

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
ktulyathan@diversitylaw.com

Attorneys for Plaintiffs and Aggrieved Employees

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

ROBERT JORDAN and CHANRAKSMEY
KAM, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

THE JUNE GROUP, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2020-00030141-CU-OE-CTL

[Assigned for all purposes to the Honorable Loren
G. Freestone, Dept. C-64]

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

Date: April 18, 2025

Time: 10:30 a.m.

Dept.: C-64

Action Filed: August 27, 2020

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

2 **PLEASE TAKE NOTICE** that on April 18, 2025, at 10:30 a.m., or as soon thereafter as
3 the matter may be heard before the Honorable Loren G. Freestone, in Department C-64, of the
4 Superior Court of the State of California for the County of Orange, located at 330 W. Broadway,
5 San Diego, California 92101, Plaintiffs Robert Jordan and Chanraksmeey Kam (together,
6 “Plaintiffs”) will and hereby do move the Court for entry of an order approving the proposed
7 PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”) entered into in the
8 above-captioned action between Plaintiffs and Defendant The June Group, LLC (“Defendant”)
9 (Plaintiffs and Defendant shall collectively be referred to as the “Parties”), pursuant to the
10 procedures set forth in Labor Code § 2698, *et seq.*, the Private Attorneys General Act of 2004
11 (the “PAGA”).

12 This motion is based on this notice of motion, the attached memorandum of points and
13 authorities, the accompanying declarations of Mai Tulyathan, Plaintiff Robert Jordan, and
14 Plaintiff Chanraksmeey Kam, the records and file herein, and on such other evidence as may be
15 presented at the hearing of the motion.

16
17 DATED: March 26, 2025

DIVERSITY LAW GROUP, P.C.

18
19 By: 
20 Larry W. Lee
21 Mai Tulyathan
22 Attorneys for Plaintiffs and Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et*
4 *seq.*, Plaintiffs Robert Jordan and Chanraksmeey Kam (together, “Plaintiffs”) hereby move the
5 Court for an order approving the non-reversionary PAGA settlement with Defendant The June
6 Group LLC (“Defendant”), as set forth in the PAGA Settlement Agreement (“Agreement” or
7 “Settlement Agreement”)¹.

8 As demonstrated below and in the accompanying declaration of Mai Tulyathan, the
9 proposed settlement warrants the Court’s approval. This settlement was reached after extensive
10 investigation and both formal and informal discovery, including data pertaining to the aggrieved
11 employees and pay periods at issue and information pertaining to Defendant’s payroll policies
12 and procedures. Furthermore, pursuant to the terms of the settlement, Defendant will pay the
13 total amount of \$85,000.00 (the “Gross PAGA Settlement Amount”), which includes an
14 estimated payment of approximately \$25,569.47 in civil penalties to the California Labor and
15 Workforce Development Agency (“LWDA”). The proposed PAGA release is narrowly tailored
16 to release only claims for civil penalties under PAGA predicated on the specific Labor Code
17 violations alleged in the operative Complaint.

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

20 **II. PROCEDURAL HISTORY**

21 **A. The PAGA Notice**

22 On June 26, 2020, Plaintiffs submitted written notices under Labor Code § 2699.3 to the
23 California Labor and Workforce Development Agency (“LWDA”) and Defendant, alleging that
24 Defendant violated the California Labor Code (the “PAGA Notices”). (*See* Tulyathan Decl. at ¶
25 3, Ex. A.) As set forth in the PAGA Notices, Plaintiffs contend that, as a matter of policy and
26

27 _____
28 ¹ The Settlement Agreement is attached to the Declaration of Mai Tulyathan (“Tulyathan Decl.”) as Exhibit B.

1 practice, Defendant failed to pay all wages owed for the time employees spent undergoing post-
2 employment drug testing and mandatory orientations, and that Defendant failed to issue accurate
3 itemized wage statements. (*Id.* at ¶ 4.)

4 **B. Litigation and Arbitration**

5 On August 27, 2020, Plaintiffs filed a class and representative action complaint against
6 Defendant in the Superior Court of the State of California, County of San Diego. (Tulyathan
7 Decl. at ¶ 5.) Thereafter, counsel for Defendant informed Plaintiffs’ counsel of binding
8 arbitration agreements signed by Plaintiffs during their employment. The Parties subsequently
9 met and conferred regarding arbitrability and Plaintiffs agreed to file an amended complaint. (*Id.*
10 at ¶ 6.)

11 On March 25, 2021, Plaintiffs filed the operative First Amended Complaint
12 (“Complaint”) against Defendant. The operative Complaint alleges a single cause of action for
13 violation of PAGA predicated on underlying violation of Labor Code §§ 201-204, 226(a), 510,
14 1194, 1198, and 1199. Plaintiffs seek civil penalties under the PAGA, as well as attorneys’
15 fees, and costs. (*Id.* at ¶ 7.) Defendant disputes and denies Plaintiffs’ allegations and claims
16 asserted in the operative Complaint. (*Id.*)

17 On September 23, 2022, Defendant filed a motion to compel individual arbitration of
18 Plaintiffs’ claims and dismiss the representative PAGA claims, in light of *Viking River Cruises,*
19 *Inc. v. Moriana*. (*Id.* at ¶ 8.) The Court subsequently granted Defendant’s motion to compel
20 arbitration of Plaintiffs’ individual PAGA claims, but denied Defendant’s motion to dismiss the
21 representative PAGA claims. Further litigation of the representative PAGA claims was stayed
22 pending arbitration. (*Id.*)

23 Thereafter, on May 30, 2023, Plaintiffs filed demands for individual arbitration of their
24 respective individual wage and hour claims against Defendant before JAMS. (Tulyathan Decl. at
25 ¶ 9.)

26 **C. The Parties Engage in Formal and Informal Discovery**

27 On April 22, 2021, Plaintiffs propounded written discovery upon Defendant, including
28 requests for production of documents and special interrogatories. (*Id.* at ¶ 10.) In July 2021,

1 Defendant provided its responses to written discovery along with document production. (*Id.*) In
2 August 2021, the Parties engaged in discovery meet and confer discussions. As part of those
3 discussions, the Parties agreed to participate in private mediation with mediator Hon. Kevin J.
4 Murphy (Ret.). (*Id.* at ¶ 11.) On December 15, 2021, the Parties participated in mediation with
5 Hon. Kevin J. Murphy (Ret.), but did not settle. (*Id.*) Thereafter, the Parties resumed discovery
6 and litigation, and Defendant filed a motion to stay the case and a motion to compel arbitration in
7 light of *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906. (*Id.* at ¶ 12.) The Court
8 granted Defendant’s motion to compel arbitration on March 14, 2023, and Plaintiffs
9 subsequently initiated their individual matters in arbitration with JAMS. (Tulyathan Decl. at ¶
10 12.) The Parties continued to conduct formal discovery in arbitration. (*Id.* at ¶ 13.)

11 Following years of ongoing litigation and discovery, the Parties then agreed to redirect
12 their efforts towards resolution of the action. (*Id.* at ¶ 14.) In connection with the Parties’
13 negotiations, the Parties engaged in informal discovery. (*Id.*) Defendant produced documents
14 relating to its policies, practices, and procedures regarding job applications, orientations, and
15 drug screening, payroll and operations policies, and data pertaining to the aggrieved employees
16 during the relevant PAGA period, and other information. (*Id.*)

17 Based on the information provided by Defendant, Plaintiffs’ counsel conducted an
18 exposure analysis as to the value of the PAGA claims. (*Id.* at ¶ 15.) Plaintiffs’ counsel also
19 investigated the applicable law as applied to the facts discovered regarding Plaintiffs’ alleged
20 claims and potential defenses thereto. (*Id.*)

21 The Parties engaged in arm’s length negotiations over the course of multiple months. As
22 a result of the negotiations, Plaintiffs and Defendant reached the present settlement. (Tulyathan
23 Decl. at ¶ 16.) The Parties subsequently negotiated the terms of the PAGA Settlement
24 Agreement. (*Id.*)

25 The Parties recognize the risk, expense, and delay in continuing litigation with the
26 representative PAGA claims, and believe the settlement to be fair, reasonable, and adequate. (*Id.*
27 at ¶ 17.) Accordingly, the Parties desire to settle, compromise, and discharge all disputes and
28 claims arising from or relating to the afore-referenced claims and allegations.

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

2 The material terms of the settlement are described below and set forth in detail in the
3 concurrently filed Settlement Agreement, a true and correct copy of which is attached as **Exhibit**
4 **B** to the Declaration of Mai Tulyathan.

5 **A. The Aggrieved Employees**

6 The current Action is being settled on behalf of the following employees: all current and
7 former non-exempt employees who worked for Defendant in California during the PAGA Period
8 (“Aggrieved Employees”). (See Settlement Agreement (“SA”) § 1.4.) The PAGA Period is the
9 period from June 24, 2019, to November 19, 2023. (SA § 1.23.) Based on Defendant’s records,
10 there are approximately 3,601 Aggrieved Employees with 4,809 pay periods at issue during the
11 PAGA Period. (SA § 4.1.)

12 **B. Gross PAGA Settlement Amount and Allocation**

13 The Settlement Agreement requires Defendant to pay the gross amount of Eighty-Five
14 Thousand Dollars (\$85,000.00) (the “Gross PAGA Settlement Amount”). (SA § 3.1.) Based on
15 the Gross PAGA Settlement Amount and the number of Aggrieved Employees, each Aggrieved
16 Employee may potentially recover approximately \$23.60. (Tulyathan Decl. at ¶ 19.)

17 The balance of the Gross PAGA Settlement Amount remaining after deduction of the
18 approved attorneys’ fees and litigation costs², settlement administration costs, and Plaintiffs’
19 Service Awards (the balance is hereinafter referred to as the “PAGA Payment”), will be
20 available for distribution to the LWDA and Aggrieved Employees. (See SA § 1.21.) The PAGA
21 Payment will total approximately \$34,092.63. (Tulyathan Decl. at ¶ 29.) Seventy-five percent
22 (75%) of the PAGA Payment, or approximately \$25,569.47, will be paid to the LWDA for
23 PAGA penalties (“LWDA PAGA Payment”). (SA § 3.2.4; Tulyathan Decl. at ¶ 29.) The
24 remaining twenty-five percent (25%), or approximately \$8,523.16, will be distributed to
25 Aggrieved Employees. (SA § 3.2.4; Tulyathan Decl. at ¶ 29.)
26
27

28 ² As explained below, Plaintiffs’ counsel seeks reimbursement of actual litigation costs in the amount of \$3,579.04.

1 The amount any particular Aggrieved Employee will be entitled to recover will depend
2 on the number of pay periods in which he or she worked during the PAGA Period, with some
3 entitled to receive more and others less. (*See* SA § 3.2.4.) This is fair, as it directly allocates
4 greater penalties to individuals who have allegedly suffered greater harm. (Tulyathan Decl. at ¶
5 30.) Any uncashed checks will be paid out pursuant to California Code of Civil Procedure
6 section 384 to the *cy pres* recipient, Legal Aid at Work. (SA § 4.4.3.) Legal Aid at Work is a
7 501(c)(3) non-profit organization that provides legal services to low-income families.
8 (Tulyathan Decl. at ¶ 31.) The Parties warrant and represent that they do not have a relationship,
9 financial or otherwise, with the *cy pres* recipient. (*Id.* at ¶ 32.)

10 As part of the settlement, Defendant does not object to Plaintiffs' counsel's request for
11 attorneys' fees of approximately one-third of the Gross PAGA Settlement Amount, *i.e.*, Twenty-
12 Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$28,333.33), and
13 reimbursement of litigation costs in an amount up to Ten Thousand Dollars (\$10,000.00), subject
14 to the Court finally approving this settlement. (SA § C-9.)³ Any portion of the requested
15 attorneys' fees and/or costs not approved by the Court shall be added to the PAGA Penalties
16 Fund. (SA § 3.2.1.)

17 Also, as part of the settlement, Defendant does not object to Plaintiffs' request for a
18 Service Award to each Plaintiff in an amount not to exceed Two Thousand Five Hundred Dollars
19 (\$2,500.00) each. (SA § 3.2.3.) Any portion of the Service Awards to Plaintiffs that are not
20 approved by the Court shall become part of the PAGA Penalties Fund. (*Id.*)

21 Finally, the settlement provides for the payment of the fees and expenses reasonably
22 incurred by the Settlement Administrator. (*See* SA § C-10.) The Parties have agreed to utilize
23 Phoenix Settlement Administrators to administer the settlement, with the administration costs
24 estimated to be Thirteen Thousand Nine Hundred Ninety-Five Dollars (\$13,995.00). (SA §§ 1.2,
25

26
27 ³ At the time the Parties negotiated the Settlement Agreement, Plaintiffs' counsel did not have a
28 final tally of the litigation costs incurred to date. As such, the Parties included a maximum
amount that could be attributed to costs under the settlement. Plaintiffs' counsel request
reimbursement of \$3,579.04 for actual litigation-related expenses. (*See* Tulyathan Decl. at ¶ 23.)

1 3.2.2.)

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

3 In exchange for the payments described above, Plaintiffs and the Aggrieved Employees
4 will release the Released Parties from the Released PAGA Claims that accrued during the PAGA
5 Period. (SA §§ 1.26, 5.) As defined in the Agreement, the term “Released PAGA Claims”
6 means:

7 [A]ll claims for civil penalties under the PAGA for penalties based
8 on violations of Labor Code §§ 201-204, 226(a), 510, 1194, 1198,
9 1199, the California Minimum Wage Order, and the IWC Wage
10 Orders, arising out of the factual allegations, circumstances, and
11 primary rights in the First Amended Complaint in the Action and
12 PAGA notices, including the failure to pay all wages owed for time
spent undergoing employment orientation session and/or drug
testing as alleged, that accrued during the PAGA Period.

13 (See SA § 1.26.) The PAGA release only releases claims for PAGA penalties that arise out of
14 the “factual allegations, circumstances, and primary rights” in the operative Complaint and
15 PAGA notices—in other words, **claims for unpaid wages under the PAGA limited to drug**
16 **testing and orientations.** The release also does not extend to violations of any predicate statutes
17 other than PAGA. (See SA §§ 1.26, 5.) The settlement also does not affect a waiver of claims
18 by Aggrieved Employees against the Released Parties for any individual wage and hour claims.
19 (See *id.*)

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

21 **A. PAGA Overview**

22 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the
23 LWDA and other aggrieved employees, to bring suit against their employers for alleged
24 violations of the California labor laws and to obtain penalties that previously could only be
25 obtained by the State. The PAGA was enacted because the Legislature determined that it was “in
26 the public interest to allow aggrieved employees, acting as private attorneys general, to recover
27 civil penalties for Labor Code violations,” since the State had not been able to fully or
28 adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-*

1 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s
2 declared purpose is to supplement enforcement actions by public agencies, which lack adequate
3 resources to bring all such actions themselves. Unlike class actions, these civil penalties are not
4 meant to compensate unnamed employees because the action is fundamentally a law
5 enforcement action” [citations omitted].).

6 Labor Code section 2699(a) states that any Labor Code provision “that provides for a
7 civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered
8 through a civil action brought by an aggrieved employee on behalf of himself or herself and
9 other current or former employees pursuant to the procedures specified in Section 2699.3.” An
10 “aggrieved employee” means “any person who was employed by the alleged violator and against
11 whom one or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to
12 commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and
13 the employer setting forth the “specific provisions of [the Labor Code] alleged to have been
14 violated, including the facts and theories to support the alleged violation.” Lab. Code §
15 2699.3(a)(1). If the LWDA decides not to investigate the allegations or issue a citation to the
16 employer, the proposed representative plaintiff is entitled to commence a PAGA action after 65
17 days. Lab. Code § 2699.3(a)(2).

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

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

28 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement

1 is to determine whether it is within the “range of reasonableness,” and thus whether notice to the
2 class of the terms and conditions of the settlement, and the scheduling of a formal fairness
3 hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* §
4 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a
5 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms
6 and must direct the preparation of notice of the certification, proposed settlement, and date of the
7 final fairness hearing.” *Manual for Complex Litigation, Fourth* § 21.632 (Fed. Jud. Ctr., 4th ed.
8 2004). To make the preliminary fairness determination, courts may consider several relevant
9 factors, including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely
10 duration of further litigation; the risk of maintaining class action status through trial; the amount
11 offered in settlement; the extent of discovery completed and the stage of the proceedings; [and]
12 the experience and views of counsel....” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
13 Cir. 1998).

14 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the
15 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties
16 sought as part of a proposed settlement agreement pursuant to this part.” The parties are not
17 obligated to “satisfy class action requirements,” including the standards for class action
18 settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff
19 need not satisfy class action requirements” to assert a PAGA claim).

20 Notably, unlike the class action settlement approval process, there is also no statutory
21 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
22 2699(i). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
23 they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if
24 any, reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

25 **C. The Settlement is Reasonable and Effectuates PAGA’s Objectives**

26 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
27 ultimately receive as a result of a settlement, but instead, on whether the total settlement amount
28 achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement

1 agency funding for education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the
2 settlement provides monetary recovery for the Aggrieved Employees and the State, and thus the
3 settlement certainly effectuates PAGA’s purpose.

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

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

12 Because an aggrieved employee’s PAGA action is a substitute for an action brought by
13 the government, “judgment in [a PAGA] action is binding not only on the named employee
14 plaintiff but also on government agencies and any aggrieved employee not a party to the
15 proceeding.” *Arias*, 46 Cal. 4th at 986. However, “the nonparty employees, because they were
16 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
17 judgment as to remedies other than civil penalties.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(1)
18 (non-party aggrieved employees retain all rights “to pursue or recover other remedies available
19 under state or federal law, either separately or concurrently with an action taken under this
20 part”).

21 Here, if approved, the settlement would release the Released Parties from claims for
22 PAGA penalties predicated on Labor Code §§ 201-204, 226(a), 510, 1194, 1198, 1199, the
23 California Minimum Wage Order, and the IWC Wage Orders predicated on the factual
24 allegations as asserted in the operative Complaint and PAGA Notices—and nothing more. (*See*
25 SA § 1.26.) In other words, the PAGA release is limited to claims for unpaid wages under the
26 PAGA based on drug testing and orientations. The settlement would not impact any Aggrieved
27 Employee’s ability to pursue PAGA claims predicated on other Labor Code violations. (*See id.*)
28 Nor does the settlement release individual wage and hour claims that Aggrieved Employees may

1 have against Defendant. (*See id.* § 5.) Therefore, the limited scope of the release also supports
2 approval.

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

5 Though Plaintiffs are reasonably confident that they would prevail at trial, proceeding in
6 litigation entails significant risk on the underlying merits of Plaintiffs’ theories, in addition to the
7 still-developing law under PAGA.

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

9 Specifically, Plaintiffs allege in this lawsuit that Defendant, as a matter of policy,
10 mandates that Aggrieved Employees attend mandatory orientation and post-employment drug
11 testing without payment of wages. (Tulyathan Decl. at ¶¶ 4, 7.)

12 Defendant disputes liability and argues that employees are not entitled to any
13 compensation for time spent taking drug tests that are a contingency of employment, pursuant to
14 *Johnson v. Winco Foods, LLC*, 37 F.4th 604 (9th Cir. 2022). While Plaintiffs indicate that they
15 underwent post-employment drug testing, Defendant contends that its policy and practice is to
16 provides offers of employment conditioned on passing drug testing. (Tulyathan Decl. at ¶ 38.)
17 With respect to unpaid orientations, Defendant contends that it has revised its policies as of
18 January 1, 2021, to provide paid orientation for the one orientation training that Defendant
19 requires. Defendant contends that liability, if any, would be limited to one pay period given that
20 orientation happens only once. Additionally, according to Defendant, after January 1, 2021,
21 liability would be cut off. (*Id.* at ¶ 39.)

22 Plaintiffs also allege a derivative wage statement violation. (*Id.* at ¶ 40.) However,
23 Plaintiffs’ derivative wage statement violation is vulnerable to a motion for summary judgment
24 based on the weaknesses of the underlying primary claims. *See Maldonado v. Epsilon Plastics,*
25 *Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under
26 226(a) where their wage statement cause of action was derived from an underlying wage and
27 hour violation for overtime).

28 //

1 **2. Recovery of Civil PAGA Penalties is Uncertain**

2 However, even if Plaintiffs were to prevail on the merits of the PAGA claim, the
3 potential recovery is uncertain. Defendant contends that it made a good faith effort to comply
4 with the law. As argued by Defendant, in deciding whether to award the maximum penalty
5 amount, courts may focus on whether the employer made a good faith effort to follow the law.
6 For example, in *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal upheld the
7 trial court’s significant reduction of PAGA penalties by 30% because the employer was not
8 initially on notice that it was in violation of the law and because it would have been unfair to
9 award penalties where the employer was unaware of the violations. 203 Cal. App. 4th 1112,
10 1136 (2012). When the employer made aware of the violations, it timely took steps to come into
11 compliance. *Id.* By contrast, the imposition of full penalties was justified when an employer
12 took a “cavalier approach to fulfilling its contractual and statutory obligations” and
13 demonstrated “reckless disregard.” *Id.* Furthermore, as the California Court of Appeal has
14 affirmed, trial courts are well within their discretion to reduce PAGA penalties “for technical
15 violations that cause no injury,” especially where the “violation was inadvertent.” *Raines v.*
16 *Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018).

17 **3. Maximum PAGA Civil Penalties Recoverable After Trial**

18 Defendant has indicated that there are approximately 4,809 affected pay periods during
19 the PAGA Period, which includes 3,292 pay periods where employees underwent drug screening
20 and 1,517 pay periods where employees attending the one mandatory orientation session. (*See*
21 *Tulyathan Decl.* at ¶ 33; SA § 4.1.) Assuming that Plaintiffs were to prevail on the merits of the
22 PAGA claim, applying the standard penalty of \$100 per pay period (regardless of the number of
23 violations) yields \$480,900.00 in potential liability for the unpaid wages violation attributable to
24 unpaid drug testing and orientation. (*Tulyathan Decl.* at ¶ 34.)

25 Even then, pursuant to Labor Code section 2699(f)(2) the Court can decline to award the
26 full amount of PAGA penalties “if, based on the facts and circumstances of the particular case, to
27 do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
28 Courts routinely award far less than the statutory maximum amount of civil penalties, even

1 where an underlying violation of the Labor Code is found. Indeed, as shown in the Court of
2 Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA
3 claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
4 employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018).
5 Upon review, the Court of Appeal found such a reduction to be proper. *Id.* at 539; *see O'Connor*
6 *v. Uber Technologies, Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal., 2016).

7 Here, Plaintiffs maintain that there does not exist any reason for reducing PAGA
8 penalties. However, Plaintiffs are aware that Defendant could make a compelling argument to
9 the contrary.

10 **4. Settlement is Reasonable When Compared to the Realistic Amount of** 11 **PAGA Civil Penalties at Issue**

12 The Court's assessment of the proposed settlement must take into account that any
13 penalties awarded may be subject to substantial reduction. When this is considered, in
14 conjunction with the history of PAGA settlements, and the fact that Plaintiffs may recover
15 nothing, the proposed settlement is patently reasonable. Indeed, the Gross PAGA Settlement
16 Amount is approximately **17.7%** of the amount of penalties at issue, if the Court awarded \$100
17 per pay period in which wages were untimely paid. (Tulyathan Decl. at ¶ 42.)

18 The proposed settlement exceeds PAGA settlements that courts have approved in other
19 cases, when considered as a percentage of the overall settlement value of the case. *See, e.g.,*
20 *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total
21 PAGA allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015
22 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of
23 \$10,000,000 gross settlement); *Lusby v. GameStop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013)
24 (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement).

25 Given Defendant's potential defenses to the alleged violations at issue, the risks and costs
26 of continued litigation, Plaintiffs and their attorneys believe that the settlement is fair and
27 reasonable. (Tulyathan Decl. at ¶ 44.) A PAGA allocation need not represent any particular
28 percentage of the overall settlement value in order to secure court approval, and courts routinely

1 approve PAGA settlements representing only a tiny fraction of the overall settlement value. The
2 proposed settlement sum in this case exceeds the percentage of overall settlement value of other
3 PAGA settlements and should be approved by the Court.

4 **F. The Attorneys' Fees are Reasonable**

5 Labor Code section 2699(g)(1) provides for the recovery of attorneys' fees and costs in
6 any successful action brought under PAGA. Although this is not a class action, in class actions
7 California state and federal courts have recognized that an appropriate method for determining
8 award of attorneys' fees is based on a percentage of the total value of benefits to class members
9 by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano*
10 *v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
11 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this
12 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
13 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
14 burden alone." *Vincent*, 557 F. 2d at 769.

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

1 successful.” *Id.*

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

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

14 Here, as set forth in the accompanying declarations, Plaintiffs’ counsel estimate that they
15 have spent at least 157.6 hours litigating this current action. (Tulyathan Decl. at ¶ 52, Ex. D.)
16 Plaintiffs’ counsel anticipates spending an additional 10 hours through the approval of this
17 settlement and to handle any post-approval matters. (*Id.* at ¶ 53.) Based thereon and based on
18 counsel’s hourly rate of \$600.00, the lodestar equates to **\$100,560.00** (167.6 hours x \$600.00),
19 which *well exceeds* the amount of the requested fees. (Tulyathan Decl. at ¶ 54.) Thus, the
20 requested fee amount of \$28,333.33 is fair and reasonable.

21 Additionally, Plaintiffs’ counsel’s cost reimbursement request in the amount of \$3,579.04
22 is also reasonable, given that the Settlement Agreement allocates for reimbursement of litigation
23 costs of up to \$10,000.00. (*See* Tulyathan Decl. at ¶ 55, Ex. E.) The costs were all directly
24 incurred in the prosecution of this action, including court and filing fees, arbitration fees,
25 postage, and copying. (*See id.*) As such, the requested costs should be awarded as fair and
26 reasonable.

27 **G. Plaintiffs’ Service Awards Should be Approved**

28 Courts have held that named plaintiffs in class, or private attorney general actions can

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

6 Here, Plaintiffs each seek \$2,500.00 for their service awards, which is intended to
7 compensate Plaintiffs for the time spent on this case, including reviewing documents and
8 pleadings and the potential for hesitation from later prospective employers that might find out
9 they brought this claim. (*See* SA § 3.2.3; Declaration of Robert Jordan; Declaration of
10 Chanraksmeey Kam.) This requested enhancement is consistent with awards approved in other
11 common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D.
12 Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*,
13 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive
14 awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)
15 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*,
16 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass*
17 *v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27,
18 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v.*
19 *Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class
20 representative in ERISA case).

21 As Plaintiffs’ requested service award is a modest amount, the Court should
22 approve the service award as requested in the amount of \$2,500.00 each.

23 **H. The Settlement Administrator’s Costs Should be Approved**

24 The Parties have agreed to pay actual costs of administration, or \$13,995.00, to the
25 Settlement Administrator, Phoenix Settlement Administrators, to administer this Settlement.
26 (*See* SA §§ 1.2, 3.2.2; Tulyathan Decl. at ¶ 26, Ex. C.) The Parties believe that the
27 administration fee is reasonable and should be approved.

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

2 As discussed above, and concurrent with the filing of this Motion, Plaintiff uploaded the
3 instant motion to the LWDA's website. (Tulyathan Decl. at ¶ 56, Ex. F.)

4 **V. CONCLUSION**

5 Based on the above, Plaintiffs request that the Court approve the current PAGA
6 settlement.

7
8 DATED: March 26, 2025

DIVERSITY LAW GROUP, P.C.

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10 By: 
11 Larry W. Lee
12 Mai Tulyathan
13 Attorneys for Plaintiffs and Aggrieved Employees
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