

Edward W. Choi, Esq. SBN 211334
LAW OFFICES OF CHOI & ASSOCIATES, APLC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

Attorneys for Plaintiff

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

MINDY WILSON, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

DOCTORS HOSPITAL OF RIVERSIDE
LLC, A Limited Liability Company;
PARKVIEW COMMUNITY HOSPITAL
MEDICAL CENTER, A Nonprofit Public
Benefit Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. RIC2001079

*Assigned for All Purposes to Honorable
Sunshine S. Sykes in Department 6*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE THE
SETTLEMENT AGREEMENT BETWEEN
PLAINTIFF AND DEFENDANT DOCTORS
HOSPITAL OF RIVERSIDE, LLC
PURSUANT TO THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

DATE: April 18, 2022
TIME: 8:30 a.m.
DEPT: 6

Reservation ID: 780289483052

ADDITIONAL PLAINTIFF'S COUNSEL

Larry W. Lee (SBN 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com

William L. Marder (SBN 170131)
POLARIS LAW GROUP, LLP
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: 831.531.4214
Facsimile: 831.634.0333
bill@polarislawgroup.com

Dennis S. Hyun (SBN 224240)
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
dhyun@hyunlegal.com

Attorneys for Plaintiff

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

PLEASE TAKE NOTICE that on April 18, 2022, at 8:30 a.m., or as soon thereafter as the matter be heard in Department 6 of the Superior Court of the State of California for the County of Riverside located at 4050 Main St., Riverside, CA 92501, Plaintiff MINDY WILSON (“Plaintiff”) will, and hereby does, move the Court for entry of an order approving the proposed settlement of the above-captioned civil action between Plaintiff and Defendant DOCTORS HOSPITAL OF RIVERSIDE, LLC (“Defendant”) (Plaintiff and Defendant shall collectively be referred to as the “Parties”) under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).¹

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

This motion is based on this notice of motion and motion for approval of the parties’ settlement agreement; the concurrently-filed memorandum of points and authorities in support of this motion; the concurrently-filed Declarations of Mindy Wilson, Larry W. Lee, Dennis S. Hyun, Edward W. Choi, and William L. Marder, (and all exhibits attached thereto) of this motion; all pleadings, records, and files in this action; and upon such other matters as may be properly presented to, or received by, the Court at or before the hearing on this motion.

///

///

///

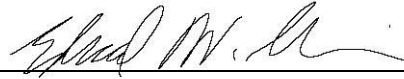
///

¹ Plaintiff has entered into a separate settlement agreement with Defendant Parkview Community Hospital Medical Center, which will be the subject of a separate motion.

1 Dated: March 24, 2022

DIVERSITY LAW GROUP, P.C.
HYUN LEGAL, APC
LAW OFFICES OF CHOI AND ASSOCIATES
POLARIS LAW GROUP

4 By: _____



Larry W. Lee
Dennis S. Hyun
Edward W. Choi
William L. Marder

7 Attorneys for Plaintiff
8 MINDY WILSON and the Aggrieved Employees

TABLE OF CONTENTS

I.	INTRODUCTION.....	9
II.	FACTUAL AND PROCEDURAL BACKGROUND	10
A.	The Parties.....	10
B.	Plaintiff’s Exhaustion of Administrative Remedies under the	
	PAGA	10
C.	Plaintiff’s Current Civil Action against Defendants.....	11
D.	The Parties’ Settlement Negotiations	11
E.	The Terms of the Settlement Agreement	12
III.	STANDARD OF REVIEW	14
IV.	ARGUMENT.....	14
A.	Notice of the Settlement Agreements Has Been Given to the	
	LWDA Pursuant to Labor Code section 2699(l)(2)	14
B.	The Court Should Approve the Settlement Agreement	15
1.	The Settlement Agreement Is Entitled to a Presumption of Fairness.....	15
2.	The Scope of the Settlement Agreement is Fair, Adequate, and	
	Reasonable	16
3.	The Settlement Agreement Allocates a Fair, Adequate, and	
	Reasonable Amount to the Payment of Civil Penalties under PAGA.....	17
4.	The Settlement Agreement Apportions Civil Penalties between the	
	LWDA and the Aggrieved Employees as Required by PAGA	20
5.	The Settlement Agreement Allocates a Fair, Adequate, and	
	Reasonable Amount to the Payment of Attorneys’ Fees	20
6.	The Settlement Agreement Allocates a Fair, Adequate, and	
	Reasonable Amount to the Payment of Litigation Costs.....	24

1	7.	The Settlement Agreement Allocates a Fair, Adequate, and	
2		Reasonable Amount to the Payment of Plaintiff's PAGA	
3		Representative Service Award.....	25
4	8.	The Settlement Will be Administered by a Third-Party Administrator	26
5	9.	Uncashed Checks Will be Distributed to the LWDA	27
6	V.	THE LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS	
7	SETTLEMENT		27
8	VI.	CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Arias v. Superior Court</i> , 46 Cal. 4th 969, 985 (2009)	15, 17
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	19
<i>Ceja-Corona v. CVS Pharmacy, Inc.</i> , No. 1:12-cv-01868, 2014 WL 4472691, at *9 (E.D. Cal. Sept. 11, 2014)	15
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	22
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1800–01 (1996)	15
<i>Ferra v. Loews Hollywood Hotel, LLC</i> , 11 Cal. 5th 858 (2021)	19
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629, 632-33 (1998)	23
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , 59 Cal. 4th 348, 383 (2014)	17
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122, 1139 (2001)	23
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 130 (2008)	18
<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811, 819 (9th Cir. 2012)	18
<i>Lealao v. Beneficial California, Inc.</i> , 82 Cal. App. 4th 19, 29-30 (2000)	21, 23
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553, 559 (1986)	22
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56, 76 (2021)	14
<i>New York Gaslight Club, Inc. v. Carey</i> (1980) 447 U.S. 54, 62	22
<i>O'Connor v. Uber Techs., Inc.</i> , 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016)	15, 17
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084, 1095 (2000)	23
<i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948, 958–59 (9th Cir. 2009)	24
<i>Sakkab v. Luxottica Retail North America, Inc.</i> , 803 F.3d 425, 435 (9th Cir. 2015)	15
<i>Serrano v. Priest</i> , 20 Cal.3d 25, 48 (1977) (“ <i>Serrano III</i> ”)	23
<i>Serrano v. Unruh</i> (1982) 32 Cal.3d 621, 639 [<i>Serrano IV</i>]	22
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal App.4th 495, 512 (2009)	22
<i>Turrieta v. Lyft, Inc.</i> , 69 Cal. App. 5th 955, 969 (2021)	14
<i>Uribe v. Crown Building Maintenance Co.</i> , 70 Cal. App. 5th 986, 1005 (2021)	17

1	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 255 (2001).....	18, 22
2	<u>Statutes</u>	
3	2003 Cal. Stat. ch. 906 § 1(d)	14, 17
4	Cal. Code Civ. Proc. § 340(a)	16
5	Labor Code § 226.....	10, 16
6	Labor Code § 226.7.....	10, 16, 18
7	Labor Code § 246.....	10, 16, 18
8	Labor Code § 2698, <i>et seq.</i>	11
9	Labor Code § 2699(e)(2)	18, 19
10	Labor Code § 2699(g).....	20, 24
11	Labor Code § 2699(i).....	20
12	Labor Code § 2699(l)(2)	9, 14, 26
13	Labor Code § 2699.3(a)	10
14	Labor Code § 2699.3(a)(2)(A).....	10
15	Labor Code § 2699.3(d).....	16
16	Labor Code §§ 201-203, 226 and 246	10, 11, 16, 18
17	Labor Code §§ 2699(l)(4)	14
18	<u>Other Authorities</u>	
19	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237, 258 (1985).....	20
20		
21		
22		
23		
24		
25		
26		
27		
28		

1

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 On or about March 6, 2020, Plaintiff MINDY WILSON (“Plaintiff”) filed a Complaint seeking
5 penalties under the California Labor Code Private Attorneys General Act (“PAGA”) against Defendants
6 DOCTORS HOSPITAL OF RIVERSIDE LLC, a Limited Liability Company (“DHOR”) and
7 PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER, a Nonprofit Public Benefit
8 Corporation (“Parkview”) (DHOR and Parkview are collectively referred to as “Defendants”).

9 In the operative Second Amended Complaint (“SAC”), Plaintiff solely seeks PAGA penalties
10 against Defendant DHOR.² This Motion seeks approval of a settlement between Plaintiff and only
11 Defendant DHOR.

12 After significant litigation and arm’s length negotiations at a private mediation and further
13 negotiations thereafter, the parties have entered into a written Private Attorneys General Act Settlement
14 Agreement Between Plaintiff Mindy Wilson and Defendant Doctors Hospital of Riverside LLC (the
15 “Settlement Agreement”).³

16 The principal terms of the Settlement Agreement are straightforward. Defendant has agreed to
17 pay the Gross Settlement Amount of \$500,000.00, for a release of claims. The Settlement Agreement
18 allocates up to one-third (1/3) of this amount (\$166,666.66) for Plaintiff’s attorneys’ fees, attorney’s
19 costs of up to \$12,500.00, PAGA representative Service Award of up to \$5,000.00 and Settlement
20 Administrator’s costs of up to \$5,250.00. The remainder is allocated to the PAGA Penalty Fund, with 75
21 percent of the civil penalties for distribution to the Labor and Workforce Development Agency (the
22 “LWDA”) and 25 percent of the civil penalties for distribution to the PAGA Aggrieved Employees, on
23 whose behalf Plaintiff filed this action as required by PAGA.

24 Under the PAGA, the Settlement Agreement cannot become effective until it is “review[ed] and

25 _____
26 ² With respect to Defendant Parkview, Plaintiff solely seeks class-wide damages. Plaintiff and Defendant Parkview have
27 reached a class settlement with respect to such class claims and Plaintiff will seek preliminary approval of said class
28 settlement in a separate motion.

³ Unless specifically defined in this order and judgment, all capitalized terms in this order and judgment shall have the same
meaning given to those capitalized terms in the Settlement Agreement.

1 approv[ed]” by this Court. *See* Cal. Lab. Code § 2699(l)(2). Accordingly, Plaintiff brings this motion to
2 request approval of the Settlement Agreement on the grounds it is fundamentally fair, adequate, and
3 reasonable in light of PAGA’s policies and purposes.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. The Parties**

6 This settlement involves two named parties: Defendant DHOR and Plaintiff (DHOR and Plaintiff
7 are collectively referred to as “Parties”).

8 Plaintiff started working for DHOR on February 1, 2019, when DHOR acquired the hospital
9 from Parkview. Plaintiff’s employment with DHOR was terminated on February 3, 2020. (Declaration
10 of MINDY WILSON (“Wilson Decl.”) at ¶ 2.)

11 **B. Plaintiff’s Exhaustion of Administrative Remedies under the PAGA**

12 Pursuant to the PAGA’s pre-filing notice and administrative exhaustion requirements, *see* Cal.
13 Lab. Code § 2699.3(a), Plaintiff sent a letter to the LWDA and Defendants on March 4, 2020, asserting
14 claims for violation of Labor Code §§ 201-203, 226 and 246. (Declaration of Edward W. Choi (“Choi
15 Decl.”) ¶2, Ex. A). Specifically, Plaintiff alleged that Defendants failed to list the accurate total hours
16 worked for wage statements furnished to Plaintiff and/or other similarly aggrieved non-exempt
17 employees whenever shift differential wages were paid. (*Id.*). In particular, whenever shift differential
18 wages were paid, the wage statements issued by Defendants did not identify the accurate total hours
19 worked. (*Id.*).

20 Plaintiff further alleges that Defendants violated Labor Code §§ 201-203 and 246 by failing to
21 pay sick pay at the regular rate of pay. (*Id.*). Plaintiff and other employees routinely earned non-
22 discretionary incentive wages, such as shift differential wages, and, thus, increasing their regular rate of
23 pay. (*Id.*). However, when sick pay was paid, Defendants paid the sick wages at the base rate of pay
24 rather than the regular rate of pay. (*Id.*).

25 On May 8, 2020, the 65-day “waiting period” on Plaintiff’s right to file a civil action under
26 PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that they
27 intended to investigate the claims in the PAGA Notice. (*Id.* at ¶ 3.) To date, the LWDA still has not
28

1 advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. (*Id.*)

2 On August 2, 2021, Plaintiff sent an Amendment to her March 4, 2020 letter, adding alleged
3 violations of Labor Code §§ 201-203, 226, and 226.7, arising from Defendants' failure to pay meal
4 period premiums at the regular rate of pay. (*Id.* at ¶4, Ex. B).

5 **C. Plaintiff's Current Civil Action against Defendants**

6 On March 26, 2020, Plaintiff filed her complaint alleging (1) Violation of Labor Code § 226(a);
7 and (2) Violation of Labor Code §§201-203 against both Defendants. (Choi Decl. at ¶5). On June 1,
8 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Violation of Labor Code §
9 2698, *et seq.* (*Id.* at 6).

10 On September 25, 2022, Plaintiff filed her Motion for Leave to Amend to File Second Amended
11 Complaint was granted on October 26, 2020. (*Id.* at ¶7). On October 26, 2020, Plaintiff filed her
12 Second Amended Complaint alleging violation of (1) Labor Code §§ 201-203, 226 and (2) Labor Code
13 § 2698, *et seq.*, removing all of the agency allegations between Defendants, and cutting off the class
14 period as of the date that DHOR assumed control of the hospital where Plaintiff worked, *i.e.*, February
15 1, 2019 (*Id.* at ¶8).

16 After extensive litigation for over a year, the Parties agreed to engage in private mediation with
17 well-respected mediator, Gig Kyriacou for August 10, 2021, and filed a Stipulation to Stay the Case
18 Pending Mediation on March 26, 2021 (*Id.* at ¶ 9).

19 The Parties engaged in mediation on August 10, 2021, which did not result in a settlement. The
20 Parties continued to negotiate at arms-length beyond the mediation, with the assistance of the mediator,
21 and successfully reached a global resolution against both Defendants. (*Id.* at ¶ 10). Specifically, the
22 Parties reached this PAGA-only settlement with DHOR and a class settlement with Parkview. (*Id.*)
23 Plaintiff will file a separate motion for preliminary approval of class action settlement regarding her
24 settlement with Parkview. (*Id.* at ¶11) On February 22, 2022, the Parties executed the Settlement
25 Agreement which is being concurrently filed with this Motion. (*Id.* ¶12)

26 **D. The Parties' Settlement Negotiations**

27 On August 10, 2021, the Parties attended a full day mediation session with experienced wage
28

1 and hour mediator Gig Kyriacou. (Choi Decl. at ¶ 10.) In advance of the mediation, the Parties
2 discussed the basis of Plaintiff's legal claims under the Labor Code sections asserted and the legal
3 authorities for and against Plaintiff's theories of liability. (*Id.* at ¶13.) The Parties also engaged in
4 informal discovery, where DHOR provided Plaintiff with data relating to the number of aggrieved
5 employees, the number of pay periods at issue with payment for shift differentials and/or overtime
6 wages during the PAGA period, and the wage statements encompassed by Plaintiff's claims. (*Id.*)
7 Based on the data produced by DHOR, Plaintiff subsequently conducted an exposure analysis. (*Id.*)

8 After independently analyzing and investigating the facts and law relevant to the Plaintiff's
9 claims, the parties outlined their respective positions in mediation briefs for Mr. Kyriacou. (*Id.* at ¶14.)
10 Based on data provided by DHOR, Plaintiff's counsel also calculated the maximum exposure in PAGA
11 penalties against DHOR in preparation for mediation. (*Id.* at ¶¶14-15.)

12 During the mediation, the Parties debated the strengths and weaknesses of Plaintiff's claims and
13 DHOR's defenses thereto and the scope of employees whom Plaintiff could represent even if Plaintiff's
14 legal claims had merit. (*Id.* at ¶ 10.)

15 Although the Parties were not able to agree to the terms of a settlement after a full day of
16 mediation, the Parties' agreed to continue settlement discussions with Mr. Kyriacou's assistance. (*Id.* at
17 ¶10.) After further negotiations spanning several months, the Parties were able to reach a resolution
18 memorialized in the Settlement Agreement. (*Id.*)

19 **E. The Terms of the Settlement Agreement**

20 On February 22, 2022, the Parties fully executed the Settlement Agreement which is being
21 concurrently filed with this Motion. The Settlement Agreement is made without an admission of
22 liability by DHOR and is conditioned upon court approval, a judgment approving the Settlement
23 Agreement becoming final. (Settlement Agreement at ¶ 27(a)-(b).)

24 Under the Settlement Agreement, Defendants will the pay Gross Settlement Amount of
25 \$500,000.00 (the "Gross Settlement Amount") (Settlement Agreement at ¶¶ 19, 27(c).) There are three
26 separate PAGA Aggrieved employees: (a) all non-exempt employees that worked for DHOR who were
27 paid shift differentials at any time between March 4, 2019 and May 16, 2020 (the "Pay Stub PAGA
28

1 Aggrieved Employees”); (b) all non-exempt employees that worked for DHOR who were paid shift
2 differentials and sick pay in the same pay period at any time between March 4, 2019 and August 16,
3 2020 (the “Sick Pay PAGA Aggrieved Employees”); and (c) all non-exempt employees that worked for
4 DHOR who were paid shift differentials and meal break premiums in the same pay period at any time
5 between March 4, 2019 and July 26, 2020 (the “Meal Break PAGA Aggrieved Employees”).
6 (Settlement Agreement at ¶ 14.)

7 The Settlement Agreement allocates the Gross Settlement Amount to: (1) Plaintiff as PAGA
8 representative for a service award in the amount of \$5,000.00; (2) Plaintiff’s counsel, 1/3 of the
9 \$500,000.00 Gross Settlement Amount, or \$166,666.66; (3) up to \$12,500.00 in actual costs for the
10 reimbursement of Plaintiff’s litigation costs; (4) Settlement Administrator Costs, in the amount of up to
11 \$5,250.00 for the cost of calculating and distributing payments and the notice of PAGA settlement
12 required by the Settlement Agreement in accordance with the Settlement Agreement and laws; and (6)
13 the remainder of the Gross Settlement Amount after deduction of the afore-referenced amounts, which is
14 at least \$310,583.34 (the “Net Settlement Amount” or “PAGA Penalty Fund”), for the civil penalties to
15 the LWDA and the Aggrieved Employees, with 75 percent of the civil penalties for distribution to the
16 Labor and Workforce Development Agency (the “LWDA Share”) and 25 percent of the civil penalties
17 for distribution to the PAGA Aggrieved Employees (the “Employee Share”), on whose behalf Plaintiff
18 filed this action as required by PAGA. (Settlement Agreement at ¶ 27(d)(i)-(ii).)

19 In accordance with PAGA, twenty-Five percent (25%) of the PAGA Penalty Fund will be
20 allocated to the PAGA Aggrieved Employees and distributed based upon the total number of pay
21 periods in which the PAGA Aggrieved Employees were (1) paid shift differentials at any time between
22 March 4, 2019 and May 16, 2020, (2) paid shift differentials and sick pay in the same pay period at any
23 time between March 4, 2019 and August 16, 2020, and (3) paid shift differentials and meal break
24 premiums in the same pay period at any time between March 4, 2019 and July 26, 2020 (collectively
25 “Qualifying Pay Periods”). (Settlement Agreement ¶ 27(d)(i).) Specifically, all PAGA Aggrieved
26 Employees’ pay periods in which they were (1) paid shift differentials at any time between March 4,
27 2019 and May 16, 2020, (2) paid shift differentials and sick pay in the same pay period at any time
28

1 between March 4, 2019 and August 16, 2020, and (3) paid shift differentials and meal break premiums
2 in the same pay period at any time between March 4, 2019 and July 26, 2020, will be totaled up (“Total
3 Pay Periods”). (*Id.*) Then, each PAGA Aggrieved Employees’ Qualifying Pay Periods shall be divided
4 by the Total Pay Periods and multiplied against Twenty-Five percent (25%) of the PAGA Penalty Fund.
5 (*Id.*) To the extent that amounts in Subparagraphs (iv) through (vi) below are not approved by the
6 Court, such amounts will be reallocated to the PAGA Penalty Fund. (*Id.*) For purposes of computing
7 taxes, one hundred percent (100%) of the Aggrieved Employee Settlement Award shall be a civil
8 penalty and shall not be subject to withholdings, unless otherwise required by law. (*Id.* at ¶ 27(d)(vii).)

9 **III. STANDARD OF REVIEW**

10 The PAGA requires courts to “review and approve” the settlement of any civil action filed under
11 PAGA. See Cal. Lab. Code § 2699(l)(2). In connection with approval of a PAGA settlement, the court
12 must “ensur[e] that any negotiated resolution is fair to those affected.” *Turrieta v. Lyft, Inc.*, 69 Cal.
13 App. 5th 955, 969 (2021); *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (2021). As explained by
14 the Court of Appeal:

15 [W]hile PAGA does not require the trial court to act as a fiduciary for
16 aggrieved employees, adoption of a standard of review for settlements that
17 prevents “ ‘ ‘ ‘fraud, collusion or unfairness’ ” ” [Citation], and protects
18 the interests of the public and the LWDA in the enforcement of state labor
19 laws is warranted. Because many of the factors used to evaluate class
20 action settlements bear on a settlement’s fairness—including the strength
21 of the plaintiff’s case, the risk, the stage of the proceeding, the complexity
22 and likely duration of further litigation, and the settlement amount—these
23 factors can be useful in evaluating the fairness of a PAGA settlement.

24 We therefore hold that a trial court should evaluate a PAGA settlement to
25 determine whether it is fair, reasonable, and adequate in view of PAGA’s
26 purposes to remediate present labor law violations, deter future ones, and
27 to maximize enforcement of state labor laws.

28 *Moniz*, 72 Cal. App. 5th at 77.

29 **IV. ARGUMENT**

30 **A. Notice of the Settlement Agreements Has Been Given to the LWDA Pursuant to 31 Labor Code section 2699(l)(2)**

32 When enacting PAGA, the Legislature intended to ensure that the LWDA retained “primacy”

over private enforcement actions. See 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA online “at the same time that it is submitted to the court,” presumably to give LWDA an opportunity to comment on the proposed settlement. See Cal. Lab. Code §§ 2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement Agreement to the LWDA through the LWDA’s online filing system on March 24, 2022. (Choi Decl. at ¶29.)

B. The Court Should Approve the Settlement Agreement

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

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

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

All of the factors that would give rise to a presumption of fairness in the context of a class action

1 settlement are present in this PAGA action. The Settlement Agreement is the product after arm's length
2 bargaining facilitated by neutral mediator, including a full-day mediation, at the conclusion of which the
3 case did not settle, and several months of follow-up negotiations through Mr. Kyriacou. (Choi Decl. at
4 ¶10.) The mediation was proceeded by a discussion of the facts and law applicable to Plaintiff's claims,
5 the exchange of data about the Aggrieved Employees sufficient for the parties' to meaningfully evaluate
6 the merits of Plaintiff's claims and the scope of any potential recovery under PAGA, and each party
7 independently analyzing Plaintiff's claims in a mediation brief prepared for the mediator. (*Id.* at ¶¶10,
8 14) Finally, Plaintiff and DHOR were represented by counsel experienced in similar litigation. (Choi
9 Decl. at ¶ 24; Declaration of Larry W. Lee ("Lee Decl.") at ¶¶3-5; Decl. of William L. Marder ("Marder
10 Decl") at ¶¶ 3-9; Declaration of Dennis S. Hyun ("Hyun Decl.") at ¶¶ 3-6.) Therefore, the Settlement
11 Agreement is entitled to a presumption of fairness.

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

13 Because the fairness inquiry is concerned, in part, with concerns over "overreaching," it is
14 important to note that the Settlement Agreement contains three important limitations, each of which
15 represents a fair and reasonable compromise.

16 First, the transmission of the Plaintiff's PAGA notice on March 4, 2020, gives rise to a statute of
17 limitations running from March 4, 2019 , through the present, *see* Cal. Code Civ. Proc. § 340(a)
18 (providing a one-year statute of limitations for "[a]n action upon a statute for a penalty"); *see also* Cal.
19 Lab. Code 2699.3(d) (tolling the statute of limitations while exhausting administrative remedies with the
20 LWDA), the Settlement Agreement is limited to the period running from March 4, 2019 through the
21 respective date that Defendant revised its policies and procedures related to the three separate claims
22 made by Plaintiff against DHOR. (Settlement Agreement at ¶ 33.) Therefore, limiting the Settlement
23 Agreement to the statute of limitations is thus a fair, reasonable, and adequate compromise negotiated by
24 the parties.

25 Second, the Settlement Agreement's release is limited to the "facts alleged" against DHOR for
26 violation of the PAGA predicated on violation of Labor Code §201-203, 226, 246, and 226.7. (*See*
27 Settlement Agreement ¶33). Specifically, the PAGA Aggrieved Employees and Plaintiff are only
28

1 releasing the following:

2 “Upon funding of the Gross Settlement Amount by Defendant, each Pay Stub PAGA
3 Aggrieved Employee fully releases and discharges Defendant and Released Parties
4 from any and all claims, debts, liabilities, demands, obligations, guarantees, costs,
5 expenses, attorneys’ fees, damages and/or penalties based on the facts alleged against
6 DHOR for violation of the PAGA predicated on violation of Labor Code § 226 that
7 accrued between March 4, 2019 and May 16, 2020; each Sick Pay PAGA Aggrieved
8 Employee fully releases and discharges Defendant and Released Parties from any and
9 all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
10 attorneys’ fees, damages and/or penalties based on the facts alleged against DHOR
11 for violation of the PAGA predicated on violation of Labor Code § 201-203, and 246
12 that accrued between March 4, 2019 and August 16, 2020; and each Meal Break
13 PAGA Aggrieved Employee fully releases and discharges Defendant and Released
14 Parties from any and all claims, debts, liabilities, demands, obligations, guarantees,
15 costs, expenses, attorneys’ fees, damages and/or penalties based on the facts alleged
16 against DHOR for violation of the PAGA predicated on violation of Labor Code §
17 201-203, and 226.7 that accrued between March 4, 2019 and July 26, 2020”

18 (Settlement Agreement ¶33).

19 Moreover, the release is further limited by the fact that a judgment in a PAGA action only
20 extends to claims actually alleged in that action. *See Uribe v. Crown Building Maintenance Co.*, 70 Cal.
21 App. 5th 986, 1005 (2021). The settlement provides that it shall not be construed as a release of any
22 PAGA Aggrieved Employees’ underlying Labor Code or Wage Order claims and it is limited to the
23 claims pled.

24 **3. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable** 25 **Amount to the Payment of Civil Penalties under PAGA**

26 The Settlement Agreement establishes a fund of *at least* \$229,375.01 to the LWDA (*See*
27 Settlement Agreement at ¶27). This amount is fair, adequate, and reasonable, in light of PAGA’s
28 policies and purposes.

29 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the “vigorous
30 assessment and collection of civil penalties as provided in the Labor Code” to sometimes be “the only
31 meaningful deterrent to unlawful conduct,” the Legislature enacted PAGA in 2003 to deter violations of
32 the Labor Code by augmenting the limited enforcement capability of the LWDA with private
33 enforcement actions by “aggrieved employees” acting as private attorneys general. *See* 2003 Cal. Stat.
34 ch. 906 § 1; *see also Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014).

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

6 The data provided by Defendant allowed Plaintiff’s counsel to calculate the maximum exposure
7 in Labor Code penalties in preparation for mediation. (Choi Decl. at ¶ 15.) There are approximately
8 1,100 aggrieved employees who worked a collective total of approximately 28,768 pay periods during
9 the PAGA period in the data set provided. (*Id.*) The total maximum exposure is estimated at
10 approximately \$2,876,800.00 in PAGA penalties. (*Id.*) The breakdown of the calculations for PAGA
11 penalties are as follows:

- 12 • Pay Stub PAGA Aggrieved Employees (3/4/2019 to 5/16/2020) \$2,495,200,000 in PAGA
13 penalties for Labor Code § 226(a) violations, based on 24,952 pay periods multiplied by
14 \$100 penalty per pay period;
- 15 • Sick Pay PAGA Aggrieved Employees (3/4/2019 to 8/16/2020) \$37,000 in PAGA penalties
16 for failure to pay sick pay wages at the regular rate of pay in violation of Labor Code §§201-
17 203 and 246, based on 370 pay periods multiplied by \$100 initial violation per pay period;
18 and
- 19 • Meal Break PAGA Aggrieved Employees (3/4/2019 to 7/26/2020) \$344,600 in PAGA
20 penalties for Labor Code §§201-203 and 226.7 violations, based on 3,446 pay periods
21 multiplied by \$100 initial violation per pay period.

22 (Choi Decl. at ¶15).

23 When reviewing a settlement agreement, however, “the test is not the maximum amount
24 plaintiffs might have obtained at trial on the complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal.
25 App. 4th 224, 250 (2001), nor is it “whether the settlement agreement is perfect in the estimation the
26 reviewing court.” *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is “whether
27 the settlement is reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App. 4th at 250.

1 Relevant considerations include, the strength of a plaintiff's case and the risk and the expense,
2 complexity and likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
3 4th 116, 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In PAGA settlements, courts also consider
4 their authority to award less than the maximum penalty authorized by PAGA. *See Cal. Lab. Code §*
5 *2699(e)(2)*; *see also Smith*, 2018 WL 1899912 at *3.

6 Under the circumstances of this case, the Gross Settlement Amount is approximately 17.38% of
7 the maximum penalties that could have been awarded by this Court. (Choi Decl. at ¶16). The Gross
8 Settlement Amount reflects a compromise of the parties' respective positions rather than a finding of
9 liability at trial and awarding of maximum penalties under the PAGA.

10 In this regard, Defendant has denied and continues to deny all allegations of wrongdoing arising
11 out of the employment relationship between the Parties including the Aggrieved Employees. (*Id.* at 17).
12 Moreover, Defendant has raised several defenses to the PAGA claims that could be persuasive to the
13 Court. (*Id.*).

14 Further, there is always the possibility of the Court reducing civil penalties significantly if
15 Plaintiff was to prevail at trial on the grounds that it would be "unjust, arbitrary and oppressive, or
16 confiscatory. *See Cal. Lab. Code § 2699(e)(2)*. Indeed, as recently shown in the Court of Appeal's
17 decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on
18 his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
19 the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
20 Appeal found such reduction to be proper. *Id.* at 539.

21 In line with *Carrington*, with respect to the wage statement claim, Defendant contends that the
22 failure to include the accurate total hours worked is a "technical" violation that Defendant believes the
23 Court will not exercise its discretion to award the maximum \$100 per pay period penalty. (*Id.* at ¶19).
24 Moreover, Defendant believes that its "good faith" conduct in revising the wage statements on May 16,
25 2020, shortly after it was provided with notice of the potential violation, would be rewarded by the
26 Court in exercising its discretion not to award significant penalties. (*Id.*).

27 With respect to the sick pay claim, Defendant alleges that there is a potential defense under the
28

collective bargaining agreement that would provide a complete defense to the claim. (*Id.* at ¶20).

Again, like the wage statement claim, Defendant believes that its “good faith” conduct in revising its policies to pay of sick pay wages at the regular rate on August 16, 2020, would be rewarded by the Court in exercising its discretion not to award significant penalties. (*Id.*).

Finally, with respect to the meal break claim, Defendant believes that it acted in good faith given that the law was changed on July 15, 2021 when the Supreme Court issued its opinion in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021), and that Defendant revised its policy in July 2020, well before the California Supreme Court’s ruling regarding requiring payment of meal break premiums at the regular rate of pay. (Choi Decl. at ¶21).

Ultimately, litigating this case to judgment could require significant time and expense and potential risk that the Court may not award the full penalties requested. Plaintiff’s Counsel are experienced and fully understand the inherent risks and uncertainty involved with such matters as the outcome of the potential trial and the outcome of any appeals that would inevitably follow should Plaintiff prevail at trial.

In sum, based on the reasoning and analysis above, this settlement is fair, reasonable, and consistent with the PAGA’s policies and purposes under these circumstances.

4. The Settlement Agreement Apportions Civil Penalties between the LWDA and the Aggrieved Employees as Required by PAGA

Except when civil penalties are recovered from a defendant who did not have any employees at the time of an alleged violation, civil penalties recovered under PAGA must be distributed so that 75 percent of the civil penalties are paid to the to LWDA and 25 percent are paid to the “aggrieved employees” on whose behalf the PAGA action was brought. *See* Cal. Lab. Code § 2699(i). In full compliance with that rule, the Settlement Agreement requires the PAGA Penalty Fund to be paid to the LWDA and 25 percent of the Net Settlement Fund to be paid to the PAGA Settlement Employees. (Settlement Agreement at ¶¶ 27(d)(i)-(ii).)

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

1 The PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab. Code
2 § 2699(g). In recognition of this, the Settlement Agreement allows Plaintiff's counsel to request 1/3 of
3 the Gross Settlement Amount, \$166,666.00 in attorneys' fees. (Settlement Agreement at ¶ 27.d.v.) For
4 the reasons below, this amount is fair, adequate, and reasonable.

5 First, in class actions, state and federal courts have held that when a class action establishes a
6 monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may
7 determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created."
8 *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3
9 percent of the fund and joining "the overwhelming majority of federal and state courts" in approving the
10 "percentage method" as a reasonable means for determining attorney fee awards in class actions). While
11 different from class action settlements in important ways, PAGA settlements also involve the
12 establishment of a common fund for the benefit of persons other than the named plaintiff, so the reasons for
13 utilizing the percentage method are the same. *See id.* (noting that the percentage method provides "ease
14 of calculation," "alignment of incentives between counsel and the class," "a better approximation of
15 market conditions in a contingency case," and the "encouragement . . . to seek an early settlement"). The
16 \$166,666.66 requested by Plaintiff's counsel represents one-third of the Gross Settlement Amount,
17 which is consistent with awards usually approved in class actions. *See Chavez v. Netflix, Inc.*, 162
18 Cal.App.4th 43, 66, fn. 11 (2008) ("[F]ee awards in class actions average around one-third of the
19 recovery"); *see also Laffitte*, 1 Cal. 5th at 506 (upholding the approval of a fee award equal to one-third
20 of the total settlement amount).

21 Second, the percentage method may be cross-checked with the lodestar calculation when there
22 are concerns about the reasonableness of a percentage-based award. A lodestar cross-check thus provides a
23 mechanism for bringing an objective measure of the work performed into the calculation of a reasonable
24 attorney fee. The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar
25 cross-check is extraordinarily high or low, the trial court should consider whether the percentage used
26 should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
27 necessarily required to make such an adjustment." (*Id.*) Thus, a lodestar cross-check is aimed at
28

1 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check
2 “undermines” one of the primary reasons for using the percentage method: aligning counsel’s incentives
3 with the benefits delivered to the class and discouraging protracted litigation. (*Id.* at p. 506 (finding trial
4 courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force,*
5 *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 258; *Lealao v. Beneficial California, Inc.*, 82 Cal.
6 App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval
7 and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by
8 many authorities, who have been most vocal about the manner in which it exacerbates the problem of
9 ‘cheap settlements’ and burdens already overworked trial judge”).)

10 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
11 even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; *see also, e.g., Sutter*
12 *Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a
13 cross-check in an antitrust class action); *Chavez*, 162 Cal.App.4th at 60 (applying a 2.5 multiplier on a
14 lodestar cross-check); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34
15 multiplier without remand).)

16 As set forth in their declarations and their respective lodestars, Plaintiff’s counsel’s total lodestar
17 incurred in the prosecution of the case against DHOR⁴ is estimated at \$189,600.00. (Lee Decl. at ¶¶6-8,
18 Ex. A; Hyun Decl. at ¶ 9, Ex. A; Choi Decl. at ¶ 26, Ex. C; Marder Decl. at ¶ 10, Ex. A.) Specifically,
19 Plaintiff’s counsel has spent approximately 232.80 hours in litigating and settling this action to date, and
20 anticipates spending another 20 hours to handle post-approval matters and any settlement issues. (Lee
21 Decl. at ¶¶6-8, Ex. A; Hyun Decl. at ¶ 9, Ex. A; Choi Decl. at ¶ 26, Ex. C; Marder Decl. at ¶¶ 10, Ex.
22 A.) Mr. Lee, Mr. Marder, Mr. Hyun, and Mr. Choi request an hourly rate of \$750.00 per hour. (Lee
23 Decl. at ¶ 8; Hyun Decl. at ¶9; Choi Decl. at ¶ 25; Marder Decl. at ¶ 10.) The courts are quite liberal in
24 the evidence required to prove an attorney’s hours. Detailed time records are not required. An
25

26
27 ⁴ As stated herein, Plaintiff has entered into a class action settlement with Parkview. Plaintiff’s
28 counsel will seek their attorneys’ fees incurred against Parkview through a motion for final approval of
the class action settlement, in the event that the Court grants Plaintiff’s motion for preliminary approval.

1 attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on
2 a particular case is sufficient evidence to support an award of attorney fees, even in the absence of
3 detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.)

4 Reasonable hours include, in addition to time spent during litigation, the time spent before the
5 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
6 preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.)
7 Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim.
8 (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639 [*Serrano IV*].)

9 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
10 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.)
11 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill
12 and experience, the nature of the work performed, the relevant area of expertise and the attorney's
13 customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632-33.)

14 Plaintiff's Counsel's skill and experience justify the requested rate. As shown in the supporting
15 declarations, Plaintiff's Counsel have significant experience in the area of employment and wage and
16 hour class actions. Specifically, Plaintiff's Counsel's practice focuses on representing employees in
17 employment matters, particularly wage and hour cases. (Lee Decl. at ¶¶ 3-5; Hyun Decl. at ¶¶ 3-6; Choi
18 Decl. at ¶ 24; Marder Decl. at ¶¶ 4-9.) As such, based on the hours and applicable rate, the total lodestar
19 to be expended by Plaintiff's Counsel through finalizing this Settlement will be approximately
20 \$189,600.00, based on 252.80 total hours. (Lee Decl. at ¶¶ 6-7, Ex. A; Hyun Decl. at ¶ 9, Ex. A; Choi
21 Decl. at ¶¶ 26, Ex. C; Marder Decl. at ¶¶ 10, Ex. A.)

22 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in
23 order to make an appropriate fee award. (*Serrano v. Priest*, 20 Cal.3d 25, 48 (1977) ("*Serrano III*"))
24 The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the
25 contingent nature of the fee award, the extent to which the litigation precluded other employment, and
26 the percentage-of-the-fund the attorney would have received on the fair market. (*Id.*; *Lealao*, 82
27 Cal.App.4th at p. 49.) However, this list is not exhaustive and the court can consider other factors it
28

1 deems important in setting the multiplier. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.)

2 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
3 enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal.App.4th at p. 52 (the promptness of
4 settlement “cannot be used to justify the refusal to apply a multiplier”).) According to *Lealao*, courts
5 placed “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for
6 achieving this goal in a timely fashion. (*Id.*)

7 Here, based upon Plaintiff’s Counsel’s lodestar of \$189,600.00, Plaintiff’s counsel do not need a
8 multiplier, as their incurred attorneys’ fees exceed 1/3 of the requested fee, or \$166,666.66. In other
9 words, a negative multiplier would have to be applied to Plaintiff’s counsel’s lodestar to reach the
10 \$166,666.66 in fees. As such, the requested fee award is fair and reasonable, and should be awarded in
11 its entirety. Plaintiff’s Counsel risked not only a great deal of time, but also a great deal of expense to
12 ensure the successful litigation of this action on behalf of all PAGA Settlement Employees. For such
13 reasons, Plaintiff’s Counsel’s request for attorneys’ fees in the amount of \$166,666.66 is fair,
14 reasonable, and adequate.

15 Plaintiff’s Counsel will be splitting the approved fees as follows: 21 2/3% to Diversity Law
16 Group; 21 2/3% to Hyun Legal, APC; 21 2/3% to the Law Offices of Choi & Associates and 35% to the
17 Polaris Law Group, which the Plaintiff has previously authorized in writing. (Choi Decl. ¶30; Lee Decl.
18 ¶10; Hyun Decl. ¶10; Marder Decl. ¶11; Wilson Decl. ¶ 7).

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

21 The PAGA also allows a prevailing plaintiff to recover litigation costs. See Cal. Lab. Code §
22 2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s counsel to request up to \$12,500.00
23 in litigation costs. (Settlement Agreement at ¶27.d.v.)

24 Plaintiff’s counsels request \$4,711.92 for the reimbursement of litigation costs. As set forth in
25 accompanying declarations of Plaintiff’s counsel, these costs were all directly incurred in the
26
27
28

prosecution of this action, including, but not limited to, filing fees, service fees, and mediation fees.⁵ (Lee Decl. at ¶ 9, Ex. B; Choi Decl. at ¶ 27, Ex. D). As such, Plaintiff’s counsels request for costs in the amount of \$4,711.92 is fair, adequate, reasonable, and consistent with the PAGA’s policies.

7. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Plaintiff’s PAGA Representative Service Award

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

Plaintiff has requested, and Defendant does not oppose, an enhancement of up to Five Thousand Dollars (\$5,000.00) pursuant to the terms of the Settlement Agreement. Plaintiff requests that this Court approve such service payments in light of the efforts Plaintiff put into this case, and the excellent result achieved.

As shown in the supporting declaration, Plaintiff has not previously been a named plaintiff in any other PAGA cases. (Wilson Decl. ¶5). Plaintiff understood that the filing of this action was a matter of public action and this was being prosecuted on a representative basis. (*Id.* at ¶6). Plaintiff further understood that a representative action would take longer in litigation than an individual action and undertook such risks. (*Id.*). Plaintiff did not incur any expenses, but has expended a significant amount of time on this matter. (*Id.*). Plaintiff spent approximately 30 hours discussing this matter with Counsel on a number of occasions to discuss the case with her counsel, including providing substantive information regarding Defendant’s practices, and providing documents related to her own claims and the claims of the Aggrieved Employees. (*Id.* at ¶7). As part of her duties as PAGA Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. (*Id.*).

Plaintiff assumed these risks alone and the Aggrieved Employees will reap the benefits through

⁵ Plaintiff’s cost request is one half (1/2) of the total costs expended in this matter. Plaintiff’s counsel will seek the other half of their total costs through the Parkview settlement.

1 this settlement. The Aggrieved Employees did not have to file individual lawsuits and bear the risks of
2 payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation.
3 These are significant benefits, even apart from the time Plaintiff spent working on this case, that weigh
4 in favor of granting the requested enhancement.

5 As part of the Settlement Agreement, Plaintiff also agreed to give general release of her own
6 individual claims, something that the Aggrieved Employees did not have to do. (Wilson Decl. at ¶8.)
7 Thus, Plaintiff sacrificed his own individual rights for those of the Aggrieved Employees. This is a
8 significant factor to take into account that further warrants the award of the requested enhancement
9 amount.

10 This litigation has resulted in a significantly valuable benefit to the Aggrieved Employees, and
11 the Plaintiff took a substantial risk and sacrifice in helping to get this financial benefit to the Aggrieved
12 Employees. As such, the enhancement should be awarded to the named Plaintiff for his commitment,
13 dedication, and risks taken for this litigation. Accordingly, the court should find that the enhancement is
14 fair and reasonable.

15 **8. The Settlement Will be Administered by a Third-Party Administrator**

16 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff's Counsel,
17 and the LWDA, but also to approximately 1,100 current and former nonexempt employees in proportion
18 to the number of pay periods each Aggrieved Employee received, significant time and effort will be
19 required to administer the Settlement Agreement if it is approved by this Court. Among other things,
20 each Aggrieved Employee's share of the Aggrieved Employee Settlement Award must be calculated;
21 taxes must be reported and appropriate tax forms must be issued to all parties who receive payments
22 under the Settlement Agreement; payments must be mailed to Plaintiff, Plaintiff's Counsel, the LWDA,
23 and each Aggrieved Employee; and any checks not cashed by Aggrieved Employees must be voided so
24 that the unclaimed amount can be reallocated to the LWDA.

25 In contemplation of these expenses, the parties have engaged Phoenix Settlement Administrators
26 ("PSA") to act as a third-party settlement administrator. PSA has extensive experience administering
27 PAGA matters. (Declaration of Jodey Lawrence ("PSA Decl.") ¶¶5-10, Ex. A). PSA has agreed to an
28

1 amount that will not exceed the fee of \$5,250.00 to administer this settlement. (*Id.* at 17; Ex. B). PSA
2 was chosen by the Parties based on a bid submitted by Phoenix Settlement Administrators to the parties'
3 counsel, which was the lowest bid obtained. (Choi Decl. at ¶ 28). Counsel for both Parties have used
4 Phoenix Settlement Administrators in connection with previous PAGA and class action settlements and
5 have found Phoenix Settlement Administrators to be a competent settlement administrator. (*Id.*) Based
6 on their experience with prior settlement agreements, the parties' counsel believe that the allocation of
7 \$5,250.00 is competitive rate that reasonably approximates the work required to administer the
8 settlement. (*Id.*)

9 **9. Uncashed Checks Will be Distributed to the LWDA**

10 PAGA Aggrieved Employees shall have one-hundred eighty (180) days from the date of
11 issuance of the check to negotiate the check. (Settlement Agreement ¶27.d.i.). The funds from any
12 checks returned as undeliverable, and any checks not negotiated within 180 days, shall be distributed to
13 the LWDA. (*Id.*)

14 **V. THE LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS SETTLEMENT**

15 On March 24, 2022, Plaintiff caused a copy of the Motion, Settlement Agreement and Proposed
16 Order to be uploaded to the LWDA's website. (Choi Decl. ¶29; Ex. E).

17 **VI. CONCLUSION**

18 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
19 Agreement pursuant to Labor Code section 2699(1)(2) and set a nonappearance Final Report hearing
20 date in or after February 2023.

21 Dated: March 24, 2022

DIVERSITY LAW GROUP, P.C.
HYUN LEGAL, APC
LAW OFFICES OF CHOI AND ASSOCIATES
POLARIS LAW GROUP

24 By: _____



Larry W. Lee
Dennis S. Hyun
Edward W. Choi
William L. Marder

Attorneys for Plaintiff
MINDY WILSON and the Aggrieved Employees

Make a Reservation

WILSON VS DOCTORS HOSPITAL OF RIVERSIDE

Case Number: RIC2001079 Case Type: Civil Category: Complex Unlimited Civil – Class Action

Date Filed: 2020-03-06 Location: Historic Court House - Department 6

Reservation

Case Name: WILSON VS DOCTORS HOSPITAL OF RIVERSIDE	Case Number: RIC2001079
Type: Civil Motion (MOTION TO APPROVE THE PARTIES' SETTLEMENT AGREEMENT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)	Status: RESERVED
Filing Party: MINDY WILSON (Plaintiff)	Location: Historic Court House - Department 6
Date/Time: 04/18/2022 8:30 AM	Number of Motions: 1
Reservation ID: 780289483052	Confirmation Code: CR-GMGCCTSRE5XVQWGVS

Fees

Description	Fee	Qty	Amount
Civil Motion (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a

 [Print Receipt](#)

[+ Reserve Another Hearing](#)

 [View My Reservations](#)