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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

CHRISTIANE LANGE APPLGATE, as
an individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

SEED BEAUTY, LLC, a California
limited liability company; COLOUR POP
DISC COMPANY, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Lead Case No.: 56-2021-00555658-CU-OE-VTA
(Consolidated with 56-2021-00556344-CU-OE-
VTA & 56-2021-00560437-CU-OE-VTA)

(Assigned for all purposes to the Hon. Benjamin F.
Coats, Department 43)

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

Date: April 3, 2024
Time: 8:30 a.m.
Dept.: 43

CHRISTIANE LANGE APPELATE, as
an individual and on behalf of aggrieved
employees,

Plaintiff,

vs.

SEED BEAUTY, LLC, a California
limited liability company; COLOUR POP
DISC COMPANY, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 56-2021-00556344-CU-OE-VTA

Complaint Filed: July 20, 2021

DORACELI MORALES, individually, and
on behalf of other aggrieved employees
pursuant to the California private attorneys
general act;

Plaintiff,

VS.

COLOUR POP COSMETICS, LLC, an
unknown business entity; SEED BEAUTY,
LLC, a California limited liability company;
and DOES I through 100, inclusive,

Defendants.

Case No. 56-2021-00560437-CU-OE-VTA

Complaint Filed: November 29, 2021

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

2 **PLEASE TAKE NOTICE** that on April 3, 2024, at 8:30 A.M., or as soon thereafter as
3 the matter may be heard, before the Honorable Benjamin F. Coats, judge presiding, in
4 Department 43 of the above-referenced Court, located at 800 S. Victoria Avenue, Ventura,
5 California 93009, Plaintiffs Christiane Lange Applegate and Doraceli Morales (together,
6 “Plaintiffs”) will seek an Order approving the Joint Stipulation of Settlement and Release of
7 PAGA Claims (“Agreement” or “Settlement Agreement”), pursuant to the procedures set forth in
8 Labor Code sections 2698, *et seq.*

9 This motion will be based on this notice of motion, the attached memorandum of points
10 and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, Mai
11 Tulyathan, Plaintiff Christiane Lange Applegate, and Plaintiff Doraceli Morales, the records and
12 file herein, and on such other evidence as may be presented at the hearing of the motion.

13 DATED: March 11, 2024

DIVERSITY LAW GROUP, P.C.

15 By: /s/ Mai Tulyathan

Larry W. Lee

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiff Christiane Lange Applegate

19 DATED: March 11, 2024

LAWYERS FOR JUSTICE, PC

21 By: /s/ Selena Matavosian

Joanna Ghosh

Selena Matavosian

Attorneys for Plaintiff Doraceli Morales

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	9
II. FACTUAL AND PROCEDURAL BACKGROUND.....	11
A. Summary of the Litigation	11
1. <i>Lange Applegate</i> Action	11
2. <i>Morales</i> Action.....	12
B. The Parties Agreed to A Second Mediation and This Settlement	13
III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT.....	14
A. The Aggrieved Employees.....	14
B. Settlement Sum and Allocation.....	14
C. Scope of the Released Claims.....	16
IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED	16
A. PAGA Overview.....	16
B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims	18
C. The Settlement is Reasonable and Effectuates PAGA’s Objectives.....	19
D. The Scope of the Release is Appropriately Limited.....	19
E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation.....	20
1. Plaintiffs’ Claims are Contested	20
2. Recovery of Penalties After Trial	21
F. The Attorneys’ Fees are Reasonable	24
G. The Costs are Reasonable	26
H. The Settlement Administrator’s Fees Should be Approved	26

I.	Plaintiffs’ PAGA Representative Awards Should be Approved	26
J.	Notice to the LWDA Has Been Provided	28
V.	CONCLUSION	28

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Arias v. Superior Court</i> (2009) 46 Cal. 4th 969	passim
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	22
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal. 4th 105, 110,.....	25
<i>Consumer Advocacy Group, Inc. v. Kintetsu</i> (2006) 141 Cal.App.4th 46, 62-63	19
<i>Gunther v. Alaska Airlines, Inc.</i> (2021) 72 Cal. App. 5th 334, 355-56	22
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> (2014) 59 Cal. 4th 348	9
<i>Laffitte v. Robert Half Int’l</i> (2016) 1 Cal. 5th 480, 503	24
<i>Neary v. Regents of Univ. of Cal.</i> (1992) 3 Cal.4th 273, 277- 278.....	19
<i>Serrano v. Priest</i> (1977) 20 Cal. 3d 25, 34 (“ <i>Serrano III</i> ”).....	24, 25
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224, 254.....	24

Federal Cases

<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	22
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472, 478.....	24
<i>Brotherton v. Cleveland</i> (S.D. Ohio 2001) 141 F. Supp. 2d 907.....	27
<i>City of Detroit v. Grinnell Corp</i> (2d Cir. 1974) 495 F.2d 448, 470.....	26
<i>Cook v. Niedert</i> (7th Cir. 1998) 142 F.3d 1004	27
<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> (S.D. Ohio 1991) 137 F.R.D. 240 ..	27
<i>Gaskill v. Gordon</i> (7th Cir. 1998) 160 F.3d 361, 363.....	25
<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068 (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476	
.....	27
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011, 1026	18
<i>Hopson v. Hanesbrands Inc.</i> (N.D. Cal. Apr. 3, 2009) 2009 WL 928133, *9	23
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> (S.D. Ohio 1990) 130 F.R.D. 366	27
<i>Lusby v. Gamestop Inc.</i> (N.D. Cal. 2013) 97 F.R.D. 400, 407	24
<i>Martin v. AmeriPride Servs.</i> (S.D. Cal. June 9, 2011).....	25

1	<i>Moore v. PetSmart, Inc.</i> (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, *8	23
2	<i>O'Connor v. Uber Techs, Inc.</i> (N.D. Cal. August 18, 2016) 2016 WL 4398271, at p. *18	19
3	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> (N.D. Cal. 2010) 2010 WL 1340777, p. *13	18
4	<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948, 958-59	27
5	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294.....	27
6	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1997) 557 F. 2d 759, 769	24, 25

Statutes

9	Business and Professions Code § 17200, <i>et seq.</i>	11, 13
10	Cal. Lab. Code § 2699	17, 18, 19, 24
11	Cal. Lab. Code § 2699(g)(l).....	20
12	Labor Code § 203.....	9, 20
13	Labor Code § 2698, <i>et seq.</i>	9, 11, 13
14	Labor Code § 2699(e)(2)	22
15	Labor Code § 2699(l).....	10, 18
16	Labor Code § 2699.3.....	11, 12, 17
17	Labor Code § 510.....	11, 13
18	Labor Code §§ 201-204	11, 13
19	Labor Code section 1174	12, 13
20	Labor Code section 1194	11, 12, 13
21	Labor Code section 1197	11, 12, 13
22	Labor Code section 1197.1	11, 12, 13
23	Labor Code section 1198	12, 13
24	Labor Code section 226	11, 12, 13
25	Labor Code section 226.7	11, 12, 13
26	Labor Code section 2800	12, 13
27	Labor Code section 2802	12, 13
28	Labor Code section 510	11, 12

1	Labor Code section 512	11, 13
2	Labor Code section 558	11, 12, 13
3	Other Authorities	
4	Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.25 <i>et seq.</i> and § 13.64 (4th	
5	ed. 2002 and Supp. 2004)	18
6	Eisenberg & Miller (2010) <i>Attorney Fees in Class Action Settlements: An Empirical Study:</i>	
7	<i>1993-2008</i> , 7 J. of Empirical Leg. Stud. 248, 262, fn.16.....	25
8	<i>Manual for Complex Litigation, Fourth</i> § 21.632 (Fed. Jud. Ctr., 4th ed. 2004)	18

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections
4 2698, *et seq.*, Plaintiffs Christiane Lange Applegate and Doraceli Morales (together, “Plaintiffs”)
5 hereby move the Court for an order approving the non-reversionary PAGA settlement as set forth
6 in the Joint Stipulation of Settlement and Release of PAGA Claims (“Agreement” or “Settlement
7 Agreement”).¹

8 The operative complaints in the above-captioned consolidated Action allege that
9 Defendants Seed Beauty, LLC, Colour Pop Disc Company, and ColourPop Cosmetics, LLC
10 (collectively, “Defendants”) (Defendants and Plaintiffs together, the “Parties”) violated the
11 PAGA by failing to pay minimum, regular, and overtime wages, failing to provide meal breaks
12 and rest breaks or pay premium compensation in lieu thereof, failing to timely pay wages and
13 upon separation of employment, failing to provide accurate itemized wage statements, failing to
14 keep complete and accurate payroll records, and failing to reimburse for necessary business
15 expenses. With respect to the afore-mentioned PAGA claims, Plaintiffs seek to recover civil
16 penalties against Defendants on behalf of the State of California and other similarly aggrieved
17 employees.

18 As will be explained in further detail below, based on the California Supreme Court’s
19 opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation*
20 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiffs can seek appropriate civil penalties as called
21 for under the PAGA on behalf of the State of California and other similarly situated aggrieved
22 employees, without seeking class certification or meeting the requirements of class certification
23 (*i.e.*, numerosity, typicality, commonality, and adequacy). As such, while the PAGA settlement
24 reached herein is on behalf of the State of California and other aggrieved employees, the usual
25 two-step preliminary and final approval process is not required. Rather, as called for under
26

27
28 ¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in
the Settlement Agreement. The Settlement Agreement is attached as **Exhibit A** to the
Declaration of Mai Tulyathan.

1 Labor Code section 2699(l), all that is required is an approval by this Court of any settlement of
2 the PAGA claims by the Parties.

3 The Parties have reached such a PAGA settlement, and now seek the Court's approval of
4 the settlement which provides for the payment of civil penalties under the PAGA. As
5 demonstrated below, the proposed settlement warrants the Court's approval. Significantly, this
6 settlement was reached after the exchange of informal discovery, including data pertaining to the
7 size of the PAGA group, the number of pay periods at issue, sample time and payroll records,
8 and documents pertaining to Defendants' pertinent policies, practices, and procedures. The
9 Parties also participated in two separate full-day mediations with mediators Joel Grossman, Esq.
10 and Steve Serratore, Esq., and thereafter by way of a mediator's proposal by Mr. Serratore, the
11 Parties were ultimately able to reach this settlement.

12 Pursuant to the terms of the Parties' proposed Settlement Agreement, Defendants will
13 pay the total amount of **\$855,000.00** (the "Gross Settlement Amount"). This amount
14 encompasses a payment of attorneys' fees to Plaintiffs' counsel in the amount of \$299,250.00,
15 Plaintiffs' counsel's actual litigation costs of \$33,968.90, a service award in the amount of
16 \$5,000.00 each to Plaintiffs, and settlement administration costs in the amount of \$10,500.00.
17 Assuming the Court grants the foregoing amounts in full, the Net Settlement Amount totals
18 approximately \$501,281.10. Pursuant to the PAGA, 75% of the Net Settlement Amount, or
19 \$375,960.82, will be paid to the Labor & Workforce Development Agency ("LWDA") as civil
20 penalties ("LWDA Payment"), and 25% of the Net Settlement Amount, or \$125,320.28, will be
21 paid to the PAGA Members² ("Individual Settlement Payments").

22 The proposed settlement also has a limited release for PAGA Members that affects only
23 those claims that were alleged in the consolidated Action and is limited to claims accrued during
24 the PAGA Period.

26 ² As further discussed below, the terms "PAGA Member(s)" and "Settlement Group Member(s)"
27 mean all current and former hourly-paid, non-exempt employees of Defendants in California
28 during the period from May 18, 2020 to June 22, 2021 (the "PAGA Period"), including those
who performed work for Defendants through staffing companies in California during the PAGA
Period.

1 In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable
2 settlement on behalf of the State of California and PAGA Members, and accomplishes the goals
3 of PAGA. Thus, the Court should grant approval of the settlement.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Summary of the Litigation**

6 **1. *Lange Applegate Action***

7 On or about May 18 and 26, 2021, Plaintiff Christiane Lange Applegate (“Lange
8 Applegate”) submitted her written notices under Labor Code section 2699.3 to the LWDA and
9 Defendants of Defendants’ alleged violations of Labor Code sections 201-204, 226, 226.7, 510,
10 512, 558, 1194, 1197, 1197.1 (hereinafter referred to as the “Lange Applegate PAGA Notice”).
11 (Declaration of Mai Tulyathan (“Tulyathan Decl.”) at ¶ 2.)

12 On June 25, 2021, Lange Applegate filed a class action complaint against Defendants
13 Seed Beauty, LLC and Colour Pop Disc Company, in the matter entitled *Lange Applegate v.*
14 *Seed Beauty, LLC, et al.*, Ventura County Superior Court, Case No. 56-2021-00555658-CU-OE-
15 VTA (the “Action”). (*Id.* at ¶ 3.) The complaint alleges causes of action for (1) failure to pay
16 wages, in violation of Labor Code §§ 510, 558, 1194, 1197, and 1197.1; (2) violation of Labor
17 Code §§ 226.7**Error! Bookmark not defined.** and 512; (3) violation of Labor Code § 226; and
18 (4) violation of Business and Professions Code § 17200, *et seq.* (*Id.*)

19 Thereafter, on July 20, 2021, Lange Applegate filed a separate, related representative
20 PAGA action against Defendants Seed Beauty, LLC and Colour Pop Disc Company, in the
21 matter entitled *Lange Applegate v. Seed Beauty, LLC, et al.*, Ventura County Superior Court,
22 Case No. 56-2021-00556344-CU-OE-VTA. (*Id.* at ¶ 4.) The representative action complaint
23 alleges a single cause of action for violation of the PAGA, Labor Code § 2698, *et seq.*,
24 predicated on underlying violations of Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194,
25 1197, and 1197.1 (the “PAGA Action”). (*Id.*) Specifically, Lange Applegate alleges claims
26 including, but not limited to, failure to pay wages for off-the-clock work and meal period
27 violations in connection with Defendants’ security check procedures and Covid-19 screening
28 procedures. (*Id.*)

On August 26, 2021, the Court consolidated the *Lange Applegate* class and PAGA actions due to the related nature of the claims and parties, and designated the *Lange Applegate* class action Case No. 56-2021-00555658-CU-OE-VTA as the lead case. (Tulyathan Decl. at ¶ 5.)

The Parties thereafter met and conferred regarding arbitration agreements signed by Lange Applegate during her employment with Defendants that contained a class action waiver. Following meet and confer discussions, on September 21, 2021, Lange Applegate filed a request for dismissal without prejudice of her class action claims. (*Id.* at ¶ 6.) On September 27, 2021, the Court dismissed the class action claims without prejudice. (*Id.*) Thereafter, only Lange Applegate's individual and PAGA claims remained pending in the Action. (*Id.* at ¶ 7.)

On May 10, 2022, Lange Applegate and Defendants participated in private mediation with experienced neutral Joel Grossman, Esq. (*Id.* at ¶ 8.) In connection with mediation, Defendants provided informal discovery, including data pertaining to the PAGA group, number of pay periods at issue, a sample of time and payroll records, and some policy documents. Lange Applegate retained an expert to analyze time and payroll records provided by Defendants. Despite arm's-length, good faith negotiations, the parties were unable to reach an agreement at the first mediation and continued litigation. (*Id.*)

On or about July 21, 2022, Defendants filed a motion to compel Lange Applegate's individual claims to arbitration and to stay the PAGA claims. (Tulyathan Decl. at ¶ 9.) On September 13, 2022, the Court granted Defendants' motion, compelling Lange Applegate's individual claims to arbitration and staying the representative PAGA claim. (*Id.*)

2. Morales Action

On or about September 20, 2021, Plaintiff Doraceli Morales ("Morales") submitted her written notice under Labor Code section 2699.3 to the LWDA and Defendants, predicated on the alleged violations of Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802. Thereafter, on November 29, 2021, Morales filed a PAGA representative action complaint against Defendants Colour Pop Cosmetics, LLC and Seed Beauty, LLC, in the matter entitled *Morales v. Colour Pop Cosmetics, LLC, et al.*, Ventura

County Superior Court, Case No. 56-2021-00560437-CU-OE-VTA. The *Morales* complaint alleges a single cause of action for violation of the PAGA, Labor Code sections 2698, *et seq.*, predicated on underlying violations of Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802.

On August 23, 2022, Defendants filed a Motion for Judgment on the Pleadings in the *Morales* action. On September 19, 2022, the Court denied Defendants' Motion for Judgment on the Pleadings. Defendants subsequently petitioned for a writ of mandate as to the Motion for Judgment on the Pleadings. On December 6, 2022, the writ was denied by the Second Appellate District.

The Parties then met and conferred regarding arbitration agreements signed by Morales during her employment with Defendants. The Parties then agreed to participate in private mediation.

B. The Parties Agreed to A Second Mediation and This Settlement

On March 10, 2023, the Parties participated in a second mediation session with Steve Serratore, Esq. (Tulyathan Decl. at ¶ 11.) In connection with mediation, the Parties exchanged informal discovery, including updated data pertaining to the PAGA group. (*Id.*) During the mediation, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses and the scope of Defendants' liability. The Parties ultimately accepted a mediator's proposal and entered into an agreement to settle Lange Applegate and Morales' claims in their entirety, the terms of which are reflected in the Settlement Agreement. (*Id.* at ¶ 12.)

On May 8, 2023, the Court consolidated the *Lange Applegate* and *Morales* actions for purposes of proceeding with the settlement approval process, and deemed the *Lange Applegate* action as the lead action. (*Id.* at ¶ 13.)

Based on the foregoing and on their own independent investigation and evaluation, Plaintiffs' counsel is of the opinion that the PAGA settlement with Defendants for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of Plaintiffs, the State of California, and the aggrieved employees. (Tulyathan Decl. at ¶ 34.) Accordingly, the Parties desire to settle, compromise, and

1 discharge Plaintiffs' PAGA claims as set forth in the Settlement Agreement.

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

3 The material terms of the settlement are described below and set forth in detail in the
4 Settlement Agreement.

5 **A. The Aggrieved Employees**

6 The aggrieved employees affected by this settlement—PAGA Members or Settlement
7 Group Members—are defined as “all current and former hourly-paid, non-exempt employees of
8 Defendants in California during the PAGA Period, including those who performed work for
9 Defendants through staffing companies in California during the PAGA Period.” (Settlement
10 Agreement at ¶ 1.19.) The PAGA Period is defined as the period from May 18, 2020 to June 22,
11 2021. (*Id.* at ¶ 1.22.)

12 Based upon Defendants' records, Defendants represent that there are 2,624 PAGA
13 Members during the PAGA Period. (*Id.* at ¶ 5.6.) Defendants represent that there are no more
14 than 38,700 pay periods worked by PAGA Members during the PAGA Period. (*Id.*)

15 **B. Settlement Sum and Allocation**

16 The Settlement Agreement requires Defendants to pay the Gross Settlement Amount of
17 \$855,000.00. (Settlement Agreement at ¶ 1.8.) The terms of the Settlement Agreement provide
18 for an award of attorneys' fees and reimbursement of litigation costs to Plaintiffs' counsel,
19 PAGA representative awards to Plaintiffs for serving as the representatives in the Action,
20 settlement administration costs to the Settlement Administrator, and payment of penalties
21 pursuant to the PAGA.

22 Pursuant to the Settlement Agreement, the balance of the Gross Settlement Amount
23 remaining after deduction of the court-approved PAGA Counsel's Attorneys' Fees and
24 Expenses, PAGA Representative Awards, and Settlement Administration Expenses will be
25 available for distribution to the LWDA and PAGA Members (the balance of the Gross
26 Settlement Amount remaining after the above deductions shall be referred to as the “Net
27 Settlement Amount” or “PAGA Payment”). (*Id.* at ¶¶ 1.14, 1.21.) Seventy-five percent (75%)
28 of the Net Settlement Amount, or approximately \$375,960.82, will be paid to the LWDA. (*Id.* at

¶ 1.12; Tulyathan Decl. at ¶ 20.) The remaining twenty-five percent (25%) of the Net Settlement Amount, or approximately \$125,320.28, will be distributed to PAGA Members on a pro rata basis. (Settlement Agreement ¶¶ 1.14, 1.9, 1.21; Tulyathan Decl. at ¶ 20.) The amount of each Individual Settlement Payment will be based on the actual number of pay periods each PAGA Member worked during the PAGA Period. (Settlement Agreement ¶¶ 1.14, 1.9, 1.21.)

Based on the number of PAGA Members estimated by Defendants, PAGA Members will be entitled to recover, *on average*, approximately **\$47.76** each, from the 25% portion of the PAGA Payment. (Tulyathan Decl. at ¶ 22.) The amount any particular PAGA Member will be entitled to recover may be greater or lower than this average depending on the number of pay periods they worked during the PAGA Period. (*Id.*) This is fair, as it directly allocates greater penalties to individual PAGA Members who were employed longer and thus allegedly suffered greater harm. (*Id.*)

As part of the Settlement Agreement, Defendants do not object to Plaintiffs' counsel's request for attorneys' fees of approximately thirty-five percent (35%) of the Gross Settlement Amount, or \$299,250.00, plus reimbursement of litigation expenses in an amount of \$33,968.90, allocated as \$26,763.29 to Diversity Law Group, P.C. and \$7,205.61 to Lawyers for Justice, PC, subject to the Court approving this settlement. (Settlement Agreement at ¶ 5.4.) Any portion of the attorneys' fees and expenses not approved by the Court will be added to the Net Settlement Amount. (*Id.*)

Also, as part of the Settlement Agreement, Defendants do not object to Plaintiffs' request for PAGA Representative Awards of \$5,000.00 each to Plaintiffs, in recognition of their efforts in prosecuting this Action as PAGA representatives on behalf of the State of California and other PAGA Members. (Settlement Agreement at ¶ 5.7.)

Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. (*Id.* at ¶ 1.31.) The Parties have agreed to utilize Phoenix Settlement Administrators, a well-known third-party settlement administrator, to administer the settlement, with the administration costs estimated not to exceed \$10,500.00. (*Id.* at ¶¶ 1.31, 1.32; Tulyathan Decl. at ¶ 24.)

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

2 In exchange for the payments described above, PAGA Members will provide the
3 following limited release:

4 [A]ll claims and theories that were set forth in the Actions and
5 PAGA Notices, or that could have been set forth based on the facts
6 alleged in the Actions and PAGA Notices, during the PAGA Period,
7 for civil penalties recoverable under the Private Attorneys General
8 Act, California Labor Code section 2698, *et seq.* including but not
9 limited to under California Labor Code sections 201-204, 210, 218,
10 218.5, 226, 226(a), 226.3, 226.7, 227, 510, 512, 512(a), 551, 552,
11 558, 1174, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800, and
12 2802, and all applicable Industrial Welfare Commission Wage
13 Orders, based on the various theories of liability, including, but not
14 limited to, Defendants' alleged failure to pay wages, including
15 minimum, regular, and overtime for all hours worked (including but
not limited to, alleged failure to use the correct rate of pay and
alleged failure to pay for time spent undergoing COVID-related
screenings and security check procedures), failure to provide
compliant meal breaks and rest breaks and associated premiums,
failure to timely pay wages upon separation, failure to provide
accurate itemized wage statements, failure to timely pay wages
during employment, failure to keep complete and accurate payroll
records, and failure to reimburse for necessary business expenses.

16 (Settlement Agreement at ¶¶ 1.28, 10.1.) As stated herein, the release is limited to claims that
17 were alleged in the consolidated Action, Lange Applegate PAGA Notice, and Morales PAGA
18 Notice that accrued during the PAGA Period. (*Id.*)

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

20 **A. PAGA Overview**

21 Prior to the enactment of PAGA, many of the penalties provided against employers for
22 violations of certain Labor Code provisions were solely within the province of the California
23 Department of Labor to seek, enforce, and assess. (*Arias v. Superior Court* (2009) 46 Cal. 4th
24 969, 980.) However, due to the lack of financing to California's agencies and the potential
25 number of Labor Code violations by California employers, the California Legislature found that
26 it was in the public interest to allow aggrieved employees to act as private attorneys general and
27 to enforce and recover penalties on behalf of other similarly situated aggrieved employees for
28 Labor Code violations committed by their employers. (*Id.*) As such, PAGA was enacted to

1 allow such enforcement and recovery by private individuals who have been aggrieved by their
2 employers. Under the PAGA, 75% of any penalties recovered under PAGA by an aggrieved
3 employee is to be paid to the state agency, the LWDA, and the remaining 25% is to be shared
4 amongst the aggrieved employees. (Cal. Lab. Code § 2699, subd. (i).)

5 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
6 employee must first provide written notice to the LWDA and the employer of the particular
7 Labor Code violation(s) alleged to have been violated by the employer. (*See* Cal. Labor Code §
8 2699.3, subd. (a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to
9 investigate the alleged violations or the time for the LWDA to investigate the violations passes,
10 the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of
11 all other similarly aggrieved employees. (*See* Cal. Labor Code § 2699.3, subd. (a)(2)(A).)

12 In 2009, the California Supreme Court considered the issue of whether an aggrieved
13 employee who brings a PAGA claim needs to meet class certification requirements. (*Arias*, 46
14 Cal. 4th at p. 976.) After a substantial review of the legislative history of PAGA, the California
15 Supreme Court held that an aggrieved employee’s representative action brought on behalf of
16 other similarly aggrieved employees against an employer for PAGA violations do not need to
17 meet the requirements for class certification. (*Id.* at pp. 975, 980-88.) As held by the California
18 Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent of
19 California’s labor law enforcement agencies. (*Id.* at p. 986.) Because an employee’s PAGA
20 action functions as a substitute for an action brought by the government itself, a judgment in the
21 PAGA action binds all those who would be bound by a judgment in an action brought by the
22 government. (*Id.*)

23 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the
24 Superior Court must “review and approve any settlement of any civil action filed pursuant to”
25 PAGA. (Cal. Lab. Code § 2699, subd. (l)(2).) As the Parties to this current PAGA action have
26 reached such an agreement, the Parties now seek this Court’s approval as to the settlement of the
27 penalties amount.

28 ///

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* Alba Conte & Herbert B. Newberg (4th ed. 2002 and Supp. 2004) 4 *Newberg on Class Actions* § 11.25, *et seq.* and § 13.64 (“*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* (Fed. Jud. Ctr., 4th ed. 2004) § 21.632.) 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.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

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. (*Arias*, 46 Cal. 4th at pp. 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. (Cal. Lab. Code § 2699, subd. (1).) In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if any, reached between the parties.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. 2010) 2010 WL 1340777, p. *13.)

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

2 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
3 ultimately receive as a result of a settlement, but instead, on whether the total settlement amount
4 achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement
5 agency funding for purposes of education of employers and employees and enforcement of labor
6 laws and rights. (*See* Cal. Lab. Code § 2699, subd. (i).) Here, the settlement provides monetary
7 recovery for the PAGA Members and the State of California and accomplishes PAGA’s primary
8 objective to enforce the Labor Code, and thus the settlement certainly effectuates PAGA’s
9 purpose. (*See O’Connor v. Uber Techs, Inc.* (N.D. Cal. August 18, 2016) 2016 WL 4398271, at
10 p. *18 (noting that deterring noncompliance with the Labor Code is one of PAGA’s objectives).)

11 The settlement is also consistent with the State’s public policy favoring resolution of
12 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
13 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
14 parties are best positioned to understand their interests and resolve a dispute in a mutually
15 beneficial manner without court intervention into the settlement.” (*Consumer Advocacy Group,*
16 *Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal.*
17 (1992) 3 Cal. 4th 273, 277- 278).)

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

19 The limited scope of the release supports approval of this PAGA settlement. If approved,
20 the settlement would release the Released Parties from claims based on the facts stated in the
21 operative complaints of the consolidated Action, Lange Applegate PAGA Notice, and Morales
22 PAGA Notice, that accrued during the PAGA Period, and nothing more. (Settlement Agreement
23 ¶¶ 1.28, 1.29, 10.1.) The settlement would not impact any other employees’ ability to pursue
24 claims predicated on other allegations aside from those raised in this lawsuit or any claims
25 accruing outside of the limited PAGA Period.

26 Because an aggrieved employee’s PAGA action is a substitute for an action brought by
27 the government, “judgment in [a PAGA] action is binding not only on the named employee
28 plaintiff but also on government agencies and any aggrieved employee not a party to the

proceeding.” (*Arias*, 46 Cal. 4th at p. 986.) However, “the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Id.* at p. 987; *see also*, Cal. Lab. Code § 2699, subd. (g)(l) (non-party aggrieved employees retain all rights “to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part”).)

Accordingly, PAGA Members will be subject to a limited release confined to the claims based on the facts stated in the operative complaints of the consolidated Action, Lange Applegate PAGA Notice, and Morales PAGA Notice. (Settlement Agreement at ¶¶ 1.28, 1.29, 10.1.) The release is therefore appropriately tailored.

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

Although Plaintiffs are reasonably confident that they would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiffs’ theories, in addition to the still-developing law under PAGA. (Tulyathan Decl. at ¶ 34.)

1. Plaintiffs’ Claims are Contested

Plaintiffs assert that their representative PAGA claims are based on the allegations that Defendants failed to pay minimum, regular, and overtime wages for off-the-clock work, failed to provide meal breaks and rest breaks or pay premium compensation in lieu thereof, failed to timely pay final wages upon separation of employment, failed to provide accurate itemized wage statements, failed to maintain requisite payroll records, and failed to reimburse for necessary business expenses. (Tulyathan Decl. at ¶ 14.)

Defendants have denied violations of any applicable laws and denied liability for any claims asserted in the Action. In this regard, Defendants contended that the time spent off-the-clock, including undergoing any sort of security checks and Covid-19 screenings, was de minimis and did not require compensation. Defendants also argued that they maintained legally compliant meal and rest period policies, and that any violations were not the result of employer-driven policies, but, rather, employee choice. Furthermore, Defendants have represented that

they ceased the security check procedures prior to the beginning of the PAGA Period, and ceased Covid-19 screening procedures in or about June 2021, which limits any potentially recoverable PAGA penalties to the State of California and PAGA Members. With respect to the expense reimbursement claim, Defendants also argued that they maintained a legally compliant reimbursement policy. (Tulyathan Decl. at ¶ 29.) Moreover, Defendants contend that even if the Court ultimately found their employment practices violative of the Labor Code, the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties or to decide not to award PAGA penalties at all. Should Defendants have prevailed with this argument, the State of California and PAGA Members would have been left with minimal or zero recovery. (Tulyathan Decl. at ¶ 31.)

Even if Plaintiffs prevailed at trial, Defendants could have appealed, which would have continued litigation in this action for several years thus depriving the State and PAGA Members of any recovery for the foreseeable future. (*Id.* at ¶ 32.)

2. Recovery of Penalties After Trial

Based on the data provided by Defendants, Plaintiffs have calculated estimated total exposure to be at least \$10,449,000, based on the following:

- \$3,870,000 for PAGA penalties for off-the-clock violations (calculated based on 38,700 total pay periods x \$100 penalty per violation, based on 100% violation rate);
- \$387,000 for PAGA penalties for meal period violations (calculated based on 38,700 total pay periods x \$100 penalty per violation, based on 10% violation rate³);
- \$387,000 for PAGA penalties for rest period violations (calculated based on 38,700 total pay periods x \$100 penalty per violation, based on 10% violation rate);

³ In connection with mediation, Lange Applegate retained an expert to analyze the sample time and payroll records of PAGA Members provided by Defendants for meal and rest violations. Plaintiffs estimated the amount of penalties for the meal and rest claims based on the expert's analysis which indicated a violation rate of less than 10%.

- \$1,935,000 for PAGA penalties for overtime violations (calculated based on 38,700 total pay periods x \$100 penalty per violation, based on 50% violation rate⁴); and
- \$3,870,000 for PAGA penalties for derivative wage statement violations (calculated based on 38,700 total pay periods x \$100 penalty per violation (*see Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal. App. 5th 334, 355-56 (declining to apply heightened penalty of \$250 per pay period))).

(Tulyathan Decl. at ¶ 25.)

Plaintiffs’ analysis here is based on the PAGA’s initial violation penalty amount of \$100, and does not account for the imposition of the subsequent violation penalty amount given recent authority indicating this increased penalty may only be available where there is a prior citation for a Labor Code violation. (*See Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor any court warned the defendant that it was subject to the Labor Code until the court handling the case at issue).) Additionally, this analysis does not account for the possibility that the Court would reduce the PAGA penalties. Pursuant to Labor Code section 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. (*Id.* at p. 517.) Upon review, the Court of Appeal found such reduction to be proper. (*Id.* at p. 539; *see O’Connor*, 2016 WL 4398271, at p. *17 (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

⁴ Based on the sample time and payroll records produced by Defendants for mediation, only about 50% of aggrieved employees worked shifts over eight (8) hours. Plaintiffs estimated the amount of penalties for the overtime claim based on this percentage as analyzed from the sample records.

1 and oppressive, or confiscatory”).) It should also be noted that the damages analysis above
2 assumes the Court would permit “stacking” of PAGA penalties, meaning allowing for multiple
3 PAGA violations based upon the same underlying violation. For instance, it is possible a Court
4 would not permit both a PAGA penalty for the failure to pay wages violation and the failure to
5 pay overtime violation based on the same off-the-clock theory.

6 Here, Plaintiffs maintain that there does not exist any reason for reducing PAGA
7 penalties. However, Plaintiffs are aware that Defendants could make a compelling argument to
8 the contrary. Even if there were a finding of liability, Defendants have argued that these
9 violations were not intentional violations of the law and did not occur every pay period.
10 (Tulyathan Decl. at ¶ 30.) Indeed, as explained above, Defendants have represented that the
11 security check and screening procedures at issue in this lawsuit have ceased. As such, the Court
12 may be disinclined to award full PAGA penalties. On this basis, the Court again may find there
13 is reason to significantly reduce the PAGA penalties awarded.

14 The Court’s assessment of the proposed settlement must take into account that any
15 penalties awarded may be subject to substantial reduction. When this is considered, in
16 conjunction with the history of PAGA case law and settlements, and the fact that Plaintiffs may
17 recover nothing, the proposed settlement is patently reasonable. Settlement for this reduced
18 value allows for the distribution of penalties in an amount which accounts for the risk of
19 continued litigation, and Defendants’ likely arguments that higher penalties would have been
20 confiscatory. It also sufficiently deters Defendants from engaging in similar conduct in the
21 future, which is one of the primary goals of PAGA.

22 The proposed settlement exceeds PAGA settlements that courts have approved in other
23 cases, when considered as a percentage of the overall settlement value of the case. Here, the
24 proposed settlement amounts to approximately **8.18%** of the possible liability in this matter,
25 which significantly exceeds other PAGA settlements approved by courts. (Tulyathan Decl. at ¶
26 33; *see, e.g., Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133, *9
27 (approving total PAGA allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v.*
28 *PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, *8 (approving total PAGA

1 allocation that was 0.5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.* (N.D. Cal.
2 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of \$750,000 gross
3 settlement).

4 A PAGA allocation need not represent any particular percentage of the overall settlement
5 value in order to secure court approval, and courts routinely approve PAGA settlements
6 representing only a tiny fraction of the overall settlement value. The proposed settlement sum in
7 this case significantly exceeds the percentage of overall settlement value of other PAGA
8 settlements and should be approved by the Court.

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

10 Plaintiffs' counsel seeks a fee award calculated as thirty-five percent (35%) of the Gross
11 Settlement Amount, or \$299,250.00, for the successful prosecution and resolution of this action.
12 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Cal. Lab. Code § 2699,
13 subd. (g).) Similar to awarding fees in a class action, California state and federal courts have
14 recognized that an appropriate method for determining award of attorneys' fees for
15 representative actions is to use a percentage of the total value of benefits to class members by the
16 settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v.*
17 *Priest* (1977) 20 Cal. 3d 25, 34 (“*Serrano III*”); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472,
18 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose of this
19 equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation costs
20 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
21 burden alone.” (*Vincent*, 557 F. 2d at p. 769.)

22 Under California law, the award of attorneys' fees in common fund wage and hour class
23 action settlements is under the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1
24 Cal. 5th 480, 503 (“We join the overwhelming majority of federal and state courts in holding that
25 when class action litigation establishes a monetary fund for the benefit of the class members, and
26 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
27 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
28 created”).) Under the percentage of the fund method, the Court's objective remains to “mimic

1 the market” in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363
2 (“When a fee is set by a court rather than by contract, the object is to set it at a level that will
3 approximate what the market will set...The judge, in other words, is trying to mimic the market
4 in legal services”).) Both California state and federal courts have embraced this doctrine.
5 (*Serrano III*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of*
6 *San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized
7 that the common fund doctrine has been applied “consistently in California when an action
8 brought by one party creates a fund in which other persons are entitled to share.” The reasons
9 for applying the common fund doctrine include: “fairness to the successful litigant, who might
10 otherwise receive no benefit because his recovery might be consumed by the expenses;
11 correlative prevention of an unfair advantage to the others who are entitled to share in the fund
12 and who should bear their share of the burden of its recovery; encouragement of the attorney for
13 the successful litigant who will be more willing to undertake and diligently prosecute proper
14 litigation for the protection or recovery of the fund if he is assured that he will be properly and
15 directly compensated should his efforts be successful.” (*Id.*)

16 Here, the fee award representing thirty-five percent (35%) of the Gross Settlement
17 Amount falls within that range and is consistent with other rulings of other courts and
18 comprehensive surveys of class action settlements and fee awards. (*See Martin v. AmeriPride*
19 *Servs.* (S.D. Cal. June 9, 2011) (recognizing that “courts may award attorney’s fees in the 30-
20 40% range in wage and hour class actions that result in recovery of a common fund under \$10
21 million”); *see also* Eisenberg & Miller (2010) *Attorney Fees in Class Action Settlements: An*
22 *Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (independent studies of
23 class action litigation nationwide conclude that fees in that range sought here are consistent with
24 market rates).) The results delivered by Plaintiffs’ counsel also support the requested percentage
25 of the fund. Here, Plaintiffs’ counsel secured a \$855,000.00 non-reversionary common fund
26 settlement.

27 In addition, it is recognized that one of the primary factors justifying an enhanced
28 attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of*

1 *Detroit v. Grinnell Corp.*:

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

8 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) For Plaintiffs' counsel, the
9 fees here were wholly contingent in nature and the case presented far more risk than the usual
10 contingent fee case, which included the developing law under the PAGA, costs inherent in class
11 and PAGA litigation, as well as a potentially drawn-out battle with corporate defendants.

12 As such, the requested fee award in the amount of \$299,250.00 is fair and reasonable, and
13 should be awarded in its entirety.

14 **G. The Costs are Reasonable**

15 Additionally, Plaintiffs' counsel's request for reimbursement of litigation costs in the
16 amount of \$33,968.90 is also reasonable, especially in light of the fact that the Parties agreed that
17 Plaintiffs' counsel may seek up to \$35,000.00 as reimbursement for litigation costs under the
18 Settlement Agreement. (Tulyathan Decl. at ¶ 41, Ex. C; Settlement Agreement at ¶ 5.4.)
19 Diversity Law Group, P.C. incurred actual litigation costs in the amount of \$26,763.29 and
20 Lawyers *for* Justice, P.C. incurred actual litigation costs in the amount of \$7,205.61, totaling
21 \$33,968.90, which are costs that were directly incurred in the prosecution of this action,
22 including filing fees, service of process fees, Court fees, mediation fees, expert fees, and postage.
(Tulyathan Decl. at ¶ 31, Ex. C.) As such, the requested costs should be awarded as fair and
reasonable.

23 **H. The Settlement Administrator's Fees Should be Approved**

24 The Parties have agreed to pay actual costs of administration, which are estimated to be
25 \$10,500.00, to the Settlement Administrator, Phoenix Settlement Administrators, to administer
26 this settlement. (Settlement Agreement at ¶¶ 1.31, 1.32.) The Parties believe that the
27 administration fee is reasonable and should be approved.

28 **I. Plaintiffs' PAGA Representative Awards Should be Approved**

Courts have held that named plaintiffs in₂₆ class or private attorney general actions can

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

6 Here, Plaintiffs each seek \$5,000.00 as a PAGA Representative Award, which is intended
7 to compensate Plaintiffs for the efforts in prosecuting the case and time spent on this case,
8 including reviewing the various pleadings and documents in connection with this lawsuit.
9 (Declaration of Christiane Lange Applegate (“Lange Applegate Decl.”) at ¶ 8; Declaration of
10 Doraceli Morales (“Morales Decl.”) at ¶¶ 3-7.) Additionally, by serving as PAGA
11 representatives and filing the underlying lawsuits, which are public records, Plaintiffs also faced
12 significant risk in not being able to find prospective employment and/or face retaliation from
13 prospective employers. In this regard, future employers are less likely to hire and/or continue
14 employment with individuals who have filed employment-related lawsuits, particularly cases of
15 this nature. In light of Plaintiffs’ efforts, the service award should be awarded to Plaintiffs for
16 their commitment, dedication, and risks taken for this litigation.

17 Furthermore, the requested service award is consistent with awards approved in other
18 common fund cases. (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp.
19 294, 299-300 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer*
20 *Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three
21 incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F. Supp. 2d 907,
22 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas*
23 *Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class
24 representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068 (N.D. Cal. Jan. 27, 2007) 2007 U.S.
25 Dist. LEXIS 8476, *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class
26 action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 Incentive award
27 to class representative in ERISA case).)

28 As Plaintiffs’ requested service award is a modest amount, the Court should approve this

1 service award as requested.

2 **J. Notice to the LWDA Has Been Provided**

3 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion, the
4 Settlement Agreement, and Proposed Order to the LWDA's website. (Tulyathan Decl. at ¶ 42,
5 Ex. D.) In addition, Plaintiffs shall submit to the LWDA a copy of the Court's judgment and
6 order approving the Settlement Agreement within ten (10) days after entry of judgment or order.
7 (*Id.*)

8 **V. CONCLUSION**

9 Based on the above, Plaintiffs request that the Court approve the current PAGA
10 settlement.

11
12 DATED: March 11, 2024

DIVERSITY LAW GROUP, P.C.

13
14 By: /s/ Mai Tulyathan
15 Larry W. Lee
16 Max W. Gavron
17 Mai Tulyathan
18 Attorneys for Plaintiff Christiane Lange Applegate

19
20 DATED: March 11, 2024

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