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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

MARIA SANCHEZ, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

LODI MEMORIAL HOSPITAL
ASSOCIATION, INC., a California
corporation; ADVENTIST HEALTH
SYSTEM/WEST, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: STK-CV-UOE-2019-09557

(Assigned to the Hon. Roger Ross, Dept. 11B)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: November 3, November 4, November 5,
November 6, or November 10, 2020

Time: 9:00 a.m.

Dept.: 11B

Complaint Filed: July 24, 2019

FAC Filed: October 10, 2019

SAC Filed: August 28, 2020

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 3, November 4, November 5, November
3 6, or November 10, 2020, at 9:00 a.m., or as soon thereafter as the matter may be heard, before
4 the Honorable Roger Ross, judge presiding, in Department 11B of the above referenced Court
5 located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiffs Maria Sanchez, Eric
6 Ridgeway, Michelle Bueno, Cindy Javier, Deborah Patterson, Monica Barajas, and Mary
7 Gallegos (collectively, "Plaintiffs") will seek an Order approving the concurrently filed PAGA
8 Settlement Agreement, pursuant to the procedures set forth in Labor Code section 2698, *et seq.*

9 This motion will be based on this notice of motion, the attached memorandum of points
10 and authorities, the accompanying declarations of Larry W. Lee, Kristen Agnew, Nicholas
11 Rosenthal, Max Gavron, William L. Marder, Nicholas J. Ferraro, Maria Sanchez, Eric Ridgeway,
12 Michelle Bueno, Cindy Javier, Deborah Patterson, Monica Barajas, and Mary Gallegos, the
13 records and file herein, and on such other evidence as may be presented at the hearing of the
14 motion.

15
16 DATED: October 5, 2020

DIVERSITY LAW GROUP, P.C.

17
18 By: _____

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Max W. Gavron

Attorneys for Plaintiffs and Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section
4 2698, *et seq.*, Plaintiffs Maria Sanchez, Eric Ridgeway, Michelle Bueno, Cindy Javier, Deborah
5 Patterson, Monica Barajas, and Mary Gallegos (collectively, “Plaintiffs”) hereby move the Court
6 for an order approving the non-reversionary PAGA settlement as set forth in the concurrently
7 filed PAGA Representative Action Settlement Agreement and Release (the “Settlement
8 Agreement” or “Settlement”)¹. The operative Complaint in this case alleges that Defendants
9 Adventist Health System/West, Lodi Memorial Hospital Association, Inc., Reedley Community
10 Hospital, St. Helena Hospital, San Joaquin Community Hospital, White Memorial Medical
11 Center, Sonora Community Hospital, and Hanford Community Hospital (collectively,
12 “Defendants”) (Defendants and Plaintiffs together, the “Parties”) violated the PAGA arising
13 from Defendants’ alleged failure to provide accurate itemized wage statements pursuant to Labor
14 Code section 226(a). Specifically, Plaintiffs allege that the wage statements issued by Defendants
15 failed to identify accurate hourly rates of pay when overtime wages were paid and accurate total
16 hours worked when overtime and/or shift differential and/or shift premium wages were paid.

17 As demonstrated below and in the accompanying declaration of Nicholas Rosenthal, the
18 proposed settlement warrants the Court’s approval. This settlement was reached after extensive
19 investigation and written discovery, including Defendants’ production of relevant handbooks
20 during the applicable period, wage statements, and pay period data.

21 Pursuant to the terms of the Parties’ proposed Settlement Agreement, Defendants will
22 pay the gross amount of \$2,473,187.00 (the “Gross Settlement Amount”), which includes a
23 payment of approximately \$1,134,847.99 in civil penalties to the Labor and Workforce
24 Development Agency (“LWDA”). The proposed release is narrowly tailored to release only
25 claims for civil penalties under PAGA predicated on Labor Code sections 226, 226.3, and 2699
26 *et seq.*

27 _____
28 ¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the Settlement Agreement.

1 The proposed settlement constitutes an adequate, fair, and reasonable settlement on
2 behalf of the LWDA and Aggrieved Employees, and accomplishes the goals of PAGA.

3 **II. PROCEDURAL HISTORY**

4 **A. Summary of the Litigation and Settlement**

5 **1. The History of the Key Pleadings**

6 On or about July 9, 2019, Plaintiff Maria Sanchez submitted written notice under Labor
7 Code section 2699.3 (the “PAGA Notice”) to the LWDA and defendants. As set forth in the
8 PAGA Notice, Plaintiff Sanchez alleged that defendants failed to provide wage statements that
9 identified the correct hourly rate of pay for overtime wages and the correct total hours worked
10 when overtime and/or shift differential wages were paid in violation of California Labor Code
11 section 226(a). (Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 3.) Specifically, when
12 overtime was paid to Ms. Sanchez and her fellow employees in a given pay period, the overtime
13 earnings were split into multiple entries, none of which listed the correct overtime rate of pay.
14 Further, when Plaintiff Sanchez and her fellow employees received wage statements for pay
15 periods in which they worked overtime and/or shift differential hours, the wage statements
16 included redundant hours in the “hours worked” column and did not provided an accurate total
17 hours worked at the bottom of the wage statements. As a result, an employee who added up the
18 hours listed on their wage statements would come up with an inaccurate total number of hours
19 worked in the pay period.,

20 On July 24, 2019, Plaintiff Maria Sanchez filed a putative class and representative action
21 complaint against Defendants Lodi Memorial Hospital Association, Inc. and Adventist Health
22 System/West in the Superior Court of California, County of San Joaquin (the “Action”). On
23 October 4, 2019, Plaintiff Sanchez filed a first amended representative action complaint, alleging
24 a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an
25 underlying Labor Code section 226(a) violation. (Rosenthal Decl. ¶ 4.)

26 Thereafter, Plaintiff Sanchez propounded written discovery upon defendants, including
27 multiple sets of requests for production of documents, special and form interrogatories, and
28 requests for admissions, regarding defendants’ payroll practices and procedures, data regarding

1 the number of aggrieved employees and wage statements at issue, and other information. (*Id.* at ¶
2 5.)

3 **a. Other Adventist Litigation**

4 Simultaneous to the instant case, Plaintiff's counsel filed cases against other hospitals
5 affiliated with Defendant Adventist Health System/West based on the same exact alleged wage
6 statement defect. These other cases are as follows:

7 **1. *Ridgeway v. Reedley Community Hospital & Adventist***
8 ***Health System/West***

9 On July 16, 2018, Plaintiff Eric Ridgeway filed a putative class action complaint against
10 Defendants Reedley Community Hospital and Adventist Health System/West in the Superior
11 Court of California, County of Fresno. Plaintiff Ridgeway amended his complaint on August 30,
12 2018, and further amended his complaint on March 29, 2019, alleging a single cause of action
13 for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code
14 section 226(a) violation. (Rosenthal Decl. ¶ 6.) Plaintiff Ridgeway's second amended complaint
15 alleges the same claims against Defendant Adventist System/West as those alleged in Plaintiff
16 Sanchez's first amended complaint. (*Id.*)

17 The *Ridgeway* parties engaged in extensive motion practice and written discovery. (*Id.* at
18 ¶ 7.) Plaintiff Ridgeway propounded multiple sets of requests for production of documents,
19 special interrogatories, and requests for admissions upon defendants, reviewed defendants'
20 voluminous document production, and took the depositions of several fact witnesses, including
21 defendants' persons most knowledgeable. Plaintiff Ridgeway also provided sworn testimony in a
22 deposition and issued subpoenas to third party witnesses located in the State of Texas. (*Id.*)

23 **2. *Bueno v. St. Helena Hospital & Adventist Health***
24 ***System/West***

25 On March 15, 2019, Plaintiff Michelle Bueno filed a putative class action complaint
26 against Defendant St. Helena Hospital in the Superior Court of California, County of Napa.
27 Plaintiff Bueno amended her complaint on May 3, 2019, alleging a single cause of action for
28 violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section

226(a) violation. (Rosenthal Decl. ¶ 8.) Plaintiff Bueno’s first amended complaint alleges the same claims against Defendant Adventist System/West as those alleged in Plaintiff Sanchez’s first amended complaint. (*Id.*)

Plaintiff Bueno propounded written discovery upon defendants, including multiple sets of requests for production of documents, special interrogatories, and requests for admissions, regarding defendants’ payroll practices and procedures, data regarding the number of aggrieved employees and wage statements at issue, and other information. (*Id.* at ¶ 9.)

3. *Javier v. San Joaquin Community Hospital & Adventist Health System/West*

On July 24, 2019, Plaintiff Cindy Javier filed a putative class and representative action complaint against Defendants San Joaquin Community Hospital and Adventist Health System/West in the Superior Court of California, County of Kern. Plaintiff Javier amended her complaint on October 4, 2019, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation. (Rosenthal Decl. ¶ 10.) Plaintiff Javier’s first amended complaint the same claims against Defendant Adventist System/West as those alleged in Plaintiff Sanchez’s first amended complaint. (*Id.*)

Plaintiff Javier propounded written discovery upon defendants, including multiple sets of requests for production of documents, special interrogatories, and requests for admissions, regarding defendants’ payroll practices and procedures, data regarding the number of aggrieved employees and wage statements at issue, and other information. (*Id.* at ¶ 11.)

4. *Patterson v. Sonora Community Hospital & Adventist Health System/West*

On August 30, 2019, Plaintiff Deborah Patterson filed a putative class and representative action complaint against Defendants Sonora Community Hospital and Adventist Health System/West in the Superior Court of California, County of Calaveras. Plaintiff Patterson filed an amended complaint on April 20, 2020, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation.

(Rosenthal Decl. ¶ 12.) Plaintiff Patterson’s first amended complaint the same claims against Defendant Adventist System/West as those alleged in Plaintiff Sanchez’s first amended complaint. (*Id.*)

Plaintiff Patterson propounded written discovery upon defendants, including multiple sets of requests for production of documents, special interrogatories, and requests for admissions, regarding defendants’ payroll practices and procedures, data regarding the number of aggrieved employees and wage statements at issue, and other information. (*Id.* at ¶ 13.)

5. Barajas v. White Memorial Medical Center & Adventist Health System/West

On September 30, 2019, Plaintiff Monica Barajas filed a representative action complaint against Defendants White Memorial Medical Center and Adventist Health System/West in the Superior Court of California, County of Los Angeles, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation. (Rosenthal Decl. ¶ 14.) Plaintiff Barajas’ complaint alleges the same claims against Defendant Adventist System/West as those alleged in Plaintiff Sanchez’s first amended complaint. (*Id.*)

Plaintiff Barajas propounded written discovery upon defendants, including multiple sets of requests for production of documents, special interrogatories, and requests for admissions, regarding defendants’ payroll practices and procedures, data regarding the number of aggrieved employees and wage statements at issue, and other information. (*Id.* at ¶ 15.)

6. Gallegos v. Hanford Community Hospital & Adventist Health System/West

On February 24, 2020, Plaintiff Mary Gallegos filed a putative class and representative action complaint against Defendants Hanford Community Hospital and Adventist Health System/West in the Superior Court of California, County of Kings. Plaintiff Gallegos amended her complaint on April 17, 2020, alleging a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation.

(Rosenthal Decl. ¶ 16.) Plaintiff Gallegos’ first amended complaint alleges the same claims

1 against Defendant Adventist System/West as those alleged in Plaintiff Sanchez's first amended
2 complaint. (*Id.*)

3 Plaintiff Gallegos propounded written discovery upon defendants, including requests for
4 production of documents, special and form interrogatories, and requests for admissions,
5 regarding defendants' payroll practices and procedures, data regarding the number of aggrieved
6 employees and wage statements at issue, and other information. (*Id.* at ¶ 17.)

7 **2. The Parties Agree to Mediation and this Settlement**

8 Throughout the course of this litigation, the Parties have been working on informal
9 resolution of this matter. The Parties engaged in robust meet and confer efforts regarding the
10 underlying merits of the case and subsequently agreed to participate in mediation. (Rosenthal
11 Decl. ¶ 20.)

12 On July 1, 2019, the parties in the *Ridgeway* matter participated in an all-day mediation
13 with neutral Hon. Steven M. Vartabedian (Ret.). (*Id.* at ¶ 21.) The mediation concluded without a
14 settlement, and the Parties continued to litigate. (*Id.*)

15 On March 9, 2020, the Parties attempted a second mediation with the Hon. Steven M.
16 Vartabedian (Ret.). (*Id.* at ¶ 22.) The second mediation included the participation of all Parties in
17 this Action. (*Id.*)

18 In advance of the second mediation, and as a result of extensive discovery, Defendants
19 produced data relating to the number of aggrieved employees and wage statements at issue. (*Id.*
20 at ¶ 23.) The data allowed Plaintiffs' counsel to perform a comprehensive damage analysis in
21 preparation for the second mediation. (*Id.*)

22 During the mediation, the Parties spoke at length about the strengths and weaknesses of
23 each side's claims and defenses, and the scope of Defendants' liability. (*Id.* at ¶ 24.) Despite a
24 full day of negotiation, the Parties were unable to reach an agreement. Following further arm's
25 length negotiations facilitated by Hon. Vartabedian (Ret.), the Parties accepted a proposal for
26 settlement and the key terms. (*Id.*)

27 On or about August 28, 2020, and in order to efficiently effectuate the current settlement,
28 Plaintiffs filed a Second Amended Representative Action Complaint in this Action, incorporating

all plaintiffs and defendants in the actions listed in Section II.A.1.a. into the Action. (Rosenthal Decl. ¶ 25.) The Second Amended Complaint alleges a single cause of action for violation of Labor Code section 2698, *et seq.*, predicated on an underlying Labor Code section 226(a) violation. (*Id.*) The Second Amended Complaint is the operative complaint (“Complaint”).

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the settlement are described below and set forth in detail in the concurrently filed Settlement Agreement.

A. The Aggrieved Employees (or PAGA Members)

The aggrieved employees affected by this Settlement are defined as “any individual in the PAGA Group² during the PAGA Period³” (“PAGA Member”). (Settlement Agreement § 1.17.) Based upon Defendants’ records, there are 12,194 PAGA Members during the PAGA Period. (Settlement Agreement §§ 1.7, 1.18.)

B. Settlement Sum and Allocation

The Settlement Agreement requires Defendants to pay the gross amount of Two Million Four Hundred Seventy-Three Thousand One Hundred Eighty-Seven Dollars (\$2,473,187.00) (the “Gross Settlement Amount”). (Settlement Agreement §§ 1.9, 4.1.) This is an allocation of The balance of the Gross Settlement Amount remaining after deduction of the approved Enhancement Payments to Plaintiffs, Attorneys’ Fees and Costs, and the Settlement Administrator’s costs (the “Net Settlement Amount”), will be available for distribution to the LWDA and PAGA Members. (Settlement Agreement § 1.15.) Seventy-five percent of the Net Settlement Amount, or approximately \$1,134,847.99, will be paid to the LWDA for PAGA penalties. (Settlement Agreement § 4.5; Rosenthal Decl. ¶ 25.) The remaining twenty-five

² The PAGA Group encompasses, generally, all non-exempt employees of the hospitals named in this Action who were paid shift premium wages, overtime compensation, or double time compensation as defined in the Settlement Agreement at §§ 1.17.1 – 1.17.8.

³ The PAGA Period includes the liability period for the entire PAGA Group and begins with the applicable statutory date based upon each action provided notice of the PAGA claim to the California Labor & Workforce Development Agency and ends with the date the Court enters approval of this settlement, as defined in the Settlement Agreement at §§ 1.19.1 – 1.19.7.

1 percent, or approximately \$378,282.66, will be distributed to PAGA Members. (Settlement
2 Agreement § 4.6; Rosenthal Decl. ¶ 25.)

3 Each PAGA Member will receive an initial flat payment of \$5.00 from the Net
4 Settlement Amount. (Settlement Agreement § 4.6; Rosenthal Decl. ¶ 26.) The remainder will
5 then be distributed to PAGA Members on a pro rata basis, based on the number of Early Format
6 Wage Statements⁴ received during the applicable PAGA Period. (*Id.*)

7 Based on the number of PAGA Members, employees will be entitled to recover, on
8 average, \$31.02 each. (Rosenthal Decl. ¶ 27.) The amount any particular PAGA Member will be
9 entitled to recover will be greater or lower than this average depending on the number of Early
10 Format Wage Statements he or she received. (*Id.*) This is fair, as it directly allocates greater
11 penalties to individual PAGA Members who have allegedly suffered greater harm. (*Id.*)

12 As part of the Settlement Agreement, Defendants do not object to Plaintiffs' Counsel's
13 request for attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*
14 Eight Hundred Twenty-Four Thousand Three Hundred Ninety-Five Dollars and Sixty-Seven
15 Cents (\$824,395.67), plus reimbursement of documented litigation costs, subject to the Court
16 approving this Settlement.⁵ (Settlement Agreement § 4.2.) Also, as part of the Settlement
17 Agreement, Defendants do not object to Plaintiffs' request for an Enhancement Payment of Ten
18 Thousand Dollars (\$10,000.00) to each Plaintiff. (Settlement Agreement § 4.3.)

19 Finally, the Settlement Agreement provides for the payment of the fees and expenses
20 reasonably incurred by the Settlement Administrator. (Settlement Agreement § 4.4.) The
21 Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement,
22 with the administration costs estimated to be \$24,000.00.

23 //

24
25
26 ⁴ Early Format Wage Statements are wage statements issued to the Aggrieved Employees from the beginning of the
27 PAGA Period through May 8, 2019. Defendants resolved the wage statement defect that was the basis for the
lawsuits resolved by the settlement on May 9, 2019.

28 ⁵ As set forth below, Plaintiffs' Counsel seeks reimbursement for its anticipated actual litigation costs in the amount
of \$41,660.68. (Declaration of Larry W. Lee ("Lee Decl.") ¶ 8; Ex. A.; Declaration of Nicholas Ferraro ("Ferraro
Decl.") ¶ 14; Ex. A.)

1 **C. Scope of the Released Claims**

2 In exchange for the payments described above, Plaintiffs, the State of California, and
3 PAGA Members will release Defendants and Released Parties from:

4 [A]ny claim under PAGA for the alleged failure to provide
5 compliant wage statements, which may have arisen during the
6 PAGA Period, as defined in Section 1.19. This includes claims for
7 civil penalties under the PAGA, which are predicated on
8 Defendants’ alleged violation of California Labor Code section
9 226, 226.3, and 2699 *et seq.*

10 (Settlement Agreement § 5.1.) The Settlement, however, does not release Defendants from
11 violations of any predicate statutes other than PAGA, and will not affect a waiver of claims by
12 PAGA Members against Defendants for any of the underlying Labor Code claims. The release is
13 expressly limited to claims for civil penalties under PAGA. (*Id.*)

14 **IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

15 **A. PAGA Overview**

16 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the
17 LWDA and other aggrieved employees, to bring suit against their employers for alleged
18 violations of the California labor laws and to obtain penalties that previously could only be
19 obtained by the State. The PAGA was enacted because the Legislature determined that it was “in
20 the public interest to allow Aggrieved Employees, acting as private attorneys general, to recover
21 civil penalties for Labor Code violations,” since the State had not been able to fully or
22 adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal.4th 969, 980 (2009); *Ochoa-*
23 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s
24 declared purpose is to supplement enforcement actions by public agencies, which lack adequate
25 resources to bring all such actions themselves. Unlike class actions, these civil penalties are not
26 meant to compensate unnamed employees because the action is fundamentally a law
27 enforcement action.” [citations omitted].)

28 Labor Code section 2699(a) states that any Labor Code provision “that provides for a
civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered
through a civil action brought by an aggrieved employee on behalf of himself or herself and

1 other current or former employees pursuant to the procedures specified in Section 2699.3.” An
2 “aggrieved employee” means “any person who was employed by the alleged violator and against
3 whom one or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to
4 commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and
5 the employer setting forth the “specific provisions of [the Labor Code] alleged to have been
6 violated, including the facts and theories to support the alleged violation.” Lab. Code §
7 2699.3(a)(1). If the LWDA decides not to investigate the allegations or issue a citation to the
8 employer, the proposed representative plaintiff is entitled to commence a PAGA action after 65
9 days. Lab. Code § 2699.3(a)(2).

10 The California Supreme Court has explained that a plaintiff who brings a PAGA claim
11 “represents the same legal right and interest as state labor law enforcement agencies,” and brings
12 PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal.4th at 986. Of the civil penalties
13 recovered, 75 percent goes to the LWDA, and the remaining 25 percent goes to the “aggrieved
14 employees” for collecting the penalties on behalf of the State Lab. Code § 2699(i); *Baumann v.*
15 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA representative’s recovery
16 is “an incentive to perform a service to the state, not restitution for wrongs done to members of
17 the class”).

18 **B. Class Action Settlement Standards Do Not Govern the Settlement Approval**
19 **Process for PAGA Claims**

20 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement
21 is to determine whether it is within the “range of reasonableness,” and thus whether notice to the
22 class of the terms and conditions of the settlement, and the scheduling of a formal fairness
23 hearing, are worthwhile. *See* 4 Herbert B. Newberg, *Newberg on Class Actions* § 11.25 *et seq.*,
24 and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a preliminary
25 determination on the fairness, reasonableness, and adequacy of the settlement terms and must
26 direct the preparation of notice of the certification, proposed settlement, and date of the final
27 fairness hearing.” *Manual*, § 21.632 (4th ed. 2004). To make the preliminary fairness
28 determination, courts may consider several relevant factors, including “the strength of the

1 plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of
2 maintaining class action status through trial; the amount offered in settlement; the extent of
3 discovery completed and the stage of the proceedings; [and] the experience and views of
4 counsel..." See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

5 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the
6 Labor Code, which provides, in relevant part: "The court shall review and approve any penalties
7 sought as part of a proposed settlement agreement pursuant to this part." The Parties are not
8 obligated to "satisfy class action requirements," including the standards for class action
9 settlement approval. *Arias*, 46 Cal.4th at 980-988 (affirming lower court's holding that "plaintiff
10 need not satisfy class action requirements" to assert a PAGA claim).

11 Notably, unlike the class action settlement approval process, there is also no statutory
12 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
13 2699(1). In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do
14 they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if
15 any, reached between the parties." *Ochoa-Hernandez*, 2010 WL 1340777 at*13.

16 **C. The Settlement is Reasonable and Effectuates PAGA's Objectives**

17 The Court's focus in a PAGA case is not the amount that aggrieved employees will
18 ultimately receive as a result of a settlement, but instead, on whether the total settlement amount
19 achieves PAGA's objectives. Under PAGA, the penalties recovered are meant to supplement
20 agency funding for education and enforcement purposes. See Lab. Code § 2699(i). Here, the
21 Settlement represents an extraordinary recovery for the Aggrieved Employees and the State, and
22 thus the Settlement certainly effectuates PAGA's purpose.

23 Here, the Settlement accomplishes PAGA's primary objective to enforce the Labor Code.
24 See *O'Connor v. Uber Techs, Inc.*, 2016 WL 4398271, at *18 (N.D. Cal. August 18, 2016)
25 (noting that deterring noncompliance with the Labor Code is one of PAGA's objectives). As a
26 result of the lawsuit and Plaintiff's PAGA Notice, Defendants revised their payroll system on
27 May 9, 2019 such that the defect at issue in this case no longer exists. (Rosenthal Decl. ¶ 35.)

28 The Settlement is also consistent with the State's public policy favoring resolution of

1 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
2 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
3 parties are best positioned to understand their interests and resolve a dispute in a mutually
4 beneficial manner without court intervention into the settlement.” *Consumer Advocacy Group,*
5 *Inc. v. Kintetsu*, 141 Cal.App.4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3
6 Cal.4th 273, 277- 278 (1992)).

7 **D. The Scope of the Release is Appropriately Limited**

8 If approved, the Settlement would release Defendants and Released Parties from PAGA
9 claims predicated on the violation of Labor Code sections 226, 226.3, and 2699 *et seq.* during the
10 PAGA Period, and nothing more. The Settlement would not impact any other aggrieved
11 employees’ ability to pursue PAGA claims predicated on other Labor Code violations or any
12 Labor Claims not predicated on PAGA. Therefore, the limited scope of the release also supports
13 approval. Because an aggrieved employee’s PAGA action is a substitute for an action brought by
14 the government, “judgment in [a PAGA] action is binding not only on the named employee
15 plaintiff but also on government agencies and any aggrieved employee not a party to the
16 proceeding.” *Arias*, 46 Cal.4th at 986. However, “the nonparty employees, because they were not
17 given notice of the action or afforded any opportunity to be heard, would not be bound by the
18 judgment as to remedies other than civil penalties.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(l)
19 (non-party aggrieved employees retain all rights “to pursue or recover other remedies available
20 under state or federal law, either separately or concurrently with an action taken under this
21 part”).

22 Accordingly, the PAGA Members will be subject to only a limited release strictly
23 confined to the statutory penalties available under PAGA for violation of Labor Code sections
24 226, 226.3, and 2699 *et seq.***Error! Bookmark not defined.** The release is therefore
25 appropriately tailored.

26 **E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
27 **Litigation**

28 Although Plaintiffs are reasonably confident that they would prevail at trial, proceeding

1 in litigation entails significant risk on the underlying merits of Plaintiffs’ theory, in addition to
2 the still-developing law under PAGA. (Rosenthal Decl. ¶ 34; Lee Decl. ¶¶ 3-4; Declaration of
3 Kristen Agnew (“Agnew Decl.”) ¶ 3; Declaration of Max Gavron (“Gavron Decl.”) ¶ 3;
4 Declaration of William L. Marder (“Marder Decl.”) ¶ 2; Declaration of Nicholas J. Ferraro
5 (“Ferraro Decl.”) ¶¶ 3-4)

6 **1. Plaintiffs’ Claims are Contested**

7 Plaintiffs assert that their representative PAGA claim is based on the allegation that
8 Defendants failed to provide accurate itemized wage statements that identified the correct hourly
9 rate of pay when overtime wages were paid and the correct total hours worked when overtime
10 and/or shift differential wages were paid. (Rosenthal Decl. ¶ 23.) Defendants have denied
11 violation of any applicable laws and liability for any claims asserted in the Action. (*Id.* at ¶ 31.)
12 Defendants also argued that even if the Court ultimately found the wage statements violative of
13 Labor Code section 226, the alleged violation is a technical one and the Court has discretion
14 under PAGA to reduce the maximum allowable PAGA penalties at its discretion. (*Id.* at ¶¶ 31-
15 32.) Defendants may have sought summary judgment on this issue or proceeded to trial. (*Id.* at
16 32.) Should Defendants have prevailed, the State of California and aggrieved employees would
17 have been left with zero recovery. (*Id.*)

18 **2. Recovery of Penalties After Trial**

19 Defendants have indicated that there were 12,194 individuals who received 145,007
20 Early Format Wage Statements that contained shift premium, overtime, or double time wages
21 during the applicable PAGA Period, which was the main focus of Plaintiffs’ claims. Therefore,
22 pursuant to the PAGA, Plaintiff has calculated total exposure at \$36,251,750.00 (\$250 x
23 145,007, pursuant to Labor Code § 226.3). (Rosenthal Decl. ¶ 30.) However, even if Plaintiffs
24 were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Pursuant to
25 Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties
26 where “...if, based on the facts and circumstances of the particular case, to do otherwise, would
27 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in
28 the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on

1 his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%,
2 citing the employer's good faith attempt at complying with the law. 30 Cal.App.5th 504, 517
3 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see*
4 *O'Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to \$1
5 billion, such award "could well be reduced, as a court may reduce the penalty when to do
6 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

7 Courts routinely award far less than the statutory maximum amount of civil penalties,
8 even where an underlying violation of the Labor Code is found. Indeed, just very recently, in the
9 matter of *Magadia v. Wal-Mart Assocs. et al.*, while the trial court imposed substantial PAGA
10 penalties upon the defendant, such amount still represented reductions of 67% and 80% of the
11 potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100. Moreover, this was
12 only after the plaintiff in *Magadia* had prevailed after trial.

13 Here, Plaintiffs maintain that there does not exist any reason for reducing PAGA
14 penalties. However, Plaintiffs are aware that Defendants could make a compelling argument to
15 the contrary. Firstly, Defendants have maintained throughout this litigation that the wage
16 statements were compliant with the law. (Rosenthal Decl. ¶ 31.) Employees could simply add
17 their regular hours worked to any overtime hours worked in order to get the total hours worked
18 in a given pay period. (*Id.*) All the cases resolved by the instant settlement hinge on this issue, so
19 if Defendant were able to persuade the Court that its wage statements were legally compliant in
20 this regard, there would be no finding of liability. (*Id.*) Second, even if there were a finding of
21 liability, Defendants have characterized the legal violation at issue as being "technical" to the
22 extent that there is no allegation of actual unpaid wages. (*Id.* at ¶ 32.) As such, the Court may be
23 disinclined to award full PAGA penalties. Third, Defendants are non-profit hospitals that serve
24 relatively isolated and rural populations. (*Id.*) On this basis, the Court again may find there is
25 reason to significantly reduce the PAGA penalties awarded.

26 The Court's assessment of the proposed Settlement must take into account that any
27 penalties awarded may be subject to substantial reduction. When this is considered, in
28 conjunction with the history of PAGA case law and settlements, and the fact that Plaintiff may

1 recover nothing, the proposed settlement is patently reasonable. Settlement for this reduced value
2 allows for the distribution of penalties in an amount which accounts for the risk of continued
3 litigation, and Defendants’ likely arguments that higher penalties would have been confiscatory.
4 It also sufficiently deters Defendants from engaging in similar conduct in the future, which is one
5 of the primary goals of PAGA.

6 The proposed settlement exceeds PAGA settlements that courts have approved in other
7 cases, when considered as a percentage of the overall settlement value of the case. The proposed
8 settlement, in fact, far exceeds other PAGA settlements approved by courts—including those that
9 provide for less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v.*
10 *Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA
11 allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL
12 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of
13 \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013)
14 (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement). For example, in
15 *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were misclassified as
16 independent contractors. 2016 WL 3561742, (N.D. Cal. June 23, 2016). The parties’ settled all
17 Labor Code and PAGA claims for \$27 million, with a PAGA allocation of \$1 million – or 3.7%
18 of the total settlement. *Id.* at *2. In granting preliminary approval to the proposed settlement in
19 *Cotter*, the court noted that the PAGA allocation “might seem low when compared to the
20 maximum PAGA penalties,” but acknowledged that it was in fact “quite high compared to the
21 typical amount apportioned to claims for PAGA penalties in wage and hour settlements.” *Id.* at
22 *5

23 A PAGA allocation need not represent any particular percentage of the overall settlement
24 value in order to secure court approval, and courts routinely approve PAGA settlements
25 representing only a tiny fraction of the overall settlement value. The proposed settlement sum in
26 this case vastly exceeds, both in terms of the total dollar amount and as a percentage of overall
27 settlement value, the typical PAGA settlement.

28 **F. The Attorneys’ Fees are Reasonable**

1 Labor Code section 2699(g)(1) provides for the recovery of attorneys' fees and costs in
2 any successful action brought under PAGA. Although this is not a class action, in class actions
3 California state and federal courts have recognized that an appropriate method for determining
4 award of attorneys' fees is based on a percentage of the total value of benefits to class members
5 by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *Serrano v.*
6 *Priest*, 20 Cal.3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
7 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
8 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
9 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
10 burden alone." *Vincent*, 557 F.2d at 769.

11 The common fund doctrine is predicated on the principle of preventing unjust
12 enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits,
13 he may require the passive beneficiaries to compensate those who created the fund. Both
14 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal.3d at 35;
15 *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.4th
16 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
17 been applied "consistently in California when an action brought by one party creates a fund in
18 which other persons are entitled to share." The reasons for applying the common fund doctrine
19 include: "...fairness to the successful litigant, who might otherwise receive no benefit because
20 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage
21 to the others who are entitled to share in the fund and who should bear their share of the burden
22 of its recovery; encouragement of the attorney for the successful litigant who will be more
23 willing to undertake and diligently prosecute proper litigation for the protection or recovery of
24 the fund if he is assured that he will be properly and directly compensated should his efforts be
25 successful." *Id.*

26 Indeed, most recently, the California Supreme Court has also held that the award of
27 attorneys' fees in common fund wage and hour class action settlements should start with the
28 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.5th 480, 503 (2016) ("We join the

1 overwhelming majority of federal and state courts in holding that when class action litigation
2 establishes a monetary fund for the benefit of the class members, and the trial court in its
3 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
4 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

5 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
6 percent of the fund. *Laffitte*, 1 Cal.5th at 506. And this was based on a lodestar amount that
7 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
8 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
9 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

10 Additionally, Plaintiffs’ Counsel’s cost reimbursement request in the amount of
11 \$41,660.68 is also reasonable. (Lee Decl. ¶ 8, Ex. A; Ferraro Decl. ¶ 14, Ex. A.) The costs were
12 all directly incurred in the prosecution of this action, including filing fees, mediation fees,
13 deposition fees, subpoena fees, postage, copying, and court reporter fees. (*Id.*) As such, the
14 requested costs should be awarded as fair and reasonable.

15 **G. The Settlement Administrator’s Fees Should be Approved**

16 The Parties have agreed to pay actual costs of administration, or \$24,000.00, to the
17 Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement.
18 (Settlement Agreement § 4.4.) The Parties believe that the administration fee is reasonable and
19 should be approved.

20 **H. Plaintiffs’ Enhancement Payments Should Be Approved**

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

27 Here, Plaintiffs seek a total of \$70,000.00 for the service award, which is intended to
28 compensate each respective Plaintiff the amount of \$10,000.00 for the time spent on this case,

1 including reviewing and verifying written discovery responses, the potential for retaliation, and
2 for executing a general release, including for all known and unknown claims under Civil Code §
3 1542. (Declaration of Maria Sanchez ¶ 5; Declaration of Eric Ridgeway ¶ 5; Declaration of
4 Michelle Bueno ¶ 5; Declaration of Cindy Javier ¶ 5; Declaration of Monica Barajas ¶ 5;
5 Declaration of Deborah Patterson ¶ 5; Declaration of Mary Gallegos ¶ 5.) This requested
6 enhancement is consistent with awards approved in other common fund cases. *See Van Vranken*
7 *v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
8 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
9 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v.*
10 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
11 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio
12 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068,
13 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive
14 award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.
15 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

16 **I. Notice to the LWDA Has Been Provided**

17 Concurrent with the filing of this Motion, Plaintiffs uploaded the instant motion to the
18 LWDA's website. (Rosenthal Decl. ¶ 40.)

19 **V. CONCLUSION**

20 Based on the above, Plaintiffs request that the Court approve the current PAGA
21 settlement.

23 DATED: October 5, 2020

DIVERSITY LAW GROUP, P.C.

25 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Max W. Gavron

Attorneys for Plaintiffs and Aggrieved Employees

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On October 5, 2020, I served the following document(s) described as:

- 1. PLAINTIFFS' NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 2. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 4. DECLARATION OF KRISTEN AGNEW IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 5. DECLARATION OF MAX GAVRON IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 6. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 7. DECLARATION OF NICHOLAS J. FERRARO IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
- 8. DECLARATION OF ERIC RIDGEWAY IN SUPPORT OF PLAINTIFFS' MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

- 1 **9. DECLARATION OF MICHELLE BUENO IN SUPPORT OF PLAINTIFFS’**
2 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**
3 **PRIVATE ATTORNEYS GENERAL ACT**
- 4 **10. DECLARATION OF MARIA SANCHEZ IN SUPPORT OF PLAINTIFFS’**
5 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**
6 **PRIVATE ATTORNEYS GENERAL ACT**
- 7 **11. DECLARATION OF CINDY JAVIER IN SUPPORT OF PLAINTIFFS’ MOTION**
8 **TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE**
9 **ATTORNEYS GENERAL ACT**
- 10 **12. DECLARATION OF MARY GALLEGOS IN SUPPORT OF PLAINTIFFS’**
11 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**
12 **PRIVATE ATTORNEYS GENERAL ACT**
- 13 **13. DECLARATION OF DEBORAH PATTERSON IN SUPPORT OF PLAINTIFFS’**
14 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**
15 **PRIVATE ATTORNEYS GENERAL ACT**
- 16 **14. DECLARATION OF MONICA BARAJAS IN SUPPORT OF PLAINTIFFS’**
17 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**
18 **PRIVATE ATTORNEYS GENERAL ACT**
- 19 **15. PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND**
20 **RELEASE**
- 21 **16. [PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION TO APPROVE**
22 **SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS**
23 **GENERAL ACT AND JUDGMENT**

24 on the interested parties in this action as follows:

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1 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
2 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
3 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
4 indicated above or on the attached mailing list. I certify that said electronic transmission was
5 completed and that all pages were received by the party(ies) identified herein or on the attached
6 mailing list.

7 I declare under penalty of perjury under the laws of the State of California that the
8 above is true and correct. Executed on October 5, 2020, at Los Angeles, California.

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Erika Mejia