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

GUY BLAZ HANLEY, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

SAMSARA NETWORKS, INC., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CGC-20-584034

[Assigned to the Hon. Anne-Christine Massullo,
Dept. 304]

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

Date: January 4, 2022

Time: 10:00 a.m.

Dept.: 304

Complaint Filed: April 3, 2020

Trial Date: None Set

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

12/09/2021
Clerk of the Court
BY: SANDRA SCHIRO

Deputy Clerk

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

2 **PLEASE TAKE NOTICE** that on January 4, 2022, at 10:00 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Anne-Christine Massullo, judge presiding, in
4 Department 304 of the above referenced Court located at 400 McAllister Street, San Francisco,
5 California 94102, Plaintiff Guy Blaz Hanley ("Plaintiff") will seek an Order approving the
6 concurrently filed PAGA Settlement Agreement (the "Agreement" or "Settlement"), pursuant to
7 the procedures set forth in Labor Code § 2698, *et seq.*

8 This motion will be based on this notice of motion, the attached memorandum of points
9 and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, Jonathan M.
10 Lebe, and Plaintiff Guy Blaz Hanley, the records and file herein, and on such other evidence as
11 may be presented at the hearing of the motion.

12
13 DATED: December 9, 2021

LEBE LAW, APLC and DIVERSITY LAW
GROUP, P.C.

14
15 By: 

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Zachary Gershman

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff Guy Blaz Hanley

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	6
II. PROCEDURAL HISTORY	7
A. Summary of the Litigation and Settlement	7
1. The History of the Key Pleadings	7
2. The Parties Participate in Private Mediation	9
III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT	9
A. The Aggrieved Employees (or PAGA Group Members)	10
B. Settlement Terms, Sum, and Allocation	10
C. Scope of the Released Claims	11
IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED	12
A. PAGA Overview	12
B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims	13
C. The Settlement is Reasonable and Effectuates PAGA's Objectives	14
D. The Scope of the Release is Appropriately Limited	15
E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation	15
1. Plaintiff's Claims are Contested	15
2. Recovery of Penalties After Trial	17
3. Settlement is Reasonable When Compared to the Value of the Underlying Labor Code Claim	18
F. The Attorneys' Fees are Reasonable	20
G. The Settlement Administrator's Fees Should be Approved	22
H. Plaintiff's General Release and Service Payments Should Be Approved	22
I. Notice to the LWDA Has Been Provided	23
V. CONCLUSION	23

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Arias v. Superior Court</i> , 46 Cal. 4th 969 (2009)	12, 13, 14, 15
<i>Baumann v. Chase Inv. Servs. Corp.</i> , 747 F. 3d 1117 (9th Cir. 2014)	13
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127 (9th Cir. 2021).....	19
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	20
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	16
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907 (S.D. Ohio 2001).....	23
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. 2011)	16
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	17, 18
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	21
<i>Consumer Advocacy Group, Inc. v. Kintetsu</i> , 141 Cal. App. 4th 46 (2006).....	14
<i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998)	23
<i>Cotter v. Lyft, Inc.</i> , 2016 WL 3561742 (N.D. Cal. June 23, 2016).....	19, 20
<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240 (S.D. Ohio 1991) .	23
<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 27, 2007).....	23
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	14
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> , 554 Fed. Appx. 661 (9th Cir. 2014).....	17
<i>Hopson v. Hanesbrands Inc.</i> , 2009 WL 928133 (N.D. Cal. Apr. 3, 2009)	19
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366 (S.D. Ohio 1990)	23
<i>Laffitte v. Robert Half Int’l</i> , 1 Cal. 5th 480 (2016)	21, 22
<i>Lusby v. Gamestop Inc.</i> , 97 F.R.D. 400 (N.D. Cal. 2013)	19
<i>Magadia v. Wal-Mart Assocs., et al.</i> , 2019 U.S. Dist. LEXIS 91792 (N.D. Cal. May 31, 2019).....	18
<i>Magadia v. Wal-Mart Assocs., Inc.</i> , 999 F.3d 668 (9th Cir. 2021)	18
<i>Moore v. PetSmart, Inc.</i> , 2015 WL 5439000 (N.D. Cal. Aug. 4, 2015).....	19
<i>Ochoa- Hernandez v. Cjaders Foods, Inc.</i> , 2010 WL 1340777 (N.D. Cal. April 2, 2010)....	12, 14
<i>Raines v. Coastal Pacific Food Distributors, Inc.</i> , 23 Cal. App. 5th 667 (2018).....	17, 18

1	<i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	22
2	<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	20, 21
3	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....	23
4	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759 (9th Cir. 1997)	20, 21
5	<i>Wesson v. Staples the Off. Superstore, LLC</i> , 68 Cal. App. 5th 746, 283 Cal. Rptr. 3d 846 (2021),	
6	reh'g denied (Sept. 27, 2021), review filed (Oct. 19, 2021).....	17
7	Statutes	
8	Labor Code § 2698, <i>et seq.</i>	passim
9	Labor Code § 2699(a)	12
10	Labor Code § 2699(c)	13
11	Labor Code § 2699(f)(2)	17
12	Labor Code § 2699(g)(l)	15, 20
13	Labor Code § 2699(i).....	13, 14
14	Labor Code § 2699.3(a)(l)	13
15	Labor Code § 2699.3(a)(2)	13
16	Other Authorities	
17	4 Herbert B. Newberg, <i>Newberg on Class Actions</i> § 11.25, <i>et seq.</i> and § 13.64 (4th ed. 2002 and	
18	Supp. 2004).....	13
19	<i>Manual for Complex Litigation, Fourth</i> § 21.632 (Fed. Jud. Ctr., 4th ed. 2004)	13
20		
21		
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23		
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25		
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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 § 2698, *et*
4 *seq.*, Plaintiff Guy Blaz Hanley (“Plaintiff”) hereby moves the Court for an order approving the
5 non-reversionary PAGA settlement as set forth in the concurrently filed PAGA Settlement
6 Agreement (the “Settlement Agreement” or “Settlement”).

7 As demonstrated below and in the accompanying declaration of Max W. Gavron, the
8 proposed settlement warrants the Court’s approval. This settlement was reached after extensive
9 investigation and informal discovery, including Defendant’s production of relevant policy
10 documents and data relating to the number of pay periods worked by aggrieved employees
11 during the applicable liability period. The Parties also participated in a mediation with Hon.
12 Ronald Sabraw (Ret.), which did not initially result in a proposed resolution. Only after months
13 of further protracted negotiations were the Parties able to arrive at the proposed Settlement.

14 Pursuant to the terms of the Parties’ proposed Agreement, Defendant will pay the gross
15 amount of \$800,000.00 (the “Gross Settlement Amount”), which includes an estimated payment
16 of approximately \$364,375.00 in civil penalties to the Labor and Workforce Development
17 Agency (“LWDA”). The proposed release is narrowly tailored to release only claims for civil
18 penalties under PAGA predicated on Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 558,
19 1174, 1194, 1197, 1197.1, and 2802 and the applicable Industrial Welfare Commission (“IWC”) *et*
20 Wage Orders.

21 The Settlement contemplates the filing of a First Amended Complaint, which asserts a
22 PAGA cause of action for violation of Labor Code § 2698, *et seq.*, predicated on Defendant
23 Samsara Inc.’s (sued herein as Samsara Networks, Inc.; hereinafter, “Defendant”) alleged
24 violation of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197,
25 1197.1, and 2802; and individual causes of action for (1) violation of Labor Code §§ 510, 558,
26 and 1194; (2) violation of Labor Code §§ 1194, 1197, and 1197.1; (3) violation of Labor Code
27 §§ 226.7 and 512; (4) violation of Labor Code § 226.7; (5) violation of Labor Code § 2802; (6)
28 violation of Labor Code § 226(a); (7) violation of Business and Professions Code § 17200, *et*

1 *seq.*; and (8) violation of Labor Code § 204. By way of this Motion, Plaintiff also seeks leave to
2 file the First Amended Complaint for purposes of effectuating the Settlement, subject to Court
3 approval.

4 The proposed settlement constitutes an adequate, fair, and reasonable settlement on
5 behalf of the LWDA and aggrieved employees, and accomplishes the goals of the PAGA.

6 **II. PROCEDURAL HISTORY**

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

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

9 On March 27, 2020, Plaintiff filed a notice with the Labor & Workforce Development
10 Agency (“LWDA”) alleging that Defendant violated Labor Code §§ 201-204, 226(a), 226.7, 510,
11 512, 558, 1194, 1197, 1197.1, 1199, and 2802 (the “PAGA Notice”).

12 On April 3, 2020, Plaintiff filed a Class Action Complaint for Damages against
13 Defendant in the Superior Court of California, County of San Francisco (the “Action”). (Gavron
14 Decl. ¶ 4.) Plaintiff alleged that Defendant failed to: (a) failed to pay overtime for all hours
15 worked in violation of Labor Code §§ 510, 558, and 1194; (b) failed to pay minimum wages for
16 all hours worked in violation of Labor Code §§ 1194, 1197, and 1197.1; (c) failed to provide off-
17 duty meal and rest breaks in violation of Labor Code §§ 226.7 and 512; (d) failed to reimburse
18 business expenses in violation of Labor Code § 2802; (e) failed to provide accurate, itemized
19 wage statements in violation of Labor Code § 226(a); (f) failed to pay all earned wages in a
20 timely manner and upon separation of employment in violation of Labor Code §§ 201-203 and
21 204; (g) failed to maintain payroll records in violation of Labor Code § 1174; and (h) engaged in
22 Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable
23 IWC Wage Orders.

24 The complaint alleged putative class claims and a representative claim under the PAGA,
25 based on the facts described above. (*Id.*)

26 On or about June 17, 2020, Defendant filed a petition to compel arbitration of Plaintiff’s
27 individual claims, dismiss the class claims, and stay the Action. On the same date, Defendant
28 also filed an Answer to the Eighth Cause of Action in the Complaint alleging violation of PAGA.

1 (*Id.* ¶ 6.)

2 On August 11, 2020, the Court issued an Order compelling Plaintiff's individual claims
3 to arbitration, dismissing the class claims, and staying the Action pending completion of
4 arbitration. (*Id.* ¶ 7.)

5 After the Court compelled Plaintiff's individual claims to arbitration and dismissed his
6 putative class allegations, the Parties agreed to participate in a mediation effort. (*Id.* ¶ 8.)

7 As noted above, the Settlement provides that Plaintiff will seek leave to file an Amended
8 Complaint, which is attached as Exhibit A to the Settlement. The Amended Complaint sets forth
9 a PAGA cause of action for violation of Labor Code § 2698, *et seq.*, predicated on Defendant's
10 alleged violation of Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512, 558, 1174, 1194,
11 1197, 1197.1, and 2802; and individual causes of action for (1) violation of Labor Code §§ 510,
12 558, and 1194; (2) violation of Labor Code §§ 1194, 1197, and 1197.1; (3) violation of Labor
13 Code §§ 226.7 and 512; (4) violation of Labor Code § 226.7; (5) violation of Labor Code § 2802;
14 (6) violation of Labor Code § 226(a); (7) violation of Business and Professions Code § 17200, *et*
15 *seq.*; and (8) violation of Labor Code § 204. (Gavron Decl. ¶ 9.) More specifically, Plaintiff
16 alleges that he and other aggrieved employees regularly worked off-the-clock during meal and
17 rest periods, were not allowed to accurately keep track of all hours worked, were not paid
18 premium compensation in lieu of missed or incomplete meal and rest periods, were not paid
19 double time pay at the correct regular rate of pay, and were not reimbursed for business-related
20 expenses. In addition, as a result of the foregoing, the wage statements issued to Plaintiff and
21 other aggrieved employees were inaccurate. Plaintiff also alleged that the wage statements
22 violated the Labor Code because Defendant always identified employees' hours worked as
23 "86.67" hour," which Plaintiff alleged was not accurate. Plaintiff also alleges that Defendant did
24 not pay all commissions owed to Plaintiff and other aggrieved employees when earned and
25 payable and/or upon separation of employment. (*Id.*) As a result, Plaintiff alleges that he and all
26 aggrieved employees are owed penalties under the PAGA. (*Id.*)

27 Pursuant to the proposed Settlement, "The Amended Complaint shall be deemed filed as
28 of the Approval Date, and Defendant concurrently shall be deemed to deny all of the allegations

1 contained in it and to raise all the defenses Defendant raised in its August 11, 2020 Answer to
2 the original Complaint, without the need to file an answer to the Amended Complaint.”
3 (Settlement Agreement ¶ 3.2.)

4 Defendant disputes and denies Plaintiff’s allegations and claims asserted in the operative
5 Complaint. (Gavron Decl. ¶ 11.)

6 **2. The Parties Participate in Private Mediation**

7 In or about November 2020, the Parties agreed to participate in private mediation. In
8 connection with the anticipated mediation, Defendant informally produced documents and data,
9 including the number of current and former non-exempt employees employed by Defendant in
10 California during the relevant period, information regarding the wage statements Defendant
11 furnished to its non-exempt employees employed in California during the relevant period, and
12 relevant written policies. (Gavron Decl. ¶ 12.) Using the data provided by Defendant, Plaintiff’s
13 counsel performed a comprehensive analysis regarding the maximum amount of penalties that
14 could be recovered at trial under the PAGA. (*Id.*)

15 On February 24, 2021, the Parties participated in private mediation with the Honorable
16 Ronald M. Sabraw (Ret.). (Gavron Decl. ¶ 13.) During the mediation, the Parties spoke at length
17 about the strengths and weaknesses of each side’s claims and defenses and the scope of
18 Defendant’s liability. (*Id.*) After a full day of negotiation, the Parties were unable to reach a
19 settlement. (*Id.*)

20 After months of continued, arm’s-length negotiations with the assistance of Judge
21 Sabraw, the Parties reached a settlement in principle on or about June 14, 2021. (*Id.* ¶ 14.) In
22 connection with the Parties’ agreement, the Parties contemplated the filing of a First Amended
23 Complaint, which is attached as Exhibit A to the Settlement Agreement, asserting individual and
24 PAGA claims for Defendant’s alleged failure to pay all commissions owed. (*Id.*)

25 After negotiating the terms of the proposed settlement, on or about November 8, 2021,
26 the Parties reached a settlement of the entire action. (*Id.* ¶ 15.)

27 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

28 The material terms of the Settlement are described below and set forth in detail in the

1 concurrently filed PAGA Settlement Agreement, a true and correct copy of which is attached as
2 **Exhibit A** to the Declaration of Max W. Gavron.

3 **A. The Aggrieved Employees (or PAGA Group Members)**

4 The Settlement covers “Plaintiff and all other current and former non-exempt employees
5 employed by Defendant in California at any time from March 27, 2019 to and including July 31,
6 2021” (“PAGA Group Members”). (Settlement Agreement ¶ 2.19.) Based upon Defendant’s
7 records, Defendant represented that there are 14,353 pay periods worked from March 27, 2019
8 to and including July 31, 2021 (“PAGA Period”). (*Id.* ¶¶ 2.13, 2.21.)

9 **B. Settlement Terms, Sum, and Allocation**

10 The Settlement Agreement requires Defendant to pay the gross amount of Eight Hundred
11 Thousand Dollars (\$800,000.00) (the “Gross Settlement Amount”). (Settlement Agreement ¶
12 2.13.) The balance of the Gross Settlement Amount remaining after deduction of the approved
13 General Release Payment to Plaintiff, Service Payment to Plaintiff, Attorneys’ Fees and Costs,
14 and Settlement Administration Costs (the “Net Settlement Sum”), will be available for
15 distribution to the LWDA and aggrieved employees. (*Id.* ¶¶ 2.13, 2.16, 2.31, 3.4, 3.5, 3.6.)

16 The Net Settlement Sum will total at least \$485,833.33. (Gavron Decl. ¶ 24.) Seventy-
17 five percent of the Net Settlement Sum, or approximately \$364,375.00, will be paid to the
18 LWDA for PAGA penalties. (Settlement Agreement ¶ 2.16; Gavron Decl. ¶ 24.) The remaining
19 twenty-five percent, or approximately \$121,458.33, will be distributed to PAGA Group
20 Members (“PAGA Group Members Payment”). (Settlement Agreement ¶ 2.20; Gavron Decl. ¶
21 24.)

22 Based on the number of pay periods encompassed by the Settlement, the gross settlement
23 amounts to an award of approximately \$55.74 per pay period ($\$800,000.00 \div 14,353$ pay
24 periods), and an award of approximately \$33.85 per pay period, if based on the Net Settlement
25 Fund ($\$485,833.33 / 14,353$ pay periods). (Gavron Decl. ¶ 25.) The aggrieved employees will
26 receive 25% of the Net Settlement Fund and each employee’s portion will be allocated based on
27 the number of pay periods in which he or she worked during the PAGA Period, with some
28 entitled to receive more, and others less. (*Id.*; Settlement Agreement ¶ 4.4.2.) This is fair, as it

1 directly allocates greater penalties to individual PAGA Group Members who have allegedly
2 suffered greater harm. (Gavron Decl. ¶ 25.)

3 As part of the Settlement, Defendant does not object to Plaintiff's Counsel's request for
4 attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Two Hundred
5 Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$266,666.67), plus
6 up to Fifteen Thousand Dollars (\$15,000.00) in actual litigation costs and expenses ("Attorneys'
7 Fees and Costs"), subject to the Court finally approving this Settlement.¹ (Settlement Agreement
8 ¶ 3.4.) Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request
9 for a Service Payment of Five Thousand Dollars (\$5,000.00) and a General Release Payment of
10 Twenty Thousand Dollars (\$20,000.00) in exchange for signing a general release. (Settlement
11 Agreement ¶¶ 3.5, 3.6.)

12 The Settlement Agreement provides for the payment of the fees and expenses reasonably
13 incurred by the Settlement Administrator. (Settlement Agreement ¶ 2.31.) The Parties have
14 agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the
15 administration costs estimated to be Seven Thousand Five Hundred Dollars (\$7,500.00) (*Id.* ¶¶
16 2.31, 2.32.)

17 Settlement payments to PAGA Group Members shall be categorized as penalties for tax
18 purposes and the Settlement Administrator shall provide IRS Form 1099-MISC, as required by
19 law. (Settlement Agreement ¶ 4.5.2.) If any checks from the Settlement remain uncashed after
20 180 days, the Settlement Administrator will remit the checks to the Labor and Workforce
21 Development Agency ("LWDA"). (Settlement Agreement ¶ 4.6.3.)

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

23 In exchange for the payments described above, Plaintiff, the State of California, and
24 PAGA Group Members will release Defendant and Released Parties from:

25 all claims under PAGA that are alleged in the Amended
26 Complaint, or that could have been alleged based on the facts

27
28 ¹ As set forth below, Plaintiff's counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$13,781.15. (Gavron Decl. ¶ 48, Ex. B; Lebe Decl. ¶ 10; Ex. A.)

1 alleged in the Amended Complaint, based on alleged violations of
2 Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 558,
3 1174, 1194, 1197, 1197.1, 2802, and 226, subdivision (a) and the
4 applicable Wage Order(s) promulgated by the Industrial Welfare
5 Commission that arose during the PAGA Group Members’
6 employment with Defendant. The Released Claims are released by
7 both the State of California and the PAGA Group Members as part
8 of this Settlement (“Released Claims”).

9 (Settlement Agreement ¶ 2.27.) The Settlement, however, does not release Defendant from
10 violations of any predicate statutes other than PAGA, and will not affect a waiver of claims by
11 PAGA Group Members against Defendant for any of the underlying Labor Code claims.

12 (Settlement Agreement ¶¶ 2.27, 5.1.) The release is expressly limited to claims for civil penalties
13 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 § 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 other current
or former employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved

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

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

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

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

1 of further litigation; the risk of maintaining class action status through trial; the amount offered
2 in settlement; the extent of discovery completed and the stage of the proceedings; [and] the
3 experience and views of counsel...” See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
4 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(i). 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 The Settlement is also consistent with the State’s public policy favoring resolution of
24 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
25 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
26 parties are best positioned to understand their interests and resolve a dispute in a mutually
27 beneficial manner without court intervention into the settlement.” *Consumer Advocacy Group,*
28 *Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3

Cal. 4th 273, 277- 278 (1992)).

D. The Scope of the Release is Appropriately Limited

If approved, the Settlement would release Defendant and other releasees from all PAGA claims predicated on the specific Labor Code violations identified in Amended Complaint—namely, Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, and 2802, and the applicable IWC Wage Orders—and nothing more. (Settlement Agreement ¶ 2.27.) The Settlement would not impact any aggrieved employee’s ability to pursue PAGA claims predicated on other Labor Code violations or any Labor Claims not predicated on PAGA. Because an aggrieved employee’s PAGA action is a substitute for an action brought by the government, “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.” *Arias*, 46 Cal. 4th at 986. However, “the nonparty 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.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all rights “to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part”).

Accordingly, the PAGA Group Members (or aggrieved employees) will be subject to only a limited release strictly confined to the civil penalties available under PAGA for violation of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, and 2802, and the applicable IWC Wage Orders. Therefore, the limited scope of the release also supports approval.

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

Though Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff’s theories, in addition to the still-developing law under PAGA.

1. Plaintiff’s Claims are Contested

1 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
2 of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
3 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff
4 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
5 the Labor Code by the defendant”). Here, Plaintiff would need to prove that each aggrieved
6 employee suffered a violation for each period the employee worked in relation to meal or rest
7 period violations, failure to pay minimum or overtime wages, failure to reimburse for required
8 expenses, failure to provide accurate itemized wage statements, and/or failure to pay earned
9 wages and commissions in a timely manner. Defendant, however, disputes and denies Plaintiff’s
10 allegations and claims asserted in the operative Complaint. (Gavron Decl. ¶¶ 11, 26.)

11 Defendant maintains that Plaintiff and aggrieved employees were properly compensated,
12 and that they did not violate the Labor Code. (Gavron Decl. ¶ 27.) Defendant contends that its
13 written policies forbid off-the-clock work and provide employees with meal and rest periods. (*Id.*
14 ¶ 28.) Defendant argued that The Supreme Court’s decision in *Brinker* clarified that the term
15 “provide” means what it says—although “an employer must relieve the employee of all duty for
16 the designated period,” the employer “need not ensure that the employee does no work.” *Brinker*
17 *Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1034 (2012). An employer satisfies its
18 obligation to provide meal breaks to its employees “if it relieves its employees of all duty,
19 relinquishes control over their activities and permits them a reasonable opportunity to take an
20 uninterrupted 30-minute break, and does not impede or discourage them from doing so.” (*Id.* at
21 pp. 1040-1041 [“Bona fide relief from duty and the relinquishing of control satisfies the
22 employer’s obligations, and work by a relieved employee during a meal break does not thereby
23 place the employer in violation of its obligations and create liability for premium pay[.]”].)

24 Defendant also argued that employers are not required to ensure that employees take rest breaks.

25 Defendant argued that it provided Plaintiff and aggrieved employees with a company
26 telephone to use for their duties, and thus Plaintiff’s Section 2802 claim was meritless. (Gavron
27 Decl. ¶ 29.) Defendant also argued that it properly calculated the regular rate of pay because it
28 included commissions in the regular rate of pay, and, in any event, only a limited number of

aggrieved employees ever earned multiple rates of pay and commission during the same pay period. (*Id.*)

With respect to Plaintiff's wage statement claim, Defendant argued that it complied with Labor Code Section 226 because it displayed the total hours worked on its wage statements, and, in any event, employees could determine this information by performing "simple math." *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 676 (2018); *Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed. Appx. 661, 662 (9th Cir. 2014).

Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. (Gavron Decl. ¶ 31.) Defendant argued that no penalties should be awarded because any alleged violations were not intentional, or should be substantially reduced. (*Id.*) Defendant also argued that the PAGA claims were unmanageable, which presented significant risk especially considering the Court of Appeal's recent holding in, *Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746, 283 Cal. Rptr. 3d 846 (2021), reh'g denied (Sept. 27, 2021), review filed (Oct. 19, 2021) (upholding trial court's order striking PAGA claim as unmanageable). These defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. (*Id.*)

2. Recovery of Penalties After Trial

Even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Under PAGA, trial courts have considerable discretion to reduce the penalty award. Pursuant to Labor Code section 2699(f)(2) the Court can decline to award the full amount of PAGA penalties where "...if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper and affirmed a judgment which only provided for a PAGA penalty of \$5 per pay period. *Id.* at 539; see *O'Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties

1 amounted to \$1 billion, such award “could well be reduced, as a court may reduce the penalty
2 when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory”).

4 Courts routinely award far less than the statutory maximum amount of civil penalties,
5 even where an underlying violation of the Labor Code is found. Just very recently, in the matter
6 of *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed substantial PAGA penalties
7 upon the defendant, such amount still represented reductions of 67% and 80% of the potential
8 PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019).
9 Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the
10 Ninth Circuit reversed the trial court’s ruling, which demonstrates the significant risk presented
11 in moving forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th
12 Cir. 2021).

13 3. Settlement is Reasonable When Compared to the Value of the 14 Underlying Labor Code Claim

15 The Court’s assessment of the proposed Settlement must take into account that any
16 penalties awarded may be subject to substantial reduction. When this is considered, in
17 conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover
18 nothing, the proposed settlement is patently reasonable.

19 Indeed, Plaintiff estimates that the maximum amount of PAGA civil penalties, if the
20 Court did not “stack” penalties, is approximately \$1,435,300 based on 14,353 pay periods
21 (14,353 pay periods x \$100 per pay period).² (Gavron Decl. ¶ 34.) If the Court stacked penalties,
22 the potential civil penalty exposure could be greater. For example, if Plaintiff was successful in
23 his wage statement claim, the maximum potentially available penalties could be as high as
24 \$3,588,250 (14,353 pay periods x \$250 penalty per wage statement). *See Raines*, 23 Cal.App.5th
25 at 676 (finding \$250 penalty appropriate for violation of Section 226 under the PAGA). On the
26

27 ² By comparison, if the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the
28 potential recovery of civil penalties would be only \$71,765, which is far less than this Settlement
provides.

1 other hand, courts have recently been hesitant to award a higher PAGA penalty for “subsequent”
2 violations where there is no prior citation by the Labor Commissioner. *Bernstein v. Virgin Am.,*
3 *Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (“Virgin was not notified by the Labor Commissioner or
4 any court that it was subject to the California Labor Code until the district court partially granted
5 Plaintiffs’ motion for summary judgment. On this basis, we reverse the district court’s holding
6 that Virgin is subject to heightened penalties for any labor code violation that occurred prior to
7 that point.”). Accordingly, evaluating the Settlement compared to a potential penalty of \$100 per
8 pay period is fair, adequate, and reasonable.

9 Thus, assuming the Court were to award \$100 penalty for every pay period, and also
10 “stack” the additional penalties associated with Plaintiff’s wage statement claim, the penalties
11 are being assessed at a rate equivalent to 16% of the potential value of the claims in the case, and
12 even higher if the Court did not “stack” the penalties. (See Gavron Decl. ¶ 35 ($\$800,000 \div$
13 $(\$1,435,300 + \$3,588,250) = 16\%$.) If the Court were to assess a \$100 penalty for every alleged
14 Labor Code violation for every pay period, the percentage of recovery compared to the
15 maximum penalties would drop, but, given the risks and considerations above, the value of the
16 proposed Settlement is fair, adequate, reasonable, and advances the goals of the PAGA.

17 Settlement for this reduced value allows for the distribution of penalties in an amount
18 which accounts for the risk of continued litigation, and Defendant’s likely arguments that higher
19 penalties would have been confiscatory. (*Id.* ¶ 36.) It also sufficiently deters Defendant from
20 engaging in similar alleged conduct in the future, which is one of the primary goals of PAGA.

21 Significantly, the proposed settlement sum in this case vastly exceeds, both in terms of
22 the total dollar amount and as a percentage of overall settlement value, the typical PAGA
23 settlement—including those that provide for less than the one percent allocation to PAGA
24 penalties. *See, e.g., Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009)
25 (approving total PAGA allocation that was .49% of \$408,420.32 gross settlement; *Moore v.*
26 *PetSmart, Inc.*, 2015 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA
27 allocation that was .5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D.
28 400, 407 (N.D. Cal. 2013) (approving total PAGA allocation that was .67% of \$750,000 gross

1 settlement). For example, in *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft
2 were misclassified as independent contractors. 2016 WL 3561742 (N.D. Cal. June 23, 2016).
3 The parties’ settled all Labor Code and PAGA claims for \$27 million, with a PAGA allocation of
4 \$1 million – or 3.7% of the total settlement. *Id.* at *2. In granting preliminary approval to the
5 proposed settlement in *Cotter*, the court noted that the PAGA allocation “might seem low when
6 compared to the maximum PAGA penalties,” but acknowledged that it was in fact “quite high
7 compared to the typical amount apportioned to claims for PAGA penalties in wage and hour
8 settlements.” *Id.* at *5.

9 Given Defendant’s potential defenses to the alleged violations at issue, the risks and costs
10 of continued litigation, Plaintiff and his attorneys believe that the Settlement is fair and
11 reasonable. (Gavron Decl. ¶¶ 32-33, 36-37; Declaration of Larry W. Lee (“Lee Decl.”) ¶ 3.) The
12 Settlement proposes a payment of approximately \$364,375.00 in penalties to the LWDA and
13 approximately \$121,458.33 in penalties to the PAGA Group Members, which is an outstanding
14 result in a PAGA only case. (Gavron Decl. ¶ 24.) Plaintiff’s Counsel have significant experience
15 litigating wage and hour claims including claims for PAGA penalties, and the Settlement here is
16 similar to or greater than similar settlements that courts have approved. (*Id.* ¶ 38.)

17 Furthermore, as set forth in the accompanying Gavron Declaration, the LWDA has been
18 provided notice of this motion and the PAGA settlement. (*Id.* ¶ 52.) The decision of the LWDA
19 to accept the Settlement and not oppose the motion should be given considerable weight.

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

21 Labor Code § 2699(g)(1) provides for the recovery of attorneys’ fees and costs in any
22 successful action brought under PAGA. Although this is not a class action, in class actions
23 California state and federal courts have recognized that an appropriate method for determining
24 award of attorneys’ fees is based on a percentage of the total value of benefits to class members
25 by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano*
26 *v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
27 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this
28 equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs

1 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
2 burden alone.” *Vincent*, 557 F. 2d at 769.

3 The common fund doctrine is predicated on the principle of preventing unjust
4 enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits,
5 he may require the passive beneficiaries to compensate those who created the fund. Both
6 California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35;
7 *Vincent*, 557 F. 2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th
8 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has
9 been applied “consistently in California when an action brought by one party creates a fund in
10 which other persons are entitled to share.” The reasons for applying the common fund doctrine
11 include: “...fairness to the successful litigant, who might otherwise receive no benefit because
12 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage
13 to the others who are entitled to share in the fund and who should bear their share of the burden
14 of its recovery; encouragement of the attorney for the successful litigant who will be more
15 willing to undertake and diligently prosecute proper litigation for the protection or recovery of
16 the fund if he is assured that he will be properly and directly compensated should his efforts be
17 successful.” *Id.*

18 Indeed, most recently, the California Supreme Court has also held that the award of
19 attorneys’ fees in common fund wage and hour class action settlements should start with the
20 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
21 overwhelming majority of federal and state courts in holding that when class action litigation
22 establishes a monetary fund for the benefit of the class members, and the trial court in its
23 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
24 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

25 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
26 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
27 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
28 “extraordinarily high or low [should] the trial court [] consider whether the percentage method

1 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

2 Here, as set forth in their declarations and their respective lodestars, Plaintiff’s attorneys
3 have spent over 334.6 hours litigating this current action. (Gavron Decl. ¶ 49; Lee Decl. ¶¶ 8-9;
4 Declaration of Jonathan M. Lebe (“Lebe Decl.”) ¶ 9-10, 13.) Based thereon, and based on each
5 of the Plaintiff’s attorneys’ hourly rates, the lodestar equates to \$190,018.00 which requires only
6 a modest 1.4 multiplier when compared to the common fund approach, which supports the
7 \$266,666.67 fee request. (Gavron Decl. ¶ 51.) Thus, the requested fee amount of \$266,666.67 is
8 fair and reasonable.

9 Additionally, Plaintiff’s Counsel’s cost reimbursement request in the amount of
10 \$13,781.15 is also reasonable. (Gavron Decl. ¶ 48, Ex. B; Lebe Decl. ¶ 10; Ex. A.) The costs
11 were all directly incurred in the prosecution of this action, including filing fees, postage,
12 copying, and mediation fees. (*Id.*) As such, the requested costs should be awarded as fair and
13 reasonable.

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

15 The Parties have agreed to pay actual costs of administration, or \$7,500.00, to the
16 Settlement Administrator, Phoenix Settlement Administrators, to administer this Settlement.
17 (Settlement Agreement ¶ 2.31.) The Parties believe that the administration fee is reasonable and
18 should be approved.

19 **H. Plaintiff’s General Release and Service Payments Should Be Approved**

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

26 Here, Plaintiff seeks \$5,000.00 for his service award, which is intended to compensate
27 Plaintiff for the time spent on this case, including reviewing and verifying written discovery
28 responses, making himself available during the mediation, and the potential for retaliation.

(Declaration of Guy Blaz Hanley ¶ 5.) This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

Separately, Plaintiff also seeks \$20,000.00 for a general release payment, which is intended to compensate Plaintiff for executing a general release, including for all known and unknown claims under Civil Code § 1542. Plaintiff has brought individual claims and has agreed to forego those claims in exchange for the General Release Payment. Plaintiff's agreement to release all of his known or unknown claims and waive the protections of Civil Code § 1542 supports the General Release Payment.

I. Notice to the LWDA Has Been Provided

As discussed above, and concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. (Gavron Decl. ¶ 52.)

V. CONCLUSION

Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

DATED: December 9, 2021

LEBE LAW, APLC and DIVERSITY LAW
GROUP, P.C.

By: 

Jonathan M. Lebe
Zachary Gershman
Larry W. Lee
Max W. Gavron

Attorneys for Plaintiff Guy Blaz Hanley

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On December 9, 2021, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE**
12 **SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE**
13 **ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND**
14 **AUTHORITIES IN SUPPORT;**
- 15 **2. DECLARATION OF MAX W. GAVRON IN SUPPORT OF**
16 **PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT**
17 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT;**
- 18 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
19 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT**
20 **TO THE PRIVATE ATTORNEYS GENERAL ACT;**
- 21 **4. DECLARATION OF JONATHAN M. LEBE IN SUPPORT OF**
22 **PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT**
23 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT;**
- 24 **5. DECLARATION OF GUY BLAZ HANLEY IN SUPPORT OF**
25 **PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT**
26 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT;**
- 27 **6. ORDER APPROVING SETTLEMENT AND JUDGMENT THEREON**

28 on the interested parties in this action as follows:

25 Karen J. Kubin
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27 Kwan Park
28 BPark@mofo.com
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Inc.*

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the File & ServeXpress E-Filing System at the website www.fileandservexpress.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 9, 2021, at Los Angeles, California.


Linda Lee