912, at *2
8 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating PAGA
9 settlements.”). The LWDA itself has acknowledged the lack of a “specific benchmark” and stated
10 only that the relief provided under PAGA must be “genuine and meaningful,” “consistent with the
11 underlying purpose of the statute to benefit the public” and, in the context of a class action,
12 “meet[] the standards of being ‘fundamentally fair, reasonable, and adequate’ with reference to
13 the public policies underlying the PAGA.” *See* California Labor and Workforce Development
14 Agency’s Comments on Proposed PAGA Settlement at 2–3, *O’Connor v. Uber Techs.*, No. 3:13-
15 CV-03826, ECF No. 736 (N.D. Cal. July 29, 2016).

16 Left to develop their own standards, federal district courts have typically followed the
17 LWDA’s limited guidance by requiring settlements to be “fundamentally fair, adequate, and
18 reasonable in light of PAGA’s policies and purposes.” *See Haralson*, 383 F. Supp. 3d at 972
19 (collecting cases). When applying this test, federal district courts often consider factors such as
20 strength of a Plaintiffs’ case; the risk, expense, complexity, and likely duration of further
21 litigation; the amount offered in settlement; the extent of discovery completed; and the expertise
22 and views of counsel. *See Smith*, 2018 WL 1899912 at *3. Federal district courts have also been
23 mindful of the fact that trial courts have broad discretion to award civil penalties in amounts that
24 are less than the maximum amounts authorized by PAGA. *See, e.g., id.* at *3; *see also* Cal. Lab.
25 Code § 2699(e)(2).

26 Given the lack of California precedent, Plaintiff defers to the PAGA standards developed
27 by district courts in the Ninth Circuit and, where appropriate, standards by California courts for
28 approving class action settlements. As set forth below, these standards favor approval of the

Settlement Agreement.

IV. ARGUMENT

A. Notice of the Settlement Agreements Has Been Given to the LWDA Pursuant to Labor Code section 2699(1)(2)

When enacting PAGA, the Legislature intended to ensure that the LWDA retained “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA online “at the same time that it is submitted to the court,” presumably to give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(1)(2), 2699(1)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement Agreement and this Motion to the LWDA through the LWDA’s online filing system on January 10, 2022. (*See* Hyun Decl. ¶ 11, Exh. B).

B. The Court Should Approve the Settlement Agreement

1. The Settlement Agreement Is Entitled to a Presumption of Fairness

In class actions, judicial review of a settlement’s fairness is designed to protect class members who had no say in the negotiation of the settlement by ensuring that the settlement is not the product of “fraud,” “overreaching,” or “collusion” by the negotiating parties and that “due regard” was given to the rights and interests of absent class members subject to the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800–01 (1996). Although PAGA actions and class action have certain “fundamental” differences, *see Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015), PAGA settlements present similar fairness concerns, because they bind “aggrieved employees” who played no part in the settlement negotiation and who have no opportunity to object. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing the scope of a judgment in a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016) (identifying the risk of PAGA claims being used “merely as a bargaining chip”); *Ceja-Corona v. CVS Pharmacy, Inc.*, No. 1:12-cv-01868, 2014 WL 4472691, at *9 (E.D. Cal. Sept. 11, 2014) (noting the risk of collusion in PAGA settlements).

1 Against this backdrop, California courts have identified a set of circumstances entitling
2 class action settlements to a “presumption of fairness.” *See Dunk*, 48 Cal. App. 4th at 1802. In
3 particular, a presumption of fairness arise where “(1) the settlement is reached through arm’s-
4 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
5 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
6 objectors is small.” *See id.*

7 All of the factors that would give rise to a presumption of fairness in the context of a class
8 action settlement are present in this PAGA action. After this lawsuit was commenced, the Parties
9 agreed to engage in arms’ length negotiations between highly experienced counsel. As part of
10 their privileged settlement negotiations, Defendant produced data regarding the entire putative
11 class, from which Plaintiff’s counsel calculated the maximum PAGA penalties exposure at at a
12 100% failure rate and based on maximum potential penalties. (Hyun Decl. ¶ 8). Defendant
13 further produced evidence in the form of sample wage statements showing that the alleged and
14 disputed violation rate was not 100% even if liability was established, such that even if the
15 maximum penalties were awarded, the calculated exposure was overstated. (*Id.*) Based on this
16 information and substantial evidence of Defendant’s deteriorating financial condition, the Parties
17 have settled this case on a representative PAGA basis for \$75,000.00, or approximately 20% of
18 the originally calculated maximum exposure. (*Id.*) Further, Plaintiff’s counsel has significant
19 experience in prosecuting wage and hour class and PAGA actions. (Hyun Decl. ¶¶ 3-6;
20 Declaration of William L. Marder (“Marder Decl.”) ¶¶ 2-10). Therefore, the Settlement
21 Agreement is entitled to a presumption of fairness.

22 **2. The Scope of the Settlement Agreement is Fair, Adequate, and**
23 **Reasonable**

24 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the
25 “vigorous assessment and collection of civil penalties as provided in the Labor Code” to
26 sometimes be “the only meaningful deterrent to unlawful conduct,” the Legislature enacted
27 PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement
28 capability of the LWDA with private enforcement actions by “aggrieved employees” acting as

1 private attorneys general. See 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS*
2 *Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of
3 in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA to
4 collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see also*
5 *Iskanian*, 59 Cal. 4th at 381–82. In that role, the named plaintiff “take[s] on a special
6 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.” *See*
7 *O'Connor*, 201 F. Supp. 3d at 1134.

8 Plaintiff’s claims in this action are based entirely on alleged violations of Labor Code
9 section 226(a). *See generally* Pl.’s Cmplt. The Labor Code provides imposes a civil penalty of
10 \$100 per violation per pay period. *See* Cal. Lab. Code § 2699(f)(2). When reviewing a settlement
11 agreement, however, “the test is not the maximum amount plaintiffs might have obtained at trial
12 on the complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), nor
13 is it “whether the settlement agreement is perfect in the estimation the reviewing court.” *See*
14 *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is “whether the settlement is
15 reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App. 4th at 250. Relevant
16 considerations include the strength of a Plaintiffs’ case and the risk, expense, complexity, and
17 likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
18 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In PAGA settlements, courts also consider
19 their authority to award less than the maximum penalty authorized by PAGA. *See* Cal. Lab. Code
20 § 2699(e)(2); *see also Smith*, 2018 WL 1899912 at *3.

21 Under the circumstances of this case, the payment of \$75,000.00 in civil penalties is fair,
22 adequate, and reasonable. The payment of \$75,000.00 in exchange for a release of only those
23 claims for civil penalties that are pleaded in the action or that could have been pleaded based on
24 the facts alleged in the PAGA Notice or the Complaint will have a substantial deterrent effect on
25 Defendant and other California employers and will confer benefits on the approximately 150
26 PAGA Members, whom will each receive roughly \$69.29 (\$10,393.23 divided by 150), while the
27 State will receive \$31,179.70. Although the PAGA Penalty Fund is less than the maximum
28 PAGA penalty authorized by PAGA, the amount reflects a compromise of the Parties’ respective

1 positions rather than a finding of liability at trial.

2 Furthermore, there is always the possibility of the Court reducing civil penalties
3 significantly if Plaintiff were to prevail at trial on the grounds that it would be “unjust, arbitrary
4 and oppressive, or confiscatory. *See* Cal. Lab. Code § 2699(e)(2). In particular, Defendant
5 contends that a significant reeducation of penalties is likely, because (1) the alleged violations of
6 Labor Code §§ 204 and 210 are, in Defendant’s opinion, technical and potentially limited and (2)
7 there is no claim that Defendant deliberately failed to provide pay and benefits to its employees or
8 negligently failed to learn about their obligations under the wage and hour laws. Indeed, as
9 shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
10 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
11 maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying
12 with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.*
13 at 539.

14 Finally, Defendant’s financial condition was a significant factor in driving this settlement.
15 The \$75,000.00 Gross Settlement Amount is the highest Defendant could pay while remaining in
16 business. Indeed, for this reason, Defendant needs to make installment payments. This heavily
17 favors approval of the settlement. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir.
18 1993) (holding that lower court properly approved class action settlement because of the
19 defendant’s financial condition; “Here one factor predominates to make clear that the district
20 court acted within its discretion. That factor is Tucson's financial condition.”).

21 In sum, this settlement is fair, reasonable, and consistent with PAGA’s policies and
22 purposes under these circumstances.

23 **3. The Settlement Agreement Apportions Civil Penalties between the**
24 **LWDA and the Settlement Group as Required by PAGA**

25 Except when civil penalties are recovered from a defendant who did not have any
26 employees at the time of an alleged violation, civil penalties recovered under PAGA must be
27 distributed so that 75 percent of the civil penalties are paid to the to LWDA and 25 percent are
28 paid to the “aggrieved employees” on whose behalf the PAGA action was brought. *See* Cal. Lab.

Code § 2699(i). In full compliance with that rule, the Settlement Agreement requires the PAGA Penalty Fund to be paid to the LWDA and 25 percent of the PAGA Penalty Fund to be paid Settlement Group. (Settlement Agreement at § 22).

4. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Attorneys' Fees

PAGA allows a prevailing Plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab. Code § 2699(g). In recognition of this, the Settlement Agreement allows Plaintiff's counsel to request up to \$25,000.00 in attorneys' fees. (*See* Settlement Agreement at § 21(a). For two reasons, this amount is fair, adequate, and reasonable in light of policies and purposes.

First, in class actions, state and federal courts have held that when a class action establishes a monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created." *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3 percent of the fund and joining "the overwhelming majority of federal and state courts" in approving the "percentage method" as a reasonable means for determining attorney fee awards in class actions). While different from class action settlements in important ways, PAGA settlements also involve the establishment of a common fund for the benefit of persons other than the named Plaintiffs, so the reasons for utilizing the percentage method are the same. *See id.* (noting that the percentage method provides "ease of calculation," "alignment of incentives between counsel and the class," "a better approximation of market conditions in a contingency case," and the "encouragement . . . to seek an early settlement"). The \$25,000.00 requested by Plaintiffs' counsel represents one-third of the Gross Settlement Amount, which is consistent with awards usually approved in class actions. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008) ("[F]ee awards in class actions average around one-third of the recovery"); *see also Laffitte*, 1 Cal. 5th at 506 (upholding the approval of a fee award equal to one-third of the total settlement amount).

Second, the percentage method may be cross-checked with the lodestar calculation when there are concerns about the reasonableness of a percentage-based award. A lodestar cross-check thus

1 provides a mechanism for bringing an objective measure of the work performed into the
2 calculation of a reasonable attorney fee. As set forth in their declarations and their respective
3 lodestars, Plaintiff's counsel have already incurred \$48,300.00, which exceeds the requested
4 \$25,000.00 in fees. (*See* Hyun Decl. ¶ 9, Exh. "A"; *see* Marder Decl. ¶ 11, Exh. "A"). Plaintiff's
5 counsel also anticipates incurring an additional 20 hours for post-approval matters, including
6 working with the administrator and responding to aggrieved employees' inquiries. (Hyun Decl. ¶
7 9; Marder Decl. ¶ 11). Based thereon, the lodestar equates to \$63,300.00, which exceeds the
8 \$25,000.00 fee request. (Hyun Decl. ¶ 9; Marder Decl. ¶ 11). Thus, while Plaintiff's counsel
9 could request a multiplier to their lodestar, none is necessary and \$25,000.00 is a fair and
10 reasonable attorney's fees award. *See Laffitte*, 1 Cal. 5th at 487 (awarding 1/3 of the common
11 fund as attorneys' fees is appropriate, even based on a lodestar with a 2.13 multiplier); *Wershba v.*
12 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g., Sutter Health Uninsured*
13 *Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in
14 an antitrust class action); *Chavez v. Netflix*, 162 Cal. App. 4th 43, 60 (2008) (applying a 2.5
15 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78
16 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after
17 finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed **a 2.13**
18 **multiplier**. *Laffitte*, 231 Cal. App. 4th at 881-82.

19 **5. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable**
20 **Amount to the Payment of Litigation Costs**

21 PAGA also allows a prevailing Plaintiff to recover litigation costs. *See* Cal. Lab. Code §
22 2699(g). Accordingly, the Settlement Agreement allows Plaintiff's counsel to request up to
23 \$10,000.00 in litigation costs. (Settlement Agreement at § 21(b)).

24 Plaintiff's counsel's is requesting \$1,027.07 for the reimbursement of litigation costs. As
25 set forth in accompanying declarations of Plaintiffs' counsel, these costs were all directly incurred
26 in the prosecution of this action, including, but not limited to, filing fees and service fees. (Marder
27 Decl. ¶ 12, Exh. "B"; Hyun Decl. ¶ 10). As such, Plaintiff's counsel's request for costs in the
28 amount of \$1,027.07 is fair, adequate, reasonable, and consistent with PAGA's policies.

1 **6. Plaintiff's Service Award Should Be Approved**

2 Courts have held that named plaintiffs in class, or private attorney general actions can
3 request a service award. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009)
4 (explaining that service awards “are intended to compensate class representatives for work done
5 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
6 action, and, sometimes, to recognize their willingness to act as a private attorney general”)
7 (emphasis added).

8 Here, Plaintiff respectfully requests \$5,000.00 for his service award, which is intended to
9 compensate Plaintiff for the time spent on this case, the potential for retaliation, and for executing
10 a general release, including of Civil Code § 1542, which was not required by aggrieved
11 employees. (Declaration of Thomas Brewer ¶¶ 2-4). This requested enhancement is consistent
12 with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*,
13 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun &*
14 *Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive
15 awards of \$55,000, and three incentive awards of \$35,000).

16 **7. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable**
17 **Amount to the Payment of Settlement Administration Costs**

18 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff's
19 Counsel, and the LWDA, but also to as many as 150 of Defendant's current and former
20 employees, significant time and effort will be required to administer the Settlement Agreement if
21 it is approved by this Court. Among other things, calculate each PAGA Member's shares; taxes
22 must be reported and appropriate tax forms must be issued to all parties who receive payments
23 under the Settlement Agreement; payments must be mailed to Plaintiff, Plaintiff's Counsel, the
24 LWDA, and each Settlement Group Member; and any checks not cashed by Settlement Group
25 Members must be voided so that the unclaimed amount can be reallocated to the LWDA.

26 In contemplation of these expenses, the parties have engaged Phoenix Settlement
27 Administrators to act as a third-party settlement administrator and have provided for the payment
28 of up to \$2,400.00 to cover the cost of settlement administration. (Settlement Agreement §

1 21(d)).

2 **V. CONCLUSION**

3 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
4 Agreement pursuant to Labor Code section 2699(1)(2).

5
6 DATED: January 10, 2022

POLARIS LAW GROUP

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9 William L. Marder
10 Attorneys for Plaintiff
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