

DIVERSITY LAW GROUP, P.C.  
Larry W. Lee (State Bar No. 228175)  
[lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)  
Simon L. Yang (State Bar No. 260286)  
[sly@diversitylaw.com](mailto: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 LOS ANGELES**

EBONY RUSSELL, as an individual and on  
behalf of all others similarly situated, and as a  
private attorney general,

Plaintiff,

vs.

LBS FINANCIAL CREDIT UNION, a California  
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 21STCV02472

[Hon. Holly J. Fujie, Department 56]

**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 Ebony Russell; [Proposed] Order]*

Date: December 22, 2022  
Time: 8:30 a.m.  
Department: 23

**Reservation ID: 346042629905**

Complaint Filed: January 21, 2021

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

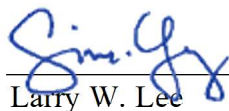
2 **PLEASE TAKE NOTICE** that on December 22, 2022, at 8:30 a.m., or as soon thereafter as the  
3 matter may be heard in Department 56 of the above-entitled court located at 111 North Hill Street, Los  
4 Angeles, California 90012, Plaintiff, Ebony Russell, will and hereby does move for an Order approving  
5 the Joint Stipulation of PAGA Settlement (the “Agreement”) entered into between Plaintiff and  
6 Defendant, LBS Financial Credit Union.<sup>1</sup>

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 Ebony Russell, all pleadings and  
17 papers on file herein, and any further oral and documentary evidence as may be presented before or at  
18 the hearing of this matter.

19 DATED: November 29, 2022

DIVERSITY LAW GROUP, P.C.

20 By:   
21 Larry W. Lee  
22 Simon L. Yang  
23 Attorneys for Plaintiff  
24  
25  
26  
27

28 <sup>1</sup> The Agreement is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**TABLE OF CONTENTS**

|                                                                      | <b>Page</b> |
|----------------------------------------------------------------------|-------------|
| SUMMARY OF MOTION.....                                               | 1           |
| RELEVANT BACKGROUND .....                                            | 2           |
| SUMMARY OF PROPOSED SETTLEMENT.....                                  | 2           |
| I. Settlement Payments.....                                          | 2           |
| II. Settlement Release.....                                          | 3           |
| LEGAL STANDARD.....                                                  | 3           |
| DISCUSSION .....                                                     | 4           |
| I. The Settlement Complies with Statutory Requirements.....          | 4           |
| II. The Settlement Should Be Approved. ....                          | 4           |
| A. The Settlement Is Entitled to a Presumption of Fairness.....      | 4           |
| B. The Settlement Obtains an Excellent Result for the State. ....    | 6           |
| 1. The Settlement Amount Is Reasonable.....                          | 6           |
| 2. The Settlement Releases Are Appropriate.....                      | 6           |
| C. The Requested Payments and Allocations Are Reasonable. ....       | 7           |
| 1. The Requested Attorneys' Fees and Costs Award Is Reasonable. .... | 7           |
| 2. The Requested Litigation Costs Are Reasonable.....                | 10          |
| 3. The Requested General Release Payment Is Reasonable. ....         | 11          |
| 4. The Administration Costs Are Reasonable.....                      | 11          |
| CONCLUSION.....                                                      | 12          |

## TABLE OF AUTHORITIES

### Page

#### State Cases

|                                                                                                           |         |
|-----------------------------------------------------------------------------------------------------------|---------|
| <i>Arias v. Superior Court</i> ,<br>46 Cal. 4th 969 (2009) .....                                          | 4       |
| <i>Carter v. City of Los Angeles</i> ,<br>224 Cal. App. 4th 808 (2014) .....                              | 7       |
| <i>Chavez v. Netflix, Inc.</i> ,<br>162 Cal. App. 4th 43 (2008) .....                                     | 8-9     |
| <i>City of Oakland v. Oakland Raiders</i> ,<br>203 Cal. App. 3d 78 (1988) .....                           | 9       |
| <i>Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America</i> ,<br>141 Cal. App. 4th 46 (2006) ..... | 4       |
| <i>Flannery v. California Highway Patrol</i> ,<br>61 Cal. App. 4th 629 (1998) .....                       | 10      |
| <i>Laffitte v. Robert Half Int'l</i> ,<br>1 Cal. 5th 480 (2016) .....                                     | 7, 8    |
| <i>PLCM Group, Inc. v. Drexler</i> ,<br>22 Cal. 4th 1084 (2000) .....                                     | 10      |
| <i>Serrano v. Priest</i> ,<br>20 Cal. 3d 25 (1977) .....                                                  | 7, 10   |
| <i>Serrano v. Unruh</i> ,<br>32 Cal. 3d 621 (1982) .....                                                  | 10      |
| <i>Sutter Health Uninsured Pricing Cases</i> ,<br>171 Cal. App. 4th 495 (2009) .....                      | 9       |
| <i>Wershba v. Apple Computer, Inc.</i> ,<br>91 Cal. App. 4th 224 (2001) .....                             | 5, 7, 9 |
| <i>Williams v. Superior Court</i> ,<br>3 Cal. 5th 531 (2017) .....                                        | 4       |

#### Federal Cases

|                                                                                                     |   |
|-----------------------------------------------------------------------------------------------------|---|
| <i>Baumann v. Chase Inv. Servs. Corp.</i> ,<br>747 F.3d 1117 (9th Cir. 2014) .....                  | 4 |
| <i>Boeing Co. v. Van Gemert</i> ,<br>444 U.S. 472 (1980) .....                                      | 7 |
| <i>Fernandez v. Victoria Secret Stores LLC</i> ,<br>2008 WL 8150856 (C.D. Cal. July 21, 2008) ..... | 8 |

|    |                                                                              |    |
|----|------------------------------------------------------------------------------|----|
| 1  | <i>Gaskill v. Gordon</i> ,                                                   |    |
| 2  | 160 F.3d 361 (7th Cir. 1998) .....                                           | 8  |
| 3  | <i>Hammon v. Barry</i> ,                                                     |    |
| 4  | 752 F. Supp. 1087 (D.D.C. 1990) .....                                        | 5  |
| 5  | <i>Haralson v. U.S. Aviation Servs. Corp.</i> ,                              |    |
| 6  | 383 F. Supp. 3d 959 (N.D. Cal. 2019) .....                                   | 3  |
| 7  | <i>In re Armored Car Antitrust Litig.</i> ,                                  |    |
| 8  | 472 F. Supp. 1357 (N.D. Ga. 1979) .....                                      | 5  |
| 9  | <i>In re Chicken Antitrust Litig.</i> ,                                      |    |
| 10 | 560 F. Supp. 957 (N.D. Ga. 1980) .....                                       | 4  |
| 11 | <i>Mars Steel Corp. v. Continental Illinois Nat’l Bank &amp; Trust Co.</i> , |    |
| 12 | 834 F.2d 677 (7th Cir. 1987) .....                                           | 4  |
| 13 | <i>National Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,                    |    |
| 14 | 221 F.R.D. 523 (C.D. Cal. 2004) .....                                        | 5  |
| 15 | <i>New York Gaslight Club, Inc. v. Carey</i> ,                               |    |
| 16 | 447 U.S. 54 (1980) .....                                                     | 10 |
| 17 | <i>O’Connor v. Uber Techs., Inc.</i> ,                                       |    |
| 18 | 201 F. Supp. 3d 1110 (N.D. Cal. 2016) .....                                  | 3  |
| 19 | <i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> ,                              |    |
| 20 | 2010 WL 1340777 (N.D. Cal. Apr. 2, 2010) .....                               | 4  |
| 21 | <i>Priddy v. Edelman</i> ,                                                   |    |
| 22 | 883 F.2d 438 (6th Cir. 1989) .....                                           | 4  |
| 23 | <i>Rodriguez v. W. Publ’g Corp.</i> ,                                        |    |
| 24 | 563 F.3d 948 (9th Cir. 2009) .....                                           | 11 |
| 25 | <i>Smith v. H.F.D. No. 55, Inc.</i> ,                                        |    |
| 26 | 2018 WL 1899912 (E.D. Cal. Apr. 20, 2018) .....                              | 3  |
| 27 | <i>Sommers v. Abraham Lincoln Federal Sav. &amp; Loan Ass’n</i> ,            |    |
| 28 | 79 F.R.D. 571 (E.D. Pa. 1978) .....                                          | 5  |
|    | <i>Steinberg v. Carey</i> ,                                                  |    |
|    | 470 F. Supp. 471 (S.D.N.Y. 1979) .....                                       | 5  |
|    | <i>Van Ba Ma v. Covidien Holding Inc.</i> ,                                  |    |
|    | 2014 WL 2472316 (C.D. Cal. May 30, 2014) .....                               | 6  |
|    | <i>Vincent v. Hughes Air West, Inc.</i> ,                                    |    |
|    | 557 F. 2d 759 (9th Cir. 1997) .....                                          | 7  |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## SUMMARY OF MOTION

As a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Ebony Russell, sues Defendant, LBS Financial Credit Union, for alleged underpayments of sick pay, overtime, and doubletime wages in workweeks in which employees also earned non-discretionary incentives, such as Service Awards. Plaintiff alleges that the Labor Code violations result from Defendant’s miscalculations of employees’ regular rates of pay.

Through formal and informal discovery and continuing settlement discussions, Plaintiff identified 136 employees who Plaintiff alleged were underpaid in 1,071 pay periods. Plaintiff then negotiated and obtained an excellent result for the State that requires Defendant to pay a \$160,000.00 Settlement Amount—or 42.7% of Defendant’s potential penalty liability. 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 \$160,000.00 Settlement Amount, or \$53,333.33, in fees, plus up to \$3,500.00 in costs (though Plaintiff now seeks reimbursement of \$1,288.44 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 \$6,000.00 in Administration Costs to a settlement administrator for effectuating the payments contemplated by the Agreement (though Plaintiff now seeks an award of \$3,500.00 in Administration Costs only).
- 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.

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

## RELEVANT BACKGROUND

On or about January 21, 2021, Plaintiff filed the original complaint initiating this representative action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for Defendant’s alleged underpayment of sick pay, overtime, and doubletime wages in workweeks in which employees also earned non-discretionary incentives, including for example Service Awards. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2.

The Parties met and conferred about Plaintiff’s allegations and claims and Defendant’s defenses. Yang Decl. ¶ 2. Plaintiff requested and Defendant provided informal discovery to enable the Parties to explore the possibility of an informal resolution. *Id.* Without resolution, Plaintiff’s Counsel continued investigating the remaining claims against Defendant in the Action and any and all applicable defenses raised by Defendant. On or about March 17, 2022, Plaintiff served initial written discovery and noticed a corporate deposition. *Id.*

Defendant produced information and documents showing when employees were impacted by Plaintiff’s alleged underpayment of sick pay, overtime, and doubletime wages. Yang Decl. ¶ 3. Defendant’s willingness to produce this information enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, over the course of negotiations for several months, the Parties were able to agree to the terms of a settlement memorialized in the Joint Stipulation of PAGA Settlement. *Id.* Ex. 1 (the “Agreement”).

## SUMMARY OF PROPOSED SETTLEMENT

### I. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Settlement Amount of \$160,000.00. Agreement § 3.1. From the Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs Award, and General Release Payment. *Id.* § 3.1.1-4. It is expected that the LWDA will receive \$68,908.67 as its share of PAGA Penalties and employees will receive \$22,969.56 as their share of PAGA Penalties. Yang Decl. ¶ 6. It is expected that, on average, each of the affected employees will receive approximately \$168.89 (*after* all requested payments from the Settlement Amount). *Id.*

## II. Settlement Release

Plaintiff is subject to a general release. Agreement § 5.2. The State and Aggrieved Employees release “any and all claims or causes of action for PAGA penalties arising from January 1, 2020, through the date of the Approval Order that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action and/or the letter to the LWDA underlying the Action.” *Id.* § 5.1.

### LEGAL STANDARD

PAGA requires courts to “review and approve” the settlement of any action filed under PAGA. Lab. Code §2699(l)(2). But the Legislature, California Supreme Court, California Courts of Appeal, and LWDA have not definitively established the standards for review. *E.g., Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a PAGA settlement); *see also Smith v. H.F.D. No. 55, Inc.*, 2018 WL 1899912, at \*2 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating PAGA settlements.”). The LWDA acknowledges the lack of a “specific benchmark” and has stated only that the relief provided under PAGA must be “genuine and meaningful,” “consistent with the underlying purpose of the statute to benefit the public” and, in the context of a class action, “meet[ ] the standards of being ‘fundamentally fair, reasonable, and adequate’ with reference to the public policies underlying the PAGA.” *See O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (quoting California Labor and Workforce Development Agency’s Comments on Proposed PAGA Settlement) .

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

1 Ultimately, the California Supreme Court has explained that a court’s review of a PAGA  
2 settlement is to ensure “that any negotiated resolution is fair to those affected.” *Williams v. Superior*  
3 *Court*, 3 Cal. 5th 531, 549 (2017). A party asserting a PAGA claim is not required to meet the  
4 requirements of a class action. *Arias v. Superior Court*, 46 Cal. 4th 969, 984 (2009). Due process  
5 concerns with respect to absent class members are not present in a PAGA action. *Williams*, 3 Cal. 5th at  
6 547 n.4. Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability  
7 to opt-out of the representative PAGA claim. *E.g., Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117,  
8 1123 (9th Cir. 2014) (noting that unnamed employees need not be given notice of the PAGA claim or  
9 settlement approval) (citing *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at \*4 (N.D.  
10 Cal. Apr. 2, 2010)). “The court does not have to approve the named PAGA plaintiff, nor does the court  
11 inquire into the adequacy of counsel’s ability to represent the unnamed employees.” *Ochoa-Hernandez*,  
12 2010 WL 1340777, at \*4. “[T]he purpose of PAGA is to incentivize private parties to recover civil  
13 penalties for the government that otherwise may not have been assessed and collected by overburdened  
14 state enforcement agencies.” *Id.*

## 15 DISCUSSION

### 16 I. The Settlement Complies with Statutory Requirements.

17 PAGA states that any “proposed settlement shall be submitted to the agency at the same time that  
18 it is submitted to the court.” Lab. Code. § 2699(l)(2). In satisfaction of that requirement, Plaintiff  
19 submitted a copy of the Agreement and this motion to the LWDA through the LWDA’s online filing  
20 system in conjunction with filing this motion. Yang Decl. ¶ 14, Ex. 3.

### 21 II. The Settlement Should Be Approved.

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

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

1 *Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the  
2 settlement is reached through arm’s length bargaining; (ii) investigation is sufficient to allow counsel  
3 and the court to act intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage  
4 of objectors is small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

5 While the recommendations of counsel proposing the settlement are not conclusive, the Court  
6 can properly take them into account, particularly where, as here, they have been involved in thorough  
7 investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s  
8 length negotiation. See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*  
9 *v. DIRECTV, Inc.*, 221 F.R.D. at 528 (C.D. Cal. 2004) (“So long as the integrity of the arm’s length  
10 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the  
11 proposed settlement ... and ‘great weight’ is accorded to the recommendations of counsel, who are most  
12 closely acquainted with the facts of the underlying litigation.”) (citations omitted). In such  
13 circumstances, as here, courts do not substitute their judgment for that of the proponents. *National Rural*  
14 *Telecomms. Coop.*, 221 F.R.D. at 528; *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990);  
15 *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp.  
16 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D.  
17 Pa. 1978).

18 All of the factors that would give rise to a presumption of fairness in the context of a class action  
19 settlement are present in this PAGA action. Here, both Plaintiff’s counsel and Defendant’s counsel have  
20 a great deal of experience in wage and hour class action litigation. Plaintiff’s counsel have extensive  
21 class action and litigation experience and have been approved as class counsel in numerous wage and  
22 hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13. Each side has  
23 apprised the other of their respective factual contentions and legal theories, and each side has considered  
24 the other’s contentions and theories. Defendant provided the relevant numbers of individuals and alleged  
25 underpayments, among other things—enabling Plaintiff to assess the full value of the PAGA claims and  
26 further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3. As the settlement is the  
27 result of extensive arm’s length negotiations between the Parties and their counsel, it is entitled to a  
28 presumption of fairness. *Id.* ¶ 9.

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

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

3           The Agreement requires Defendant to pay \$160,000.00—or approximately \$149.39, on average,  
4 per pay period. Yang Decl. ¶ 4. This amounts to approximately 42.7% of Defendant’s potential liability  
5 and is an excellent result for the State. *Id.* Plaintiff contended that Defendant’s alleged underpayments  
6 resulted in a \$100 per pay period penalty under Section 210 and also resulted in a \$250 penalty per pay  
7 period under Section 226.3—for a total of \$350 per pay period with an alleged underpayment. *Id.*; Lab.  
8 Code §§ 210, 226.3, 2699(g).

9           Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 5. Moreover, even if  
10 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* Specifically, Defendant  
11 contended that PAGA penalties would be subject to discretionary reductions. *Id.*

12           While the Parties disagree on the application of the law to the facts, each Party recognized in  
13 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the  
14 Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 6. Ultimately,  
15 based on a review of Defendant’s employee pay data, Plaintiff argued that the potential total recovery  
16 amounted to \$374,850.00—or \$350 for each of 1,071 pay periods with alleged underpayments. *Id.* ¶ 4.  
17 Plaintiff contends that the Settlement Amount of \$160,000.00—approximately 42.7% of the potential  
18 total recovery of \$374,850.00—is an excellent result. *Id.*

19           Although Plaintiff and her counsel are confident that litigation of the claims would result in a  
20 judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks  
21 that liability could not be established at trial or that the applicable law could change. Yang Decl. ¶ 5.  
22 The settlement is fair, reasonable, and adequate, given the inherent risks of litigation, as well as the  
23 potential for appeals and the costs of pursuing litigation. *Id.*

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

25           As discussed above, only Plaintiff is subject to a general release. Agreement § 5.2. The State and  
26 Aggrieved Employees are only subject to a release of “any and all claims or causes of action for PAGA  
27 penalties arising from January 1, 2020, through the date of the Approval Order that were alleged in the  
28 Action or that reasonably could have been alleged based on the facts alleged in the Action and/or the

1 letter to the LWDA underlying the Action.” *Id.* § 5.1. Plaintiff alleged targeted claims in the Action, and  
2 any settlement releases also are specifically tailored to the facts alleged. The settlement releases are thus  
3 appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general  
4 release—covering ‘all claims’ that were or could have been raised in the suit—is common in class action  
5 settlements.”).

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

7 The Agreement provides for a Settlement Amount of \$160,000.00. Agreement § 3.1. From the  
8 Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or  
9 \$53,333.33) and litigation costs of up to \$3,500 are permitted—though Plaintiff’s Counsel seeks  
10 reimbursement of \$1,288.44 in costs only. *Id.* § 3.1.1; Lee Decl. ¶ 8, Ex. A. The General Release  
11 Payment will be no more than \$10,000.00. Agreement § 3.1.2. Administration Costs will be no more  
12 than \$6,000.00—though Plaintiff’s Counsel seeks only \$3,500.00 in Administration Costs only.  
13 Agreement § 3.1.3; Yang Decl. ¶ 6. The PAGA Penalty Fund thus will be \$91,878.23, and pursuant to  
14 statute, 75% of the PAGA Penalty Fund (or \$68,908.67) would constitute the LWDA Payment, and 25%  
15 of the PAGA Penalty Fund (or \$22,969.56) shall be payable to Aggrieved Employees on a pro rata basis,  
16 based on the number of relevant pay periods they worked. *Id.* § 3.1.4.<sup>2</sup>

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

18 PAGA allows a prevailing Plaintiff to recover reasonable attorneys’ fees. Lab. Code § 2699(g).  
19 The requested Attorneys’ Fees of \$53,333.33 are reasonable in light of the standards established in the  
20 class action context. In that context, California state and federal courts have recognized that an  
21 appropriate method for determining award of attorneys’ fees is based on a percentage of the total value  
22 of settlement benefits to a class. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App.  
23 4th at 254; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557  
24 F.2d 759, 769 (9th Cir. 1997).

25 Under California law, the award of attorneys’ fees in common fund wage and hour class action  
26 settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503  
27 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action

28 <sup>2</sup> Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its  
2 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a  
3 reasonable fee by choosing an appropriate percentage of the fund created”). Under the percentage of the  
4 fund method, a court’s objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v.*  
5 *Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court rather than by  
6 contract, the object is to set it at a level that will approximate what the market will set ... . The judge, in  
7 other words, is trying to mimic the market in legal services.”).

8 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal  
9 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.  
10 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that  
11 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the  
12 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide  
13 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”  
14 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at \*16 n.59 (C.D. Cal. July 21, 2008)  
15 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*  
16 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%  
17 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average  
18 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

19 Here, Plaintiff requests an attorneys’ fees award of 33⅓% of the Settlement Amount, or  
20 \$53,333.33. This amount is reasonable for a second reason. When the primary method employed to  
21 determine fees is the percentage method, courts have discretion to use the lodestar method to “cross-  
22 check” the amount of fees calculated by way of percentage. The *Laffitte* court emphasized, however, that  
23 “the lodestar calculation, when used in this manner, does not override the trial court’s primary  
24 determination of the fee as a percentage of the common fund and thus does not impose an absolute  
25 maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re*  
26 *Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not  
27 trump the primary reliance on the percentage of common fund method”).  
28

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); *see also*, e.g., *Sutter*  
3 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a  
4 cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a  
5 lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34  
6 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable  
7 range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.  
8 The intermediate court opinion was affirmed in full by the California Supreme Court in its decision  
9 guiding lower courts on assessing fees.

10 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by  
11 the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See*  
12 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an  
13 employment class action case and analyzing the multiplier awarded in over 30 cases). Federal district  
14 courts applying California law have likewise routinely approved cross-check multipliers between 2 and  
15 3 in employment cases. *See, e.g., Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625,  
16 at \*7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor Code  
17 violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving  
18 attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-  
19 02786-LHK, 2013 WL 496358, at \*5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in  
20 settlement of Labor Code violations). Other courts have found even higher multipliers to be reasonable  
21 by comparison to other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26  
22 (C.D. Cal. 2008) (approving a 5.2 multiplier on a cross-check after surveying a large body of cases  
23 affirming a higher multiplier).

24 With respect to Plaintiff’s Counsel’s lodestar, just one of Plaintiff’s Counsel has expended  
25 approximately 76.4 hours litigating this case, which includes approximately 5.0 hours of anticipated  
26 time spent after approval responding to correspondence and phone calls from the administrator, defense  
27 counsel, and aggrieved employees. Yang Decl. ¶ 13, Ex. 2. The courts are quite liberal in the evidence  
28 required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony

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

4 Reasonable hours include, in addition to time spent during litigation, the time spent before the  
5 action is filed, including time spent interviewing the clients, investigating the facts and the law, and  
6 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee  
7 award should also include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v.*  
8 *Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff’s Counsel seeks compensation involve  
9 only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

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

15 Here, Plaintiff’s Counsel’s hourly rate is \$725. Yang Decl. ¶ 12. Plaintiff’s Counsel’s skill and  
16 experience justify the requested rates. As shown in the supporting declarations, Plaintiff’s Counsel has  
17 significant experience in the area of employment and wage and hour class and representative actions.  
18 Plaintiff’s Counsel’s practice focuses on representing employees in employment matters, particularly  
19 wage and hour cases on a contingency basis. Lee Decl. ¶ 3; Yang Decl. ¶ 8-11. As such, based on the  
20 hours and applicable rate, the lodestar for just one of Plaintiff’s Counsel through the finalization of this  
21 settlement—without a multiplier—will be approximately \$55,390.00, which *exceeds the fee requested*  
22 by Plaintiff here. *Id.* Accordingly, the cross-check supports the fee requested.

## 23 **2. The Requested Litigation Costs Are Reasonable.**

24 PAGA also allows a prevailing Plaintiff to recover litigation costs. See Cal. Lab. Code §  
25 2699(g). Accordingly, the Agreement permits Plaintiff’s Counsel to request up to \$3,500.00 in litigation  
26 costs. Agreement § 3.1.1. Plaintiff’s Counsel, however, seeks only \$1,288.44 in costs only. Lee Decl. ¶  
27 8, Ex. A; Yang Decl. ¶ 6. As set forth in accompanying declarations of Plaintiff’s counsel, these costs  
28 were all directly incurred in the prosecution of this action, including filing fees and service fees. *Id.* As

1 such, Plaintiff's counsel's request for costs in the amount of \$1,288.44 is fair, adequate, reasonable, and  
2 consistent with PAGA's policies. Because this amount is less than what was provided in the Agreement,  
3 the difference will be distributed to the LWDA and Aggrieved Employees as part of the PAGA Penalty  
4 Fund.

### 5 **3. The Requested General Release Payment Is Reasonable.**

6 Plaintiff and proposed Class Representative Ebony Russell requests a modest General Release  
7 Payment of \$10,000.00. Agreement § 3.1.2. The request is reasonable in light of the general release that  
8 the Agreement requires of Plaintiff but not of any other individual. Independently, the request is  
9 appropriate in recognition of Plaintiff's efforts on behalf of the State. Declaration of Ebony Russell  
10 ("Russell Decl.") ¶¶ 2-3.

11 Courts have held that named plaintiffs in private attorney general actions can request a service  
12 award. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that service  
13 awards "are intended to compensate class representatives for work done on behalf of the class, to make  
14 up for financial or reputational risk undertaken in bringing the action, and, sometimes, *to recognize their*  
15 *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. Russell Decl. ¶¶ 2-3. Plaintiff met and conferred with her  
18 counsel on a number of occasions to discuss the case. *Id.* ¶ 3. Plaintiff provided information and  
19 documents to her counsel and made herself available to answer any questions during litigation. *Id.*  
20 Ultimately, Plaintiff's efforts secured an exceptional result for the State.

21 In addition to the invaluable services that Plaintiff provided, she also took a significant risk.  
22 Russell Decl. ¶ 4. Plaintiff risks prejudice in the future from other potential employers that may be less  
23 willing to hire an individual who has filed suit against a prior employer. Plaintiff took this risk upon  
24 herself and the State benefited. No others have to face potential prejudice in future employment.

### 25 **4. The Administration Costs Are Reasonable.**

26 Because the Agreement requires payments not only to Plaintiff, Plaintiff's Counsel, and the  
27 LWDA, but also to other current and former employees, significant time and effort will be required to  
28 administer the Agreement if it is approved by this Court. Among other things, the Administrator will

1 calculate each absent employee's share and prepare appropriate tax forms for all parties who receive  
2 payments under the Agreement. Similarly, payments must be mailed to Plaintiff, Plaintiff's Counsel, the  
3 LWDA, and each absent employee, and any uncashed checks must be voided so that the unclaimed  
4 amounts can be forwarded to the State of California Controller's Office Unclaimed Property Fund.  
5 Agreement § 3.3.)

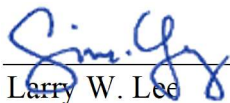
6 Phoenix Settlement Administrators, a well-recognized settlement administrator, has quoted  
7 Administration Costs not to exceed \$3,500.00 to send notices and administer the settlement. Yang Decl.  
8 ¶ 6; *see also* Agreement § 3.1.3. The Administration Costs are reasonable and should be approved.

### 9 CONCLUSION

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

16 DATED: November 30, 2022

DIVERSITY LAW GROUP, P.C.

17 By:   
18 Larry W. Lee  
19 Simon L. Yang  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28