

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

KRISTY VESS, as a private attorney general,

Plaintiff,

vs.

GO WIRELESS, INC., a Nevada corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV00185

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Kristy Vess; [Proposed] Order]*

Date: July 31, 2024
Time: 8:30 a.m.
Courtroom: 10

Complaint Filed: January 25, 2021
FAC Filed: March 29, 2021

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

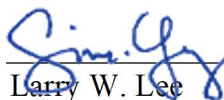
2 **PLEASE TAKE NOTICE** that on July 31, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Courtroom 10 of the above-entitled court located at 701 Ocean Street, Santa
4 Cruz, California 95060, Plaintiff, Kristy Vess, will and hereby does move for an Order approving the
5 Joint Stipulation of PAGA Settlement (the “Agreement”) entered into between Plaintiff and Defendant,
6 Go Wireless, Inc.¹

7 The motion is made pursuant to Labor Code section 2699(1)(2), which requires a court to “review
8 and approve any settlement of any civil action filed pursuant to [the Labor Code Private Attorneys
9 General Act of 2004, Lab. Code §§ 2698 et seq. (“PAGA”)].” Lab. Code § 2699(1)(2). The motion is
10 made on the grounds that the Agreement and the Parties’ settlement are fundamentally fair, adequate,
11 and reasonable in light of PAGA’s policies and in furtherance of PAGA’s purposes. As set forth in the
12 concurrently filed declaration of Simon L. Yang, a copy of the Agreement and the motion have been
13 electronically submitted to the Labor and Workforce Development Agency in accordance with Labor
14 Code sections 2699(1)(2) and 2699(1)(4).

15 The motion is based on this notice, the memorandum of points and authorities, the Agreement,
16 the supporting Declarations of Larry W. Lee, Simon L. Yang, and Kristy Vess, all pleadings and papers
17 on file herein, and any further oral and documentary evidence as may be presented before or at the
18 hearing of this matter.

19 DATED: July 8, 2024

DIVERSITY LAW GROUP, P.C.

20 By: 
21 Larry W. Lee
22 Simon L. Yang
23 Attorneys for Plaintiff
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28 ¹ The Agreement is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

MEMORANDUM OF POINTS AND AUTHORITIES

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SUMMARY OF MOTION

As a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Kristy Vess, sues Defendant, Go Wireless, Inc., for alleged failures to pay or timely pay all sick pay wages, to pay or timely pay all overtime wages, and to provide accurate itemized wage statements. Plaintiff alleges that the Labor Code violations resulted primarily from Defendant’s miscalculation of legally required pay rates.

Through informal and formal discovery over the course of more than three years of litigation, Plaintiff discovered that the alleged Labor Code violations affected approximately 662 employees in about 23,938 relevant pay periods from July 29, 2019, through March 31, 2022. Plaintiff then negotiated and obtained an excellent result for the State that requires Defendant to pay \$360,000.00 for the resolution of the alleged PAGA claims—or approximately \$15.04 for each of the relevant pay periods at issue. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant. The terms of the settlement are memorialized in the Joint Stipulation of PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

Under PAGA, the Court must review and approve the proposed settlement. Lab. Code § 2699(1)(2). Plaintiff thus moves for approval of the Agreement:

- The Agreement provides for an award of Attorneys’ Fees and Costs in the amount of 33⅓% of the \$360,000.00 Settlement Amount, or \$120,000.00, in fees, plus up to \$20,000.00 in costs (though Plaintiff now seeks reimbursement of \$15,958.06 in costs only).
- It also provides for a \$10,000.00 General Release Payment to Plaintiff (i) as consideration for her additional general release of claims and waiver of Civil Code section 1542 and (ii) in recognition of her efforts and work in prosecuting the lawsuit on behalf of the State.
- It also provides for \$6,500.00 in Administration Costs to a settlement administrator for effectuating the payments contemplated by the Agreement.
- Finally, it provides for all remaining funds to constitute a PAGA Penalty Fund, 75% of which would be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% of which would be distributed to allegedly aggrieved employees.

1 The terms of the Agreement are fundamentally fair, adequate, and reasonable. In light of
2 PAGA’s policies and in furtherance of PAGA’s purposes, the Court should approve the settlement.

3 RELEVANT BACKGROUND

4 On January 25, 2021, Plaintiff filed the original putative class action and PAGA complaint in
5 this matter. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On March 29, 2021, after meeting and
6 conferring with Defendant about an applicable arbitration agreement, Plaintiff filed a first amended
7 complaint to dismiss class action claims and allegations and proceed on a PAGA-only basis. *Id.* The
8 operative complaint alleges PAGA claims for failures to pay or timely pay all sick pay wages, to pay or
9 timely pay all overtime wages, and to provide accurate itemized wage statements. *Id.*

10 The Parties met and conferred about Plaintiff’s allegations and claims as well as Defendant’s
11 defenses. Yang Decl. ¶ 3. The Parties also engaged in formal discovery, including the exchange of
12 document requests and interrogatories. *Id.* Plaintiff also requested (and Defendant provided) additional
13 informal discovery to enable the Parties to explore the possibility of an informal resolution. *Id.*
14 Defendant’s willingness to produce this information enabled Plaintiff to evaluate the full scope of
15 Defendant’s potential liability. *Id.*

16 On June 6, 2022, the Parties attended a mediation with Steven G. Pearl, an experienced mediator
17 knowledgeable of both the wage and hour laws and PAGA claims at issue in the Action. Yang Decl. ¶ 4.
18 The Parties were unable to resolve the Action, in part due to uncertainties due to an anticipated United
19 States Supreme Court decision that would address the impact that arbitration agreements with class
20 action waivers would have on the viability of PAGA claims. *Id.*

21 On March 21, 2024, the Parties again attended a mediation with Steven G. Pearl. Yang Decl. ¶ 5.
22 With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to agree to
23 settlement terms, which were negotiated in light of all known facts and circumstances including the
24 uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate
25 issues. *Id.* The settlement terms are memorialized in the Joint Stipulation of PAGA Settlement. *Id.* Ex. 1
26 (the “Agreement”).
27
28

1 **SUMMARY OF PROPOSED SETTLEMENT**

2 **I. Settlement Payments**

3 The Agreement requires Defendant to pay a non-reversionary Settlement Amount of
4 \$360,000.00. Agreement § 3.1. From the Settlement Amount, the Parties will request that the Court
5 approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs Award, and General
6 Release Payment. *Id.* § 3.1.1-4. It is expected that the LWDA will receive \$155,636.20 as its share of
7 PAGA Penalties and employees will receive \$51,878.74 as their share of PAGA Penalties. Yang Decl. ¶
8 9.

9 **II. Settlement Releases**

10 Plaintiff is subject to a general release. Agreement § 5.2. The State releases any PAGA claims
11 from July 29, 2019, through March 31, 2022, that are “based on Labor Code violations pled in the
12 Action, including any claims for any interest, fees, and costs available under PAGA, based on the factual
13 allegations in the Action, including but not limited to, for failure to provide compliant and accurate wage
14 statements, failure to pay sick and overtime wages, and failure to timely pay wages upon termination, in
15 violation of California Labor Code sections 201, 202, 203, 204, 246, 510, 558, 1194, 226(a) and
16 Industrial Welfare Commission Wage Orders.” *Id.* § 5.1.

17 **LEGAL STANDARD**

18 PAGA requires courts to “review and approve” the settlement of any action filed under PAGA.
19 Lab. Code §2699(l)(2). The California Supreme Court has explained that a court’s review of a PAGA
20 settlement is to ensure “that any negotiated resolution is fair to those affected.” *Williams v. Superior*
21 *Court*, 3 Cal. 5th 531, 549 (2017). But “PAGA does not establish a standard for evaluating PAGA
22 settlements.” *Griffin v. Consolidated Commc’ns*, 2023 WL 3853643, at *3 (E.D. Cal. June 6, 2023)
23 (quoting *Smith v. H.F.D. No. 55, Inc.*, 2018 WL 1899912, at *2 (E.D. Cal. Apr. 20, 2018)). Indeed, the
24 Legislature, California Supreme Court, California Courts of Appeal, and LWDA have not definitively
25 established the standards for review. *E.g., Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959,
26 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a PAGA settlement).
27 The LWDA acknowledges the lack of a “specific benchmark” and has stated only that the relief
28 provided under PAGA must be “genuine and meaningful,” “consistent with the underlying purpose of

1 the statute to benefit the public” and, in the context of a class action, “meet[] the standards of being
2 ‘fundamentally fair, reasonable, and adequate’ with reference to the public policies underlying the
3 PAGA.” *See O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (quoting
4 California Labor and Workforce Development Agency’s Comments on Proposed PAGA Settlement).

5 Federal district courts have typically followed the LWDA’s limited guidance by requiring
6 settlements to be “fundamentally fair, adequate, and reasonable in light of PAGA’s policies and
7 purposes.” *See Haralson*, 383 F. Supp. 3d at 972 (collecting cases). When applying this test, federal
8 district courts often consider factors such as strength of a Plaintiffs’ case; the risk, expense, complexity,
9 and likely duration of further litigation; the amount offered in settlement; the extent of discovery
10 completed; and the expertise and views of counsel. *See Smith*, 2018 WL 1899912, at *3. Federal district
11 courts have also been mindful of the fact that trial courts have broad discretion to award civil penalties
12 in amounts that are less than the maximum amounts authorized by PAGA. *Id.* at *3; *see also* Lab. Code
13 § 2699(e)(2).²

14 “Given PAGA’s purpose to protect the public interest, [authoritative California courts] also
15 agree with the LWDA and federal district courts that have found it appropriate to review a PAGA
16 settlement to ascertain whether a settlement is fair in view of PAGA’s purposes and policies.” *Moniz v.*
17 *Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021).

18 DISCUSSION

19 I. The Settlement Complies with Statutory Requirements.

20 PAGA states that any “proposed settlement shall be submitted to the agency at the same time that
21 it is submitted to the court.” Lab. Code. § 2699(l)(2). In satisfaction of that requirement, Plaintiff

22 ² A party asserting a PAGA claim is not required to meet the requirements of a class action. *Arias v.*
23 *Superior Court*, 46 Cal. 4th 969, 984 (2009). Due process concerns with respect to absent class members
24 are not present in a PAGA action. *Williams*, 3 Cal. 5th at 547 n.4. Unnamed employees need not be
25 given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA
26 claim. *E.g., Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (noting that
27 unnamed employees need not be given notice of the PAGA claim or settlement approval) (citing *Ochoa-*
28 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010)). “The court does
not have to approve the named PAGA plaintiff, nor does the court inquire into the adequacy of counsel’s
ability to represent the unnamed employees.” *Ochoa-Hernandez*, 2010 WL 1340777, at *4. “[T]he
purpose of PAGA is to incentivize private parties to recover civil penalties for the government that
otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *Id.*

submitted a copy of the Agreement and this motion to the LWDA through the LWDA's online filing system in conjunction with filing this motion. Yang Decl. ¶ 18, Ex. 3.

II. The Settlement Should Be Approved as Fair in Light of PAGA's Purposes and Policies.

A. The Settlement Is Entitled to a Presumption of Fairness.

In the class action context, a trial court must determine and approve a class action settlement is fair to "prevent fraud, collusion or unfairness to the class" through settlement and dismissal of the class action." *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. Of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980).

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in thorough investigation, are experienced with this type of litigation, and agreed to a resolution through arm's length negotiation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.47 (4th ed. 2002); *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. at 528 (C.D. Cal. 2004) ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement ... and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.") (citations omitted). In such circumstances, as here, courts do not substitute their judgment for that of the proponents. *National Rural Telecomms. Coop.*, 221 F.R.D. at 528; *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

The factors that would give rise to a presumption of fairness in the context of a class action settlement are present in this PAGA action. Here, both Plaintiff's counsel and Defendant's counsel have a great deal of experience in wage and hour and PAGA litigation. Plaintiff's counsel have extensive class action and PAGA litigation experience and have been approved as class counsel in numerous wage

1 and hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 2-5; Yang Decl. ¶¶ 11-14. Each
2 side has apprised the other of their respective factual contentions and legal theories, and each side has
3 considered the other’s contentions and theories. Defendant provided the relevant numbers of pay periods
4 in which alleged underpayments occurred, among other things—enabling Plaintiff to assess the full
5 value of the PAGA claims and further enabling negotiations to take place between the Parties. Yang
6 Decl. ¶ 3. As the settlement is the result of extensive arm’s length negotiations between the Parties and
7 their counsel, it is entitled to a presumption of fairness. *Id.* ¶ 10.

8 **B. The Settlement Obtains an Excellent Result for the State.**

9 **1. The Settlement Amount Is Reasonable.**

10 Plaintiff contended that Defendant’s alleged Labor Code violations resulted in a \$100 per pay
11 period penalty under Section 2699(f) for each of approximately 23,938 relevant pay periods that
12 Plaintiff contended had underpayments of wages. Yang Decl. ¶ 6; Lab. Code § 2699(f).³ The Agreement
13 requires Defendant to pay \$360,000.00—or approximately \$15.04 per pay period for the 23,938 relevant
14 pay periods in which Plaintiff contended Labor Code violations occurred. *Id.*

15 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 7. For example,
16 Defendant contended that there were no underpayments of overtime at all. *Id.* Moreover, even if Plaintiff
17 prevailed on the merits, Defendant contested the extent of liability. *Id.* Specifically, Defendant
18 contended that PAGA penalties would be subject to discretionary reductions. *Id.*

19 While the Parties disagree on the application of the law to the facts, each Party recognized in
20 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
21 Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 8. Ultimately,
22 based on a review of Defendant’s records, Plaintiff argued that the potential total recovery amounted to
23 \$2,393,800.00—or \$100 for each of approximately 23,938 relevant pay periods that Plaintiff contended
24 had underpayments of wages. *Id.* ¶ 6. Plaintiff contends that the Settlement Amount of \$360,000.00—
25 approximately 15.04% of that potential recovery—is an excellent result. *Id.*

26 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
27 judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks

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³ Except as otherwise noted, all “Section” references are to the Labor Code.

1 that the applicable law could change, that liability could not be established at trial, or that penalties
2 awarded after trial would be reduced. Yang Decl. ¶ 10. The settlement is fair, reasonable, and adequate,
3 given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing
4 litigation. *Id.*

5 **2. The Settlement Releases Are Appropriate.**

6 As discussed above, only Plaintiff is subject to a general release. Agreement § 5.2. The State
7 releases any PAGA claims from July 29, 2019, through March 31, 2022, that are based on the Labor
8 Code violations pled in the Action. *Id.* § 5.1. Plaintiff alleged targeted claims in the Action, and any
9 settlement releases also are specifically tailored to the targeted claims alleged. The settlement releases
10 are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general
11 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action
12 settlements.”).

13 **C. The Requested Payments and Allocations Are Reasonable.**

14 The Agreement provides for a Settlement Amount of \$360,000.00. Agreement § 3.1. From the
15 Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Settlement Amount (or
16 \$120,000.00) and litigation costs of up to \$20,000.00 are permitted—though Plaintiff’s Counsel seeks
17 reimbursement of \$15,958.06 in costs only. *Id.* § 3.1.1; Lee Decl. ¶ 6, Ex. A. The requested General
18 Release Payment is \$10,000.00. Agreement § 3.1.2. The requested Administration Costs are \$6,500.00.
19 Agreement § 3.1.3. The PAGA Penalty Fund thus will be \$207,514.94, and pursuant to statute, 75% of
20 the PAGA Penalty Fund (or \$155,636.20) would constitute the LWDA Payment, and 25% of the PAGA
21 Penalty Fund (or \$51,878.74) shall be payable to Aggrieved Employees based on the number of relevant
22 pay periods worked by each Aggrieved Employee. *Id.* § 3.1.4; *see also* Yang Decl. ¶ 9.⁴

23 **1. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

24 Plaintiff requests an attorneys’ fees award of 33⅓% of the Settlement Amount. Agreement ¶
25 3.1.1. Further, the Parties have agreed to reimbursement of Plaintiff’s Counsel’s litigation costs.
26 Plaintiff’s Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of
27 process, mediation fees, and payment of other litigation related costs.

28 ⁴ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 18.

1 **a. The percentage of the fund method supports the requested fees.**

2 PAGA allows a prevailing Plaintiff to recover reasonable attorneys’ fees. Lab. Code § 2699(g).
3 As discussed below, the requested attorneys’ fees of \$120,000.00 are reasonable in light of the standards
4 established in the class action context. There, California state and federal courts have recognized that an
5 appropriate method for determining award of attorneys’ fees is based on a percentage of the total value
6 of benefits to settlement beneficiaries. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
7 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
8 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).

9 Indeed, under California law, the award of attorneys’ fees in common fund wage and hour class
10 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th
11 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that when
12 class action litigation establishes a monetary fund for the benefit of the class members, and the trial
13 court in its equitable powers awards class counsel a fee out of that fund, the court may determine the
14 amount of a reasonable fee by choosing an appropriate percentage of the fund created”). Under the
15 percentage of the fund method, a court’s objective remains to “mimic the market” in fixing a reasonable
16 fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court
17 rather than by contract, the object is to set it at a level that will approximate what the market will set
18 The judge, in other words, is trying to mimic the market in legal services.”).

19 The requested attorneys’ fees of \$120,000.00 should be awarded for several reasons:

20 First, the fee award representing 33⅓% of the fund clearly falls within the accepted range and is
21 consistent with other rulings of other courts and comprehensive surveys of fee awards. Attorneys’ fees
22 awards of 35% of the fund are within the expected range in the “market in legal services.” *See*
23 *Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg.
24 Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards
25 were between 25 percent and 35 percent”); *see also Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
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1 n.11 (2008) (“[E]mpirical studies [that] show that ... fee awards in class actions average around one-
2 third of the recovery.”).⁵

3 Second, it is recognized that one of the primary factors justifying an enhanced attorney’s fees
4 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

5 No one expects a lawyer whose compensation is contingent upon his success to charge, when
6 successful, as little as he would charge a client who had agreed to pay for his services, regardless
7 of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a
fee depend solely on the reasonable amount of time expended.

8 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$360,000.00 has been
9 created. For Plaintiff’s Counsel, the fees here were wholly contingent in nature and the case presented
10 far more risk than the usual contingent fee case—as a pending Supreme Court decision had the potential
11 to eliminate the possibility of any recovery on the PAGA claims. Yang Decl. ¶ 4. Nonetheless, despite
12 the possibility of recovering nothing on the PAGA claims, Plaintiff’s Counsel did not accept a too
13 heavily discounted settlement at the initial mediation on June 6, 2022. *Id.* Instead, Plaintiff’s Counsel
14 continued litigating the claims for two additional years to obtain an excellent result for the State at the
15 second mediation on March 21, 2024. *Id.* ¶ 5.

16 **b. The lodestar cross-check supports the requested fees.**

17 The amount requested is reasonable for an additional reason. While the primary method
18 employed to determine fees is the percentage method, courts have discretion to use the lodestar method
19 to “cross-check” the amount of fees calculated by way of percentage. The *Laffitte* court emphasized,
20 however, that “the lodestar calculation, when used in this manner, does not override the trial court’s
21 primary determination of the fee as a percentage of the common fund and thus does not impose an
22 absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis
23 added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) (“[T]he lodestar cross-
24 check does not trump the primary reliance on the percentage of common fund method”).

25
26
27 ⁵ Such a fee award mimics the market and “is supported by the fact that typical contingency fee
28 agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the
case is tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at *16 n.59 (C.D. Cal. July
21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and
Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11).

1 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even
2 higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).⁶ Indeed, the intermediate
3 court in *Laffitte*—after finding that “2 to 4” is a reasonable range for multipliers on a cross-check—
4 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.⁷ Moreover, the Ninth Circuit has cited
5 with approval a comprehensive study of fees awarded by the percentage method showing that the
6 majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d
7 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and
8 analyzing the multiplier awarded in over 30 cases).⁸

9 With respect to Plaintiff’s Counsel’s lodestar, at least 183.6 hours have been expended by
10 Plaintiff’s Counsel in litigating this case. Lee Decl. ¶ 7, Ex. B; Yang Decl. ¶ 15, Ex. 2. Moreover,
11 Plaintiff’s Counsel expects to incur approximately 5.0 hours of anticipated time spent to attend the
12 settlement approval hearing, secure approval, and respond to post-approval phone calls and
13 correspondence from the Administrator and defense counsel to effectuate the terms of the settlement. *Id.*
14 Courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are
15 not required; an attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of
16 hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the
17 absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

18 Reasonable hours include, in addition to time spent during litigation, the time spent before the
19 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
20 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee

22 ⁶ *Accord Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *Sutter*
23 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
multiplier without remand).

24 ⁷ The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

25 ⁸ Federal district courts applying California law have likewise routinely approved cross-check
26 multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL
27 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor
Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving
attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL
28 496358, at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
violations). Other courts have found even higher multipliers to be reasonable by comparison to other
cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)
(approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel seeks compensation involve only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

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

Here, Mr. Lee's hourly rate is \$800. Lee Decl. ¶ 7. Mr. Yang's hourly rate is \$750. Yang Decl. ¶ 16. Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the supporting declarations, Plaintiff's Counsel has significant experience in the area of employment and wage and hour class and representative actions. Plaintiff's Counsel's practices focus on representing employees in employment matters, particularly wage and hour cases on a contingency basis. Lee Decl. ¶¶ 2-5; Yang Decl. ¶¶ 11-14.

Based on the rates and 188.6 total hours, the lodestar for Plaintiff's Counsel through the finalization of this settlement will be approximately \$143,460.00. Lee Decl. ¶ 7; Yang Decl. ¶ 17. The requested attorneys' fees result in a negative multiplier of approximately 0.83. Again, the requested fees are reasonable and fair, based on the factors described above. The cross-check also supports the requested fees.

c. The requested litigation costs are reasonable.

PAGA also allows a prevailing Plaintiff to recover litigation costs. Lab. Code § 2699(g). The Agreement permits Plaintiff's Counsel to request up to \$20,000.00 in litigation costs. Agreement § 3.1.1. Plaintiff's Counsel, however, seeks \$15,958.06 in costs only. Lee Decl. ¶ 6, Ex. A; Yang Decl. ¶ 9. As set forth in accompanying declarations of Plaintiff's counsel, these costs were all directly incurred in the prosecution of this action, including filing fees and service fees. *Id.* As such, Plaintiff's Counsel's request for costs in the amount of \$15,958.06 is fair, adequate, reasonable, and consistent with PAGA's policies. Because this amount is less than what was provided in the Agreement, the difference will be distributed to the LWDA and Aggrieved Employees as part of the PAGA Penalty Fund.

1 **2. The Requested General Release Payment Is Reasonable.**

2 Plaintiff, Kristy Vess, requests a modest General Release Payment of \$10,000.00. Agreement §
3 3.1.2. The request is reasonable in light of the general release that the Agreement requires of Plaintiff.
4 Independently, the request is appropriate in recognition of Plaintiff's efforts on behalf of the State.
5 Declaration of Kristy Vess ("Vess Decl.") ¶¶ 2-3.

6 With respect to the general release, Plaintiff did not proceed with litigation of all of her potential
7 claims and instead strategically pursued the targeted claims in this lawsuit to maximize her ability to
8 recover penalties for the State. Nonetheless, Plaintiff was required to agree to a general release as part of
9 this settlement, though in any other context, Plaintiff would have sought at least a \$10,000.00 payment
10 in exchange for a general release.

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

16 As part of her duties as a private attorney general, Plaintiff provided all necessary information
17 and evidence that resulted in this settlement. Vess Decl. ¶¶ 2-3. Plaintiff met and conferred with her
18 counsel on a number of occasions to discuss the case. *Id.* ¶ 3. She provided information and documents
19 to her counsel and made herself available to answer any other questions. *Id.* Ultimately, Plaintiff's
20 efforts secured an exceptional result.

21 In addition to the invaluable services that Plaintiff provided, she also took a significant risk. Vess
22 Decl. ¶ 4. Plaintiff risks prejudice in the future from other potential employers that may be less willing
23 to hire an individual who has filed suit against a prior employer. Plaintiff took this risk upon herself and
24 the State benefited. No other allegedly aggrieved employees had to face potential prejudice in future
25 employment. Nor did the State have to allocate its limited resources to ensure compliance with the
26 Labor Code.

1 **3. The Administration Costs Are Reasonable.**

2 Because the Agreement requires payments not only to Plaintiff, Plaintiff's Counsel, and the
3 LWDA, but also to other current and former employees, significant time and effort will be required to
4 administer the Agreement if it is approved by this Court. Among other things, the Administrator will
5 prepare and mail each absent employee's share and prepare appropriate tax forms for all parties who
6 receive payments under the Agreement. Similarly, any uncashed checks must be voided so that the
7 unclaimed amounts can be forwarded to the State of California Controller's Office Unclaimed Property
8 Fund. Agreement § 4.4.

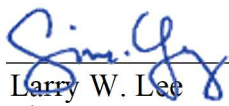
9 Phoenix Settlement Administrators, a well-recognized settlement administrator, has quoted
10 Administration Costs not to exceed \$6,500.00 to administer the settlement. Yang Decl. ¶ 9; *see also*
11 Agreement § 3.1.3. The Administration Costs are reasonable and should be approved.

12 **CONCLUSION**

13 The proposed settlement would result in substantial monetary benefits to the State. It was the
14 result of informed, arm's length negotiations conducted by counsel experienced in wage and hour class
15 and representative action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no
16 reason to believe the proposal is outside the range of reasonableness for such a settlement. Accordingly,
17 for the benefit of the State and in furtherance of PAGA's policies, Plaintiff respectfully requests that the
18 Court grant approval of the settlement.

19 DATED: July 8, 2024

DIVERSITY LAW GROUP, P.C.

20 By: 
21 Larry W. Lee
22 Simon L. Yang
23 Attorneys for Plaintiff
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