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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

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

Plaintiff,

vs.

STANBRIDGE UNIVERSITY, a California  
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2021-01206298-CU-OE-CXC

(Assigned for all purposes to the Hon. William  
Claster, Dept. CX 104)

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

Date: July 22, 2022

Time: 9:00 a.m.

Dept.: CX104

**Reservation No.: 73787090**

Complaint Filed: June 17, 2021

Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on July 8, 2022, at 9:00 a.m., or as soon thereafter as the matter  
3 may be heard, before the Honorable William Claster, judge presiding, in Department CX104 of the  
4 above referenced Court, located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff  
5 Matthew Miller ("Plaintiff") will seek an Order approving the concurrently filed Settlement Agreement  
6 and General Release of All Claims, pursuant to the procedures set forth in Labor Code § 2698, *et seq.*

7 This motion will be based on this notice of motion, the attached memorandum of points and  
8 authorities, the accompanying declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal,  
9 William L. Marder, and Plaintiff Matthew Miller, the records and file herein, and on such other  
10 evidence as may be presented at the hearing of the motion.

11  
12 DATED: June 21, 2022

DIVERSITY LAW GROUP, P.C.

13  
14 By:   
15 Larry W. Lee  
16 Kristen M. Agnew  
17 Nicholas Rosenthal  
18 Attorneys for Plaintiff and the Aggrieved Employees  
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1 **I. INTRODUCTION**

2 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et*  
3 *seq.*, Plaintiff Matthew Miller (“Plaintiff”) hereby moves the Court for an order approving the non-  
4 reversionary PAGA settlement as set forth in the concurrently filed Settlement Agreement and General  
5 Release of All Claims (“Agreement” or “Settlement Agreement”). As set forth in the operative  
6 Complaint, Plaintiff seeks PAGA penalties based on Defendant Stanbridge University’s (“Defendant”)  
7 (together with Plaintiff, the “Parties”) alleged failure to pay all wages owed, provide accurate itemized  
8 wage statements, and reimburse business expenses. Plaintiff’s claims resolve around the central  
9 contention that Defendant deducted one dollar in wages for each direct deposit payment that was  
10 issued. In total, the Aggrieved Employees received a total of 5,875 direct deposit payments during the  
11 PAGA Period.

12 As demonstrated below and in the accompanying declaration of Nicholas Rosenthal, the  
13 proposed settlement warrants the Court’s approval. This settlement was reached after investigation and  
14 discovery, including Defendant’s production of relevant documents and payroll data.

15 Pursuant to the terms of the Settlement Agreement, Defendant will pay the gross amount of  
16 \$115,700.00 (the “Gross Settlement Amount”), which includes a payment of approximately \$39,475.00  
17 in civil penalties to the California Labor and Workforce Development Agency (“LWDA”). The  
18 proposed release is narrowly tailored to release only claims under PAGA that were or could have been  
19 pled based on the operative Complaint and/or written notice to the LWDA—specifically, Labor Code  
20 sections 201, 202, 203, 204, 221, 222, 223, 224, 226, 210, 218, 218.6, 225.5, 226.3, 1194, 1194.2,  
21 1197, 1197.1, and 2802. The proposed settlement constitutes an adequate, fair, and reasonable  
22 settlement on behalf of the LWDA and Aggrieved Employees and accomplishes the goals of PAGA.

23 **II. SUMMARY OF THE LITIGATION**

24 On April 14, 2022, Plaintiff submitted his written notice under Labor Code section 2699.3 (the  
25 “PAGA Notice”) to the LWDA and Defendant. As set forth in the PAGA Notice, Plaintiff alleged that  
26 Defendant unlawfully deducted wages from employees’ paychecks, and thus failed to pay all wages  
27 owed at the time owing and upon separation of employment; failed to provide accurate itemized wage  
28 statements to employees; and failed to reimburse business expenses in violation of California Labor

Code sections 201-204, 221-224, 226, 1194, 1194.2, 1197, 1197.1, and 2802. Declaration of Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 3.

On June 17, 2021, Plaintiff filed a representative PAGA action against Defendant in the Superior Court of California, County of Orange. Rosenthal Decl. ¶ 4. The Complaint alleged a single cause of action for violation of Labor Code section 2698, *et seq.*, based on the facts described in Plaintiff’s PAGA Notice. *Id.*

After the filing of the Complaint and meeting and conferring regarding Plaintiff’s claims, the Parties agreed to participate in private mediation with Michael J. Loeb, Esq. Rosenthal Decl. ¶ 5. Prior to the mediation, Defendant informally produced data relevant to the potential value of the claims, including the number of alleged aggrieved employees and pay periods encompassed by the allegations of Plaintiff’s complaint. *Id.* ¶ 6. Using the data provided by Defendant, Plaintiff’s Counsel performed a comprehensive damages analysis. *Id.*

On May 2, 2022, the Parties engaged in an all-day mediation session with Mr. Loeb, a respected mediator knowledgeable of the wage and hour laws and representative claims at issue in this action. *Id.* ¶ 7. After a full day of arm’s length negotiations, the Parties agreed to a settlement of the action and executed a memorandum of understanding. *Id.*

The Parties thereafter worked to memorialize the terms of the settlement in a long-form Settlement Agreement, which is attached to the Rosenthal Declaration as Exhibit A. (Rosenthal Decl. ¶ 8.) Based on their own independent investigation and evaluation, Plaintiff’s Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiff, the LWDA, and Aggrieved Employees, in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the various defenses asserted by Defendant, and the numerous potential appellate issues. Rosenthal Decl. ¶ 25; Declaration of Larry W. Lee (“Lee Decl.”) ¶ 2; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 3; Declaration of William L. Marder (“Marder Decl.”) ¶ 2. Defendant and its counsel also agree that the settlement is fair, reasonable, and adequate.

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

The material terms of the settlement are described below and set forth in detail in the concurrently filed Settlement Agreement and General Release of All Claims. Rosenthal Decl. ¶ 8, Ex.

1 A.

2 **A. The Aggrieved Employees**

3 The settlement covers “all individuals who are or were employed by Stanbridge in California  
4 during the period of April 14, 2020 and April 9, 2021 who received pay for wages from Stanbridge  
5 through direct deposit” (the “Aggrieved Employees”). Settlement Agreement ¶ I.1. The PAGA Period  
6 is defined as “the period of time from April 14, 2020 and April 9, 2021.” *Id.* ¶ I.14. Based upon  
7 Defendant’s records, there are an estimated 384 Aggrieved Employees who worked approximately  
8 5,785 pay periods during the PAGA Period. *Id.* ¶ III.32.c.

9 **B. Settlement Sum and Allocation**

10 The Settlement Agreement requires Defendant to pay the gross amount of One Hundred Fifteen  
11 Thousand Seven Hundred Dollars (\$115,700.00) (the “Gross Settlement Amount”). Settlement  
12 Agreement ¶ III.30. Based on the Gross Settlement Amount, Defendant will pay approximately \$20.00  
13 per pay period to resolve the claims in this case. Rosenthal Decl. ¶ 16.

14 The balance of the Gross Settlement Amount remaining after deduction of the approved service  
15 award to Plaintiff, attorneys’ fees and costs, and settlement administration costs (the “Net Settlement  
16 Amount”), will be available for distribution to the LWDA and Aggrieved Employees. Settlement  
17 Agreement ¶¶ I.11, III.32. The Net Settlement Amount is estimated to be \$53,019.00 Rosenthal Decl. ¶  
18 12. Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$39,764.24, will be  
19 paid to the LWDA for PAGA penalties. Settlement Agreement ¶ III.32.a; Rosenthal Decl. ¶ 12. The  
20 remaining twenty-five percent (25%), or approximately \$13,254.75, will be distributed to Aggrieved  
21 Employees. Settlement Agreement ¶ III.32.b; Rosenthal Decl. ¶ 12. The amount any particular  
22 Aggrieved Employee will be entitled to recover will depend on the number of pay periods he or she  
23 worked during the PAGA Period, with some entitled to receive more and others less. Settlement  
24 Agreement ¶ III.32.b; Rosenthal Decl. ¶ 16. This is fair, as it directly allocates greater penalties to  
25 individuals who have allegedly suffered greater harm. Rosenthal Decl. ¶ 16. Any uncashed checks will  
26 escheat to the *cy pres* recipient Public Counsel. Settlement Agreement ¶ III.39.

27 As part of the Settlement Agreement, Defendant does not object to Plaintiff’s Counsel’s  
28 request for attorneys’ fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Thirty-

Eight Thousand Five Hundred Sixty Six Dollars and Sixty-Six Cents (\$38,566.66), plus up to Fifteen Thousand Dollars (\$15,000.00) for reimbursement of litigation costs, subject to the Court approving this Settlement.<sup>1</sup> Settlement Agreement ¶ III.31.b. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request for a service award of Five Thousand Dollars (\$5,000.00). *Id.* ¶ III.31.a.

Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. Settlement Agreement ¶ III.31.c. The Parties have agreed to allocate \$4,500.00 for administration costs to Phoenix Settlement Administrators. Settlement Agreement ¶ III.31.c

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

In exchange for the payments described above, Plaintiff and Aggrieved Employees will release Defendant and Released Parties from:

[A]ll PAGA claims pled or that could have been pled based on the factual allegations contained in in the Complaint filed in the Action and/or the written notice(s) sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) that occurred during the PAGA Period as to the Aggrieved Employees; specifically, PAGA claims for civil penalties predicated on alleged violations of Labor Code sections 201, 202, 203, 204, 221, 222, 223, 224, 226, 210, 218, 218.6, 225.5, 226.3, 1194, 1194.2, 1197, 1197.1, and 2802 that occurred during the applicable PAGA Period and arise from the facts that were alleged or could have been alleged based on the factual allegations in the written notice sent to the Labor & Workforce Development Agency pursuant to California Labor Code § 2699.3(a)(1) or the Complaint in the Action (the "Released Claims").

Settlement Agreement ¶ III.41.a. The settlement does not extend to violations of any predicate statutes other than PAGA. *Id.* The release also does not constitute a waiver of claims by Aggrieved Employees for any individual wage and hour claims. *Id.*

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

##### **A. PAGA Overview**

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA

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<sup>1</sup> As set forth below, Plaintiff's Counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$10,850.93. Rosenthal Decl. ¶ 13, Ex. B.

1 and other aggrieved employees, to bring suit against their employers for alleged violations of the  
2 California labor laws and to obtain penalties that previously could only be obtained by the State. PAGA  
3 was enacted because the Legislature determined that it was “in the public interest to allow aggrieved  
4 employees, acting as private attorneys general, to recover civil penalties for Labor Code violations,”  
5 since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*,  
6 46 Cal. 4th 969, 980 (2009); *Ochoa- Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, \*4 (N.D.  
7 Cal. April 2, 2010) (“The act’s declared purpose is to supplement enforcement actions by public  
8 agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions,  
9 these civil penalties are not meant to compensate unnamed employees because the action is  
10 fundamentally a law enforcement action.” [citations omitted]).

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

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

of the class”).

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

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

By contrast, court approval of PAGA settlements is governed by section 2699(1) of the Labor Code, which provides, in relevant part: “The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.” The parties are not obligated to “satisfy class action requirements,” including the standards for class action settlement approval. <sup>2</sup> *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. Lab. Code § 2699(1). In

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<sup>2</sup> PAGA also does not require class action procedures, such as notice and opt-out rights. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016) (explaining that “in a lawsuit which asserts a PAGA claims and seeks class certification for labor/wage claims, even class members who opt out of the class would be bound by an adverse PAGA judgment or settlement”).

1 addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the  
2 ability to opt-out of the representative PAGA claim” or “contest a settlement, if any, reached between  
3 the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at \*13.

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

5 The Court’s focus in a PAGA case is not the amount that aggrieved employees will ultimately  
6 receive as a result of a settlement, but instead, on whether the gross settlement amount achieves  
7 PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for  
8 education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the settlement represents an  
9 extraordinary recovery for the Aggrieved Employees and the State, and thus the settlement certainly  
10 effectuates PAGA’s purpose.

11 The settlement is also consistent with the State’s public policy favoring resolution of disputes.  
12 “California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is  
13 efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best  
14 positioned to understand their interests and resolve a dispute in a mutually beneficial manner without  
15 court intervention into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th  
16 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277- 278 (1992)).

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

18 Because an aggrieved employee’s PAGA action is a substitute for an action brought by the  
19 government, “judgment in [a PAGA] action is binding not only on the named employee plaintiff but  
20 also on government agencies and any aggrieved employee not a party to the proceeding.” *Arias*, 46 Cal.  
21 4th at 986. However, “the nonparty employees, because they were not given notice of the action or  
22 afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than  
23 civil penalties.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all  
24 rights “to pursue or recover other remedies available under state or federal law, either separately or  
25 concurrently with an action taken under this part”).

26 Here, if approved, the Settlement would release Defendant and other releasees from civil  
27 penalties under PAGA predicated on alleged violations of Labor Code sections 201, 202, 203, 204, 221,  
28 222, 223, 224, 226, 210, 218, 218.6, 225.5, 226.3, 1194, 1194.2, 1197, 1197.1, and 2802. Settlement

1 Agreement ¶ III.41.a. The settlement would not impact Aggrieved Employees’ ability to pursue PAGA  
2 claims predicated on other Labor Code violations. *Id.* Nor does the Settlement release individual wage  
3 and hour claims that Aggrieved Employees may have against Defendant. *Id.* Therefore, the limited  
4 scope of the release also supports approval.

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

7 Though Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation  
8 entails significant risk on the underlying merits of Plaintiff’s theory, in addition to the still-developing  
9 law under PAGA.

10 **1. Defendant’s Contentions**

11 Defendant argued that it made a good faith effort to comply with the law and that Section  
12 2699(e)(2) provides courts with the discretion to reduce any civil penalties recoverable in a PAGA  
13 action if imposition of the full penalty amount would be “unjust, arbitrary and oppressive, or  
14 confiscatory.” As the California Court of Appeal has affirmed, trial courts are well within their  
15 discretion to reduce PAGA penalties “for technical violations that cause no injury,” especially where  
16 the “violation was inadvertent.” *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667,  
17 681 (2018).

18 In deciding whether to award the maximum penalty amount, courts may focus on whether the  
19 employer made a good faith effort to follow the law. *Thurman v. Bayshore Transit Management, Inc.*,  
20 203 Cal. App. 4th 1112, 1136 (2012). In *Thurman*, the Court of Appeal upheld the trial court’s  
21 significant reduction of PAGA penalties by 30% because the employer was not initially on notice that it  
22 was in violation of the law and because it would have been unfair to award penalties where the  
23 employer was unaware of the violations. *Id.* When the employer made aware of the violations, it timely  
24 took steps to come into compliance. *Id.* By contrast, the imposition of full penalties was justified when  
25 an employer took a “cavalier approach to fulfilling its contractual and statutory obligations” and  
26 demonstrated “reckless disregard” with respect to paying its employees. *Amaral v. Cintas Corp.*, 163  
27 Cal. App. 4th 1157, 1214 (2008).

28 In this case, Defendant asserted that a substantial reduction in potential PAGA penalties was  
warranted because (1) the alleged violation was inadvertent, (2) Defendant changed its practices to

1 eliminate the violation after receiving notice of the alleged violation, and (3) in total, the Aggrieved  
2 Employees were charged on \$5,785 due to the direct deposit fee. Immediately after Defendant received  
3 Plaintiff's pre-filing LWDA notice, it changed its payroll system to eliminate the deductions for direct  
4 deposits. Thus, Defendant contended that no PAGA penalties were needed to punish or deter Defendant  
5 for its inadvertent behavior, much less to deter it from committing any future violations that were  
6 completely foreclosed by its new payroll practices. Rosenthal Decl. ¶ 21.

7 Plaintiff's counsel also considered the Court of Appeal's recent holding in *Wesson v. Staples the*  
8 *Off. Superstore, LLC*, 68 Cal. App. 5th 746, 763, 283 Cal. Rptr. 3d 846, 857 (2021), *reh'g denied* (Sept.  
9 27, 2021), *review denied* (Dec. 22, 2021), which upheld the trial court's order striking PAGA claim as  
10 unmanageable. Rosenthal Decl. ¶ 22.

## 11 **2. Recovery of Penalties After Trial**

12 Defendant has indicated that there were approximately 5,785 pay periods that Aggrieved  
13 Employees worked during the PAGA Period. Rosenthal Decl. ¶ 18. Therefore, pursuant to the PAGA,  
14 Plaintiff has calculated total exposure, if the Court were to award penalties for each violation alleged,  
15 could total as high as \$2,314,000.00. *Id.* ¶ 19. This, however, assumes that the Court would "stack"  
16 penalties – *i.e.*, award multiple PAGA penalties for the same pay period based on different violations of  
17 the Labor Code, which is unlikely. *Id.* ¶¶ 20.

18 If the Court only awarded a maximum penalty for a single violation per pay period, the total  
19 penalties would only be approximately \$578,500.00. Rosenthal Decl. ¶ 23. Even then, pursuant to  
20 Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties "if, based  
21 on the facts and circumstances of the particular case, to do otherwise, would result in an award that is  
22 unjust, arbitrary and oppressive, or confiscatory." Courts routinely award far less than the statutory  
23 maximum amount of civil penalties, even where an underlying violation of the Labor Code is found.  
24 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff  
25 prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by  
26 90%, citing the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517  
27 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see O'Connor*,  
28 201 F.Supp.3d 1110 at 1133 (noting that even if PAGA penalties amounted to \$1 billion, such award

“could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”); *Magadia v. Wal-Mart Assocs. et al.*, 2019 U.S. Dist. Lexis 91792 at \*87-\*100 (N.D. Cal. May 31, 2019) (while the trial court imposed substantial PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80% of the potential PAGA penalties at issue).

Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the contrary. Rosenthal Decl. ¶ 23.

### **3. Settlement is Reasonable When Compared to the Value of the Underlying Labor Code Claim**

The Court’s assessment of the proposed settlement must take into account that any penalties awarded may be subject to substantial reduction. When this is considered, in conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Indeed, if the Court were to only permit a single violation penalty per pay period, the Gross Settlement Amount is 20% of the available penalties. *Id.* ¶ 26. Settlement for this reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation and Defendant’s likely arguments that higher penalties would have been confiscatory. It also sufficiently deters Defendant from engaging in similar conduct in the future, which is one of the primary goals of PAGA.

The proposed settlement exceeds PAGA settlements that courts have approved in other cases, when considered as a percentage of the overall settlement value of the case. The proposed settlement, in fact, far exceeds other PAGA settlements approved by courts – including those that provide for less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v. Hanesbrands Inc.*, 2009 WL 928133, \*9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL 5439000, \*8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013) (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement). For example, in *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were

1 misclassified as independent contractors. 2016 WL 3561742 (N.D. Cal. June 23, 2016). The parties  
2 settled all Labor Code and PAGA claims for \$27 million, with a PAGA allocation of \$1 million – or  
3 3.7% of the total settlement. *Id.* at \*2. In granting preliminary approval to the proposed settlement in  
4 *Cotter*, the court noted that the PAGA allocation “might seem low when compared to the maximum  
5 PAGA penalties,” but acknowledged that it was in fact “quite high compared to the typical amount  
6 apportioned to claims for PAGA penalties in wage and hour settlements.” *Id.* at \*5.

7 A PAGA allocation need not represent any particular percentage of the overall settlement value  
8 in order to secure court approval, and courts routinely approve PAGA settlements representing only a  
9 tiny fraction of the overall settlement value. Here, on the other hand, the settlement proposes a payment  
10 of approximately \$439,764.25 in penalties to the LWDA and approximately \$13,254.75 in penalties to  
11 the Aggrieved Employees, which is an outstanding result in a PAGA-only case where Plaintiff asserts  
12 that the actual unpaid wages to the Aggrieved Employees amounts to less than \$6,000. *See Rosenthal*  
13 *Decl.* ¶ 27. The proposed settlement sum in this case exceeds the typical PAGA settlement, both in  
14 terms of the total dollar amount and as a percentage of overall settlement value.

#### 15 **F. The Attorneys’ Fees are Reasonable**

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

25 The common fund doctrine is predicated on the principle of preventing unjust enrichment.  
26 When a litigant’s efforts create or preserve a fund from which others derive benefits, he may require the  
27 passive beneficiaries to compensate those who created the fund. Both California state and federal courts  
28 have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F. 2d at 769. Similarly, in *City*

1 *and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court  
2 recognized that the common fund doctrine has been applied “consistently in California when an action  
3 brought by one party creates a fund in which other persons are entitled to share.” The reasons for  
4 applying the common fund doctrine include: “fairness to the successful litigant, who might otherwise  
5 receive no benefit because his recovery might be consumed by the expenses; correlative prevention of  
6 an unfair advantage to the others who are entitled to share in the fund and who should bear their share  
7 of the burden of its recovery; encouragement of the attorney for the successful litigant who will be  
8 more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the  
9 fund if he is assured that he will be properly and directly compensated should his efforts be successful.”  
10 *Id.*

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

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

23       Here, as set forth in their declarations and their respective lodestars, Plaintiff’s attorneys have  
24 spent at least 55.7 hours litigating this current action. Rosenthal Decl. ¶¶ 32, 33, Ex. C; Declaration of  
25 Larry W. Lee (“Lee Decl.”) ¶ 6, Ex. A; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 10, Ex.  
26 A;. Based thereon and based on each of the Plaintiff’s attorneys’ hourly rates, the lodestar equates to  
27 \$39,485.00, which only requires a negative multiplier of .98. Rosenthal Decl. ¶ 33, Ex. C; Lee Decl. ¶  
28 6, Ex. A; Agnew Decl. ¶ 10, Ex. A. Thus, the requested fee amount of \$38,566.34 is fair and

1 reasonable.

2        Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of \$10,850.93 is  
3 also reasonable. Rosenthal Decl. ¶ 13, Ex. B. The costs were all directly incurred in the prosecution of  
4 this action, including filing fees, service of process fees, mediation costs, postage, copying, and other  
5 costs. *Id.* As such, the requested costs should be awarded as fair and reasonable.

6        **G.        The Settlement Administrator's Fees Should be Approved**

7        The Parties have agreed to pay administration costs in the amount of \$4,500.00 to the  
8 Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. Settlement  
9 Agreement ¶ III.31.c. The Parties believe that the administration fee is reasonable and should be  
10 approved. Rosenthal Decl. ¶ 15.

11        **H.        Representative Plaintiff's Payment Should be Approved**

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

17        Here, Plaintiff seeks \$5,000.00 for his service award, which is intended to compensate Plaintiff  
18 for the time spent on this case, including reviewing pleadings, the potential for hesitation from later  
19 prospective employers that might find out he brought this claim, and for executing a general release,  
20 including for all known and unknown claims under Civil Code § 1542. Declaration of Matthew Miller  
21 ¶¶ 6, 7. This requested enhancement is consistent with awards approved in other common fund cases.  
22 *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive  
23 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D.  
24 Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v.*  
25 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter.*  
26 *Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)  
27 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S.  
28 Dist. LEXIS 8476, at \*51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA

1 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000  
2 Incentive award to class representative in ERISA case).

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

4 Concurrent with the filing of this motion, Plaintiff uploaded the instant motion to the LWDA's  
5 website. Rosenthal Decl. ¶ 28.

6 **V. CONCLUSION**

7 Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

8  
9 DATED: June 21, 2022

DIVERSITY LAW GROUP, P.C.

10  
11 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

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13 Attorneys for Plaintiff and the Aggrieved Employees  
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3  
4 STATE OF CALIFORNIA ]  
5 COUNTY OF LOS ANGELES ]ss.  
6 ]

7 I am employed in the County of Los Angeles, State of California. I am over the age of  
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite  
9 1250, Los Angeles, California 90071.

10 On June 21, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE**  
12 **SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS**  
13 **GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN**  
14 **SUPPORT**
- 15 **2. DECLARATION OF NICHOLAS ROSENTHAL IN SUPPORT OF PLAINTIFF'S**  
16 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**  
17 **PRIVATE ATTORNEYS GENERAL ACT**
- 18 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION**  
19 **TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE**  
20 **ATTORNEYS GENERAL ACT**
- 21 **4. DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S**  
22 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**  
23 **PRIVATE ATTORNEYS GENERAL ACT**
- 24 **5. DECLARATION OF WILLIAM L. MARDER IN SUPPORT OF PLAINTIFF'S**  
25 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**  
26 **PRIVATE ATTORNEYS GENERAL ACT**
- 27 **6. DECLARATION OF MATTHEW MILLER IN SUPPORT OF PLAINTIFF'S**  
28 **MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE**  
**PRIVATE ATTORNEYS GENERAL ACT**
- 7. [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE**  
**PAGA SETTLEMENT AGREEMENT AND JUDGMENT**

on the interested parties in this action as follows:

1 Linda Auerbach Allderdice  
2 [Linda.allderdice@hklaw.com](mailto:Linda.allderdice@hklaw.com)  
3 Samuel Stone  
4 [Sam.stone@hklaw.com](mailto:Sam.stone@hklaw.com)  
5 Holland & Knight LLP  
6 400 S. Hope Street, 8<sup>th</sup> Floor  
7 Los Angeles, California 90071  
8 *Attorneys for Defendant Stanbridge University*

9   X   BY ELECTRONIC SERVICE: Based on a court order I caused the above-  
10 entitled document(s) to be served through the One Legal E-Filing System at the website  
11 [www.onelegal.com](http://www.onelegal.com), addressed to all parties appearing on the electronic service list for the above-  
12 entitled case. The service transmission was reported as complete and a copy of the filing  
13 receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this  
14 office.

15 I declare under penalty of perjury under the laws of the State of California that the  
16 above is true and correct. Executed on June 21, 2022, at Los Angeles, California.

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Erika Mejia