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on behalf of all other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

SONIA FRANCO, on behalf of all other  
aggrieved employees,

Plaintiff,

vs.

CAREMORE HEALTH PLAN, INC.,  
ANTHEM INC., THE ANTHEM  
COMPANIES, INC., ANTHEM  
COMPANIES OF CALIFORNIA,  
WELLPOINT, INC., THE WELLPOINT  
COMPANIES, CAREMORE HEALTH  
SYSTEMS, INC., CAREMORE HEALTH  
GROUP, INC., CAREMORE HEALTH  
PLAN, and DOES 1 through 20, inclusive,

Defendants,

Case No.: 20STCV30072

**NOTICE OF MOTION AND MOTION  
FOR APPROVAL OF PAGA  
SETTLEMENT**

**[Filed concurrently with the Declaration of  
Daniel J. Bass; Declaration of Sonia Franco;  
and {proposed} Order]**

Date: July 1, 2022

Time: 8:30 a.m.

Dept: 56

Reservation ID: 330079099655

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

2 PLEASE TAKE NOTICE that on July 1, 2022 at 8:30 a.m., or as soon thereafter as  
3 counsel may be heard in Department 56 of the Los Angeles Superior Court, Stanley Mosk  
4 Courthouse, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff SONIA  
5 FRANCO (“Plaintiff”) will, and hereby does, respectfully moves for the Court’s approval,  
6 pursuant to Labor Code section 2699(l), of a settlement of Plaintiff’s claims under the Labor  
7 Code Private Attorneys General Act (“PAGA”) as detailed in the Parties’ PAGA Settlement  
8 Agreement (“Agreement” or “Settlement” herein) attached as Exhibit A to the Declaration of  
9 Daniel J. Bass filed concurrently in support hereof.

10 Good cause exists for the granting of this motion as the proposed Settlement is fair,  
11 adequate, and reasonable. The motion is based upon this Notice, the attached Memorandum of  
12 Points and Authorities, the accompanying Declaration of Daniel J. Bass and all exhibits thereto,  
13 including the Settlement Agreement, the Declaration of Sonia Franco, the complete files and  
14 records of this case, and any other evidence or oral argument which may be considered by the  
15 Court at the time of the hearing.

16 DATED: June 9, 2022

**MAKAREM & ASSOCIATES, APLC**

17 

18 Ronald W. Makarem  
19 Cameron A. Stewart  
20 Daniel J. Bass  
21 Attorneys for Plaintiff  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND PROCEDURAL HISTORY**

3 Plaintiff SONIA FRANCO (“Plaintiff”) and Defendants CareMore Health Plan (erroneously  
4 sued as both CareMore Health Plan and CareMore Health Plan, Inc.), Anthem, Inc., The Anthem  
5 Companies, Inc., The Anthem Companies of California, Inc. (erroneously sued as Anthem  
6 Companies of California), and CareMore Health System (erroneously sued as CareMore Health  
7 Systems, Inc.) (together, “Defendants”) (hereinafter collectively with Plaintiff the “Parties”)  
8 pursuant to Labor Code section 2699(l), reached a negotiated settlement of Plaintiff’s claims  
9 under the Labor Code Private Attorneys General Act (“PAGA”) as detailed in the Parties’ PAGA  
10 Settlement Agreement (“Agreement” or “Settlement” herein) attached as Exhibit A to the  
11 Declaration of Daniel J. Bass (“Bass Decl.”) filed concurrently in support hereof.

12 **A. Plaintiff’s Representative Action**

13 On April 14, 2020, Plaintiff provided written notice of her intent to file a claim for civil  
14 penalties under PAGA to the LWDA against CareMore Health Plan, Inc.”), Sachin Jain, Karen  
15 Schulte, and Michael Plumb. On August 5, 2020, Plaintiff provided written notice of her intent to  
16 file a claim for civil penalties under PAGA to the LWDA against Anthem, Inc., The Anthem  
17 Companies, Inc., Anthem Companies of California, WellPoint, Inc., The WellPoint Companies,  
18 CareMore Health Systems, Inc., CareMore Health Group, Inc., and CareMore Health Plan. (Bass  
19 Decl., ¶ 3.)

20 On August 7, 2020, Plaintiff filed the PAGA Action against CareMore Health Plan, Inc.  
21 asserting a single cause of action for civil penalties under PAGA. On November 24, 2020,  
22 Plaintiff filed the First Amended Complaint in the PAGA Action, naming CareMore Health Plan,  
23 Inc., Anthem, Inc., The Anthem Companies, Inc., Anthem Companies of California, CareMore  
24 Health System, Inc., and CareMore Health Plan as defendants in the Action. (Bass Decl., ¶ 4.)

25 On June 24, 2020, Plaintiff filed the Class Action against CareMore Health Plan, Inc. and

1 Sachin H. Jain asserting causes of action for: (1) failure to pay overtime wages; (2) failure to  
2 provide meal periods; (3) failure to provide rest periods; (4) failure to furnish accurate wage  
3 statements; (5) failure to pay all wages earned; (6) failure to maintain required records; (7)  
4 failure to pay earned wages upon termination; (8) failure to indemnify to necessary business  
5 expenses; and (9) unfair competition in violation of Business & Professions Code section 17200.  
6 (Bass Decl., ¶ 5.) On August 10, 2020, Plaintiff filed a first amended complaint naming  
7 CareMore Health Plan, Inc., Anthem, Inc., The Anthem Companies, Inc., Anthem Companies of  
8 California, WellPoint, Inc., The WellPoint Companies, CareMore Health Systems, Inc.,  
9 CareMore Health Group, Inc., and Sachin H. Jain as defendants in the Class Action. (*Id.*)

10 On January 20, 2021, Defendants filed a motion to compel arbitration in the Class  
11 Action, and on October 15, 2021, the court ordered Plaintiff's individual claims to arbitration  
12 using JAMS and dismissed the class claims. (Bass Decl., ¶ 6.) On November 16, 2021, Plaintiff  
13 submitted a demand for the JAMS Arbitration asserting the same causes of action and naming  
14 the same defendants as the first amended complaint in the Class Action. (*Id.*)

#### 15 **B. Investigation, Mediation and Settlement Agreement**

16 In response to Plaintiff's Counsel's informal discovery requests made pursuant to  
17 mediation, Defendants provided Plaintiff's Counsel with information and documents pertaining  
18 to Plaintiff and other PAGA Group Members in order for Plaintiff's Counsel to investigate  
19 Plaintiff's allegations and value the PAGA claim. (Bass Decl., ¶ 7.) This was in addition to the  
20 formal discovery which was also conducted, including the exchange of formal written discovery  
21 requests, responses thereto, and document productions, as well as multiple meet and confer  
22 sessions regarding the same. (*Id.*)

23 On August 2, 2021, the Parties participated in a full-day mediation with Steven J.  
24 Serratore, Esq. The Parties were unable to reach an informal resolution at the August 2, 2021  
25 mediation. (Bass Decl., ¶ 8.) However, with the assistance of Mr. Serratore in the following

1 months, the Parties were able to eventually agree to resolve the claims fully and finally. (*Id.*)  
2 Eventually Parties completed a long-form settlement of Plaintiff's PAGA claims ("Settlement"  
3 or "Agreement" herein), for which the Parties now jointly seek this Court's approval under  
4 Labor Code section 2699(1)(2). (*Id.*)

5 As part of the Settlement executed by the Parties, Defendants agreed to pay the Gross  
6 Settlement Amount of \$825,000.00 in consideration release of the "PAGA Released Claims"  
7 which means any and all demands, rights, liabilities, claims, and/or causes of action under the  
8 PAGA including but not limited to any claims alleged by Plaintiff in the PAGA Action and  
9 PAGA Letters or that could have been alleged based on the facts or underlying claims in the  
10 PAGA Action, PAGA Letters, Class Action, and JAMS Arbitration during the Settlement Period,  
11 including all claims that are based on or related to: the purported payment or nonpayment of  
12 compensation (including, but not limited to, wages, minimum wage, rate of pay, straight time,  
13 overtime, and/or premium pay); failure to pay meal or rest period premiums or penalties; failure  
14 to pay for all hours worked; failure to timely pay all wages earned, including final wages; failure  
15 to provide compliant meal and rest periods; failure to reimburse business expenses; failure to  
16 provide timely and compliant wage statements; improper recordkeeping; violations of California  
17 Labor Code sections 200-204, 210, 218, 218.5, 218.6, 221-223, 226, 226(a), 226(e), 226.3,  
18 226.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 2802,  
19 2810.5, 2699, 2699.3, and any applicable IWC Wage Orders. *See* Bass Decl., Exh. A, ¶ 17.

20 Under section 2699(i) of the California Labor Code, aggrieved employees are entitled to  
21 recover 25 percent of the Net Settlement Amount, or \$127,445.40, with the remaining 75  
22 percent, or \$382,336.22, to be paid directly to the LWDA. The Parties and their respective  
23 counsel agree that the settlement of the PAGA claims for the consideration and on the terms set  
24 forth herein is fair, reasonable, and adequate, given all known facts and circumstances and the  
25 risks inherent in litigation, including potential appellate issues. (Bass Decl., ¶ 9.) In addition,

1 Plaintiff, as a designated private attorney general, believes the settlement amount entered into is  
2 in the best interest of the LWDA and that the PAGA Settlement is fair, reasonable, and adequate,  
3 given the inherent risk of litigation. (*Id.*)

4 The Plaintiff now requests the Court's approval of the Parties' Settlement Agreement of  
5 this representative action entitled *Sonia Franco v. CareMore Health Plan, Inc. et al.*, Los  
6 Angeles Superior Court Case No. 20STCV30072 (the "Action"). Plaintiff's counsel represents  
7 that the LWDA was provided the relevant portions of Settlement Agreement pursuant to Labor  
8 Code § 2699(l)(1) and (2). (Bass Decl., ¶ 10, Exhibit B.)

## 9 **II. LEGAL ANALYSIS**

10 Under Labor Code § 2699 (l)(2), the Parties must obtain approval of their PAGA  
11 settlement from the Court and hereby seek the Court's approval. As explained by the California  
12 Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969, the Parties do not have to  
13 follow class action procedural rules in this PAGA Action and therefore need not follow the class  
14 action procedures for obtaining an approval of the settlement and thus submit this motion for  
15 approval. Other than the requirement in section 2699 (l)(2) that the court "review and approve"  
16 a settlement of a civil action filed under PAGA, neither the California legislature, nor the  
17 California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has provided  
18 any definitive answer to [the] vexing question" of the appropriate standard for approving the  
19 settlement of PAGA claims, whether brought as a class or representative action. *Alonzo v. First*  
20 *Transit, Inc.*, No. B277109, 2018 WL 5118644, at \*8 (Cal. Ct. App. Oct. 22, 2018).

### 21 **A. Plaintiff Submitted a Copy of the Settlement to the LWDA**

22 Labor Code § 2699(l)(2) requires that any proposed settlement of a PAGA action be  
23 submitted to the LWDA. Plaintiff will complete this requirement by concurrently submitting a  
24 copy of the Settlement and this filing to the LWDA through its online portal. (Bass Decl. ¶ 11.)  
25

1                   **B. Court Approval of a PAGA Settlement is Unlike Class Action Approval**

2           Labor Code § 2699(l)(2) provides that the superior court shall review and approve any  
3 settlement of any civil action filed pursuant to the PAGA. “Since a representative action under  
4 PAGA allows an individual employee to seek monetary relief arising out of unlawful conduct  
5 directed at a group of employees, PAGA actions bear a superficial resemblance to a type of class  
6 action. There are, however, several factors distinguishing representative PAGA actions and class  
7 actions. First, a unique feature of a representative action under PAGA is that it is ‘fundamentally  
8 a law enforcement action designed to protect the public and penalize the employer for past illegal  
9 conduct.’ (internal citation omitted). The purpose is not to collect damages on behalf of other  
10 employees or provide restitution to victims of Labor Code violations.” *Cunningham v. Leslie's*  
11 *Poolmart, Inc.*, 2013 U.S. Dist. LEXIS 90256, \*16-17, 2013 WL 3233211 (C.D. Cal. June 25,  
12 2013); *see Franco v. Athens Disposal Co., Inc.*, 171 Cal. App. 4th 1277, 1300 (2009)  
13 (“Restitution is not the primary object of a PAGA action, as it is in most class actions.”).

14           Moreover, there is no requirement that the Court apply the same level of scrutiny in  
15 approving a PAGA settlement as it does with class actions. Indeed, the California Supreme  
16 Court has held that an employee who sues an employer under the PAGA need not satisfy class  
17 action requirements. *Arias*, 46 Cal. 4th at 974. For example, “PAGA has no notice requirements  
18 for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”  
19 *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014).

20                   **C.     The LWDA Did Not Investigate Plaintiff’s PAGA Allegations**

21           The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the  
22 same time that it is submitted to the Superior Court for review and approval. Lab. Code §  
23 2699(l)(2). However, the Labor Code does not authorize the LWDA to interfere with, obstruct,  
24 object, or otherwise impede a request for approval of a PAGA settlement. Indeed, the time for  
25 the LWDA to comment on a settlement is during the short window in which it must inform the

1 aggrieved employee that it declines to investigate. Lab. Code § 2699.3(a)(2)(B). Once that  
2 window shuts, the aggrieved employee is deputized to act on behalf of the LWDA in a civil  
3 action. The Labor Code is clear that all that is required to obtain court approval of a PAGA  
4 settlement is for the proposed settlement to be sent to the LWDA. Lab. Code § 2699(l)(2).

5 Here, the LWDA had opportunity to investigate and obtain civil penalties by citation after  
6 Plaintiff submitted her PAGA notice to the LWDA. (Bass Decl., Ex. B). “If the [LWDA]  
7 intends to investigate the alleged violation, it shall notify the employer and the aggrieved  
8 employee or representative by certified mail of its decision within 65 calendar days of the  
9 postmark date of the notice.” Lab. Code § 2699.3(a)(2)(B). “Within 120 calendar days of that  
10 decision, the [LWDA] may investigate the alleged violation and issue any appropriate citation.”  
11 *Id.* Here, the LWDA chose not to investigate the alleged violation. All that is required now  
12 regarding LWDA involvement is for the requisite documentation to be submitted to the LWDA  
13 pursuant to Labor Code § 2699(l)(2). That has been done. (Bass Decl. ¶ 12.).

14 **D. The PAGA Settlement in this Case is Fair, Adequate, and Reasonable**

15 Plaintiff conducted a thorough investigation into the facts of the Action, including by  
16 reviewing Defendants’ production of responsive documents and information requested for  
17 mediation. (Bass Decl. ¶ 13.) Altogether, Defendants produced hundreds of pages of documents  
18 and information related to the PAGA claim, including time keeping and payroll records. (*Id.*)  
19 Plaintiff’s counsel analyzed this data, including substantial time and payroll records, as well as  
20 wage statements in order to evaluate the potential damages and for respective counsel to engage  
21 in meaningful settlement discussions. (*Id.*) Plaintiff’s counsel received, among other things, the  
22 following information and evidence with which to properly evaluate both her individual claim  
23 and the PAGA claim: (1) information bearing on the number of “aggrieved employees” and the  
24 number of pay periods during the PAGA period; (2) wage statements; (3) time records; and  
25 Defendants’ company policies. (*Id.*) Plaintiff’s counsel closely reviewed the documents and data

1 provided by Defendants to determine the amount of potential PAGA penalties and other  
2 remedies potentially available to Plaintiff and the aggrieved individuals based on the claims  
3 alleged in the Action. (*Id.*)

4 As a result of this investigation, Plaintiff learned that there are less than 585 "PAGA  
5 Group Members", including Plaintiff, throughout the State of California for the period from  
6 April 14, 2019 through the date of Approval of the Settlement, or April 12, 2022, whichever is  
7 earlier (the "Settlement period"). (Bass Decl. ¶ 14.) The Gross Settlement Amount represents  
8 over \$1,410.26 per aggrieved employee, with the LWDA to be paid an estimated \$382,336.22  
9 and the aggrieved employees receiving \$127,445.40 or, on average, over \$217.85 each from the  
10 Net Settlement Amount. (*Id.*)

11 This settlement is fair and reasonable considering the probability of recovery in this  
12 matter and the role of judicial discretion in right-sizing any penalty amount. (Bass Decl. ¶ 15.)  
13 For PAGA claims, the courts are not obligated to impose the maximum penalties and have  
14 discretion to lower the penalties. Specifically, Labor Code §2699(e)(2) provides that "a court  
15 may lower penalties if it finds that a higher amount would result in an award that is "unjust,  
16 arbitrary and oppressive or confiscatory." In the present action, Defendants argued that an award  
17 of penalties would be unjust, arbitrary and oppressive or confiscatory and any potential  
18 violations were corrected. (Bass Decl. ¶ 15.)

19 In addition, the settlement amount is fair and reasonable in light of applicable case law.  
20 See *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1136 (2012) ("In  
21 summary, the trial court stated that ... the facts and circumstances that the trial court specified in  
22 its statement of decision in support of the finding, the trial court reasonably determined that  
23 imposition of the maximum statutory penalty amount against defendants would be unjust — if  
24 not also arbitrary, oppressive, or confiscatory."); see also *Carrington v. Starbucks Corp.*, 30 Cal.  
25 App. 5th 504, 529 (2018) ("Although the trial court may have disagreed with Starbucks

1 regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into  
2 consideration when it imposed the penalty, as evident from the significant reduction of the \$50  
3 maximum penalty (per initial violation) to the penalty imposed—only \$5 per initial violation.”).

4 Furthermore, PAGA settlements of amounts significantly lower have been approved. *See,*  
5 *e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc.* (N.D. Cal. Feb. 23, 2015) No. C 13-00847  
6 LB, Doc No. 71, slip op. at \*2 (approving \$20,000 PAGA settlement for 13 aggrieved  
7 employees); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at  
8 \*14 (approving PAGA penalties of \$10,000 for 2,055 class members and aggrieved employees);  
9 *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at \*3 (approving  
10 PAGA settlement payment of \$10,000 for approximately 1,869 class members and aggrieved  
11 employees); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,  
12 at \*1 (approving \$10,000 PAGA settlement payment for approximately 2,7852 class members  
13 and aggrieved employees)). Here, this settlement amount on behalf of the aggrieved employees  
14 and the state is significantly more than previously approved settlements for similar claims.

15 **E. Plaintiff’s Attorneys’ Fees and Costs are Fair and Reasonable**

16 In the Settlement, Defendants agreed, subject to Court approval, to pay Plaintiff’s  
17 Counsel an award of reasonable attorneys’ fees Thirty-Three percent (33.33%) of the Gross  
18 Settlement Amount, or Two Hundred Seventy-Four Thousand Nine Hundred Seventy-Two  
19 Dollars and Fifty Cents (\$274,972.50) and up to \$25,000 in costs. To date, Plaintiff’s Counsel  
20 has incurred \$17,245.88 in litigation costs. (Bass Decl., 16, Exh. C). In terms of their actual time  
21 spent on the matter, Plaintiff’s Counsel will have collectively spent more than 293.60 hours, and  
22 multiplying the hours by their hourly rates, Plaintiff’s Counsel’s incurred fees exceeding  
23 \$222,399.00. (*Id.*). Plaintiff’s Counsel anticipate spending additional time working with the  
24 Settlement Administrator through the disbursement and accounting process. (Bass Decl., ¶ 17).

25 Though there are two methods for determining the appropriateness of a fee award, the

1 starting point for determining a fees' appropriateness is to assess the amount of time spent by the  
2 attorneys working. In *Lealao v. Beneficial California* , the court held that:

3       The starting point of every fee award, once it is recognized that the court's role in  
4 equity is to provide just compensation for the attorney, must be a calculation of  
5 the attorney's services in terms of the time he has expended on the case.  
6 Anchoring the analysis to this concept is the only way of approaching the problem  
that can claim objectivity, a claim which is obviously vital to the prestige of the  
bar and the courts. [citation omitted]

7 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Plaintiff's Counsel's actual fees incurred  
8 litigating this case will exceed \$222,399.00. (Bass Decl. ¶, 16). Beyond a simple review of  
9 Plaintiff's Counsel's hours worked, the fee award requested comports with attorneys' fee awards  
10 issued by other courts under both the "common fund" and "lodestar" fee methods.

11       Because the requested award is well within the typical multiplier approved by California  
12 courts, and because it is fully supported by the factors that California courts consider in  
13 determining the reasonableness of attorney fee awards in similar cases, Plaintiff's Counsel  
14 respectfully submit that their request for \$274,972.50 in attorneys' fees is appropriate.

#### 15       **F. The Trial Court has Wide Discretion Over the Amount of the Fee Award**

16       California appellate courts have long recognized that trial courts are ideally situated to  
17 assess the quality and effectiveness of counsel's efforts, and have, thus, conferred considerable  
18 equitable discretion upon trial courts to determine an appropriate fee award. *See Serrano*, 20  
19 Cal.3d at 49; *accord, Glendora Community Redev. Agency v. Demeter* (1984) 155 Cal.App.3d  
20 465, 474 (holding that "[t]he rule with respect to attorney[s'] fees is that the amount to be  
21 awarded as attorney[s'] fees is left to the sound discretion of the trial court. The trial judge is in  
22 the best position to evaluate the services rendered by an attorney in his courtroom; his judgment  
23 will not be disturbed unless it is clearly wrong.").

24       California courts generally recognize two standard methods for calculating attorneys' fee  
25 awards in common fund settlements. The more prevalent "percentage of the fund" (also known

as the “common fund” or “common benefit”) method calculates attorneys' fees based on a percentage of the common benefit bestowed. The “lodestar-plus-multiplier” method uses counsel's “lodestar” as a basis - determined by multiplying the hours counsel expended by their hourly rates - which the Court may then enhance by a multiplier, taking into account a variety of factors. The “lodestar-plus-multiplier” method is often considered to cross-check the propriety of the “common fund” award.

### **1. The “Common Fund” Doctrine**

The California Supreme Court has held it is advisable for trial courts to employ the “common fund” doctrine to award attorneys' fees and costs to counsel in similar actions, where litigants proceeding in a representative capacity have secured a monetary settlement or judgment on behalf of others. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court has specifically endorsed the use of the percentage of the fund method in paradigmatic common fund cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the ‘common fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed...”]; *see also*, *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir.1977).

Plaintiff’s Counsel commenced this action with the goal of recovering penalties for: unpaid wages, meal and rest break violations, wage statements, and waiting time penalties. This Settlement constitutes the achievement of that goal. As such, Plaintiff’s Counsel should be paid their attorneys' fees based on the common benefit they have achieved for aggrieved employees. *Lealao*, 82 Cal.App.4th at 28-36, 50-51 (noting that percentage of the fund awards are appropriate in cases where the common benefit can be quantified); *Serrano*, 20 Cal.3d at 35-40.

Various federal courts have made similar attorneys’ fee awards of a similar or greater percentage to that requested in this case. (*See, e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*

1 *Sec. Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the  
2 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526  
3 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*  
4 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199  
5 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y.  
6 1981) 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles*  
7 (1974) 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery).

8 In fact, fees amounting to one-third of the settlement fund are often awarded. In  
9 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable  
10 Steven Czuleger awarded a 40% attorney fee request in an overtime-exemption action; in  
11 *Bushnell v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald  
12 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,  
13 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded  
14 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3),  
15 the court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-  
16 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour action; and  
17 in both *Rippee v. Boston Market Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA))  
18 and *Barile v. Boston Market Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the  
19 Honorable Barry T. Moskowitz awarded a 40% fee to counsel in wage and-hour action.

20 In this case, 33.3% of the original Gross Settlement Amount in attorney's fees is fair and  
21 reasonable in light of the substantial time spent by Plaintiff's Counsel litigating this case and the  
22 substantial benefit to be received by the state and the aggrieved employees. Moreover, the award  
23 is approved by the Plaintiff and Defendants. Accordingly, the fee request here is warranted.

## 24 **2. The Lodestar Approach Demonstrates the Fee Request is Justified.**

25 Some California courts also use a lodestar approach, enhanced by a multiplier, in

1 awarding attorneys' fees and costs. The lodestar method is often used to cross-check the  
2 propriety of the common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina,*  
3 *Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the  
4 court should award a fee commensurate with 33 1/3% of the fund, but why the court should not.

5       The lodestar method requires that a trial court first determine a “lodestar” figure based on  
6 a “careful compilation of the time spent in reasonable hourly compensation for each attorney  
7 involved in the presentation of the case.” *Serrano*, 20 Cal.3d at 48. Presently, the “lodestar”  
8 figure is over \$222,399.00. The lodestar figure may then be increased by the application of a  
9 “multiplier.” *Id.*; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) Some of the factors  
10 a trial court considers when determining whether to apply a multiplier are: “(1) the novelty and  
11 difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to  
12 which the nature of the litigation precluded other employment by the attorneys, (4) the  
13 contingent nature of the fee award.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (citations  
14 omitted.) In California, “[m]ultipliers can range from two to four or even higher” and are  
15 routinely applied as such. *Wershba*, 91 Cal.App.4th 224, 254; see also *Chavez v. Netflix, Inc.*  
16 (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community Redevelopment*  
17 *Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that included a 12.0  
18 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125  
19 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v. Microsoft Corp.*  
20 (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken v. Atlantic*  
21 *Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of 3.6). The  
22 ultimate goal is “to entice competent counsel to undertake difficult public interest cases.” (*San*  
23 *Bernardino Valley Audubon Soc. v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755.)  
24 Fee awards that are too small “chill the private enforcement essential to the vindication of many  
25 rights[.]” *Lealao*, 82 Cal.App.4th at 53.

1 This settlement comes after protracted litigation, and Plaintiff's Counsel has provided this  
2 Court with both a summary of their hourly rates and hours billed in this matter that attest to their  
3 diligent efforts. To summarize the lodestar, Plaintiff's Counsel's time summaries show that they  
4 worked over 293.60 hours on this case, not even including all hours spent on this filing, and  
5 which will occur through the distribution and accounting process thereafter. (Bass Decl., ¶ 16,  
6 Exh. C). Based on their hourly rates, the lodestar calculation produces \$222,399.00 in fees. *Id.*  
7 As such, if the Court is inclined to award fees based on lodestar, only the very limited multiplier  
8 of less than 1.24 is required to support Plaintiff's request.

#### 9 **G. Plaintiff's Counsel's Costs Are Reasonable**

10 In the course of this litigation, Plaintiff's Counsel have incurred costs totaling \$17,245.88  
11 and will incur additional expenses through the completion of the disbursement and accounting  
12 process (including, but not limited to, filing this Motion and appearance at the hearing, and other  
13 appearances and communications regarding final accounting). Such litigation-related costs are  
14 reimbursable in representative actions. *In re United Energy Corp. Sec. Litig.*, 1989 U.S. Dist.  
15 LEXIS 19146 at \*16 (C.D. Cal. 1989) [quoting Newberg, Attorney Fee Awards § 2:19 (1987)].

16 As one commentator has noted, "the prevailing view is that expenses are awarded in  
17 addition to the fee percentage." Conte, Attorney Fee Awards, § 2:08 at 50-51 (2d ed. 1977); *In re*  
18 *GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). As such, the costs incurred by  
19 Plaintiff's Counsel in this litigation are reasonable and appropriate as they served the Plaintiff,  
20 the State of California, and aggrieved employees.

#### 21 **H. The Proposed Incentive Payment to the Plaintiff is Reasonable**

22 The Parties have agreed to an Incentive Payment of no more than \$15,000 to Plaintiff.  
23 The service award is proper for several reasons. First, the award is proper considering that  
24 Plaintiff spent a substantial amount of her own time to ensure that the representative claims  
25 could proceed and to ensure that the state and aggrieved employees members received a benefit

1 in this case. (Bass Decl., ¶¶ 22-26). Plaintiff worked with counsel to assist in this case. (*Id.*).  
2 Specifically, Plaintiff met with her attorneys before the lawsuit was filed and discussed her  
3 experiences working for Defendants at length while searching for all documents she had related  
4 to her employment with Defendants. (Declaration of Sonia Franco [“Franco Decl.”] ¶¶ 6-7).  
5 During the litigation Plaintiff remained in close contact with her counsel and engaged in  
6 numerous telephone conversations regarding the claims in the case and Defendant’s defenses to  
7 those claims. *Id.* Plaintiff also had numerous conversations with her counsel regarding the  
8 potential of the lawsuit, the terms of the ultimate Settlement Agreement, of which Plaintiff  
9 reviewed the drafts, and in responding to discovery requests. *Id.* It is estimated that over the  
10 course of the lawsuit, Plaintiff spent 20-25 hours working on the case for the benefit of both  
11 herself, the state, and the other aggrieved employees.

12 Second, the parties - who conducted arms-length settlement negotiations – have agreed  
13 that the service award is fair and reasonable in light of: (i) Plaintiff efforts in the Litigation and  
14 (ii) her execution of a full, general release.

15 Lastly, courts have frequently approved substantial incentive payments to representatives  
16 in similar lawsuits. See *In re Southern Ohio Correctional Facility*, *supra*, 175 F.R.D. at 272  
17 (recognizing that “[c]ourts routinely approve incentive awards to compensate named plaintiffs  
18 for the services they provided and the risks they incurred during ... litigation.”); *Ingram v. The*  
19 *Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (\$300,000 incentive award to each named  
20 plaintiff); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-  
21 251 (S.D. Ohio 1991) (incentive payments of \$50,000); *In re Dunn & Bradstreet Credit Services*  
22 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting  
23 to \$35,000 to \$55,000 for each representative); see also, *Van Vranken v. Atlantic Richfield Co.*,  
24 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re v.*  
25 *Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, \*16-17 (S.D.N.Y. 1979) (payment of

1 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the  
2 settlement to be unreasonable).

3 In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent  
4 aggrieved employees did not. Rewarding her efforts is a proper incentive for individuals who  
5 come forward to challenge employment practices, thus fulfilling the policies and purposes  
6 underlying the Labor Code.

7 **I. The Proposed Settlement Administration is Reasonable**

8 CPT Group, Inc. (“CPT”) has been retained to handle the notice and settlement  
9 administration. CPT is an experienced class and settlement notice administration company, and  
10 has acted as claims administrator in numerous wage and hour cases throughout the country. CPT  
11 has presented an estimate to counsel reflecting that its charges to administer the proposed  
12 settlement will not exceed \$8,000. (Bass Decl., ¶ 27). Within five (5) calendar days of receiving  
13 the PAGA Group Members’ information from Defendants, the Settlement Administrator will  
14 circulate to counsel for both Parties an anonymized spreadsheet containing the Individual  
15 Settlement Payments to each PAGA Group Member and the data used to calculate said  
16 payments. (*Id.*, Exh. A, § IV.2.) Within twenty (20) calendar days after the Gross Settlement  
17 Amount is deposited, the Settlement Administrator shall mail the Individual Settlement  
18 Payments to all PAGA Group Members via First-Class U.S. Mail. (*Id.*, Exh. A, § IV.3.) Checks  
19 will remain negotiable for one hundred eighty (180) days from the date they are mailed by the  
20 Settlement Administrator. (*Id.*) Any check that is not negotiated within one hundred eighty (180)  
21 days of mailing to a PAGA Group Member shall be transferred to the Controller of the State of  
22 California per California’s Unclaimed Property Law to be held in the name of the PAGA Group  
23 Member, and shall be deemed unpaid residuals pursuant to California Code of Civil Procedure  
24 Section 384(a). (*Id.*)

1 **III. CONCLUSION**

2       Based on the foregoing, the Plaintiff respectfully requests that the Court grant this motion  
3 and approve the Parties' PAGA settlement.

4 DATED: June 9, 2022

**MAKAREM & ASSOCIATES, APLC**

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6

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