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

NANCY MARES, individually, and on behalf)
of all other aggrieved employees,)

Plaintiff,)

vs.)

COMMUNITY INTEGRATED WORK)
PROGRAM, INC., a California corporation)
and DOES 1-20, inclusive,)

Defendants,)

Case No.: RG21111310

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

**[Filed concurrently with the Declaration of
Daniel J. Bass in Support Thereof]**

Date: July 21, 2022

Time: 9:00 a.m.

Dept: 24

Reservation ID: 673229811896

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

2 PLEASE TAKE NOTICE that on July 21, 2022 at 9:00 a.m., or as soon thereafter as
3 counsel may be heard in Department 24 of the Alameda Superior Court, Rene C. Davidson
4 Courthouse, located at 1225 Fallon St, Oakland, CA 94612, Plaintiff NANCY MARES
5 ("Plaintiff") will, and hereby does, respectfully moves for the Court's approval, pursuant to
6 Labor Code section 2699(l), of a settlement of Plaintiff's claims under the Labor Code Private
7 Attorneys General Act ("PAGA") as detailed in the Parties' Private Attorneys General Act
8 Settlement Agreement ("Agreement" or "Settlement" herein) attached as Exhibit 1 to the
9 Declaration of Daniel J. Bass filed concurrently in support hereof.

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

15 DATED: June 24, 2022

MAKAREM & ASSOCIATES, APLC

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18 Ronald W. Makarem
19 Daniel J. Bass
20 Attorneys for Plaintiff
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I. INTRODUCTION AND PROCEDURAL HISTORY

Plaintiff NANCY MARES (“Plaintiff”) and Defendant COMMUNITY INTEGRATED WORK PROGRAM, INC. (“Defendant”) (hereinafter collectively referred to as the “Parties”) pursuant to Labor Code section 2699(l), reached a negotiated settlement of Plaintiff’s claims under the Labor Code Private Attorneys General Act (“PAGA”) as detailed in the Parties’ Private Attorneys General Act Settlement Agreement (“Agreement” or “Settlement” herein) attached as Exhibit 1 to the Declaration of Daniel J. Bass (“Bass Decl.”) filed concurrently in support hereof.

Defendant was founded in 1987 as a California corporation utilizing regional centers to provide programs for developmentally disabled individuals. The stated goal of the company according to its founders was a desire to integrate developmentally disabled individuals into society. In this pursuit Defendant offers its customers social, advocacy, health/wellness and vocational training programs. Bass Decl. ¶ 3. Plaintiff was hired by Defendant in 2011, working for Defendant as a Job Coach Aide for nearly a decade until she ended her employment on March 31, 2021. *Id.* at ¶ 4.

B. The Parties' Settlement Agreement

6

1 settlement negotiations with the assistance of Hon. Jamie Jacobs-May and were eventually able
2 to privately negotiate a complete settlement of Plaintiff's PAGA claims ("Settlement" or
3 "Agreement" herein), for which the Parties now jointly seek this Court's approval under Labor
4 Code section 2699(1)(2). *Id.*

5 As part of the Settlement executed by the Parties, Defendant agreed to pay the Gross
6 Settlement Amount of \$425,000.00 in consideration for full and complete release of Plaintiff's
7 representative claims under PAGA. *Id.*, Exhibit 1. Under section 2699(i) of the California
8 Labor Code, aggrieved employees are entitled to recover 25 percent of the Net Settlement
9 Amount, currently estimated at \$66,068.51, with the remaining 75 percent, or \$198,205.52, to be
10 paid directly to the LWDA ("LWDA Payment").

11 The Parties have agreed that, upon entry of the Order approving this settlement, the
12 LWDA and any of Defendant's employees who worked between June 23, 2020 and May 13,
13 2022, will be barred from pursuing any action for civil penalties under PAGA against the
14 Released Parties stemming from any violations of the California Labor Code. The settlement
15 serves as a full and complete satisfaction of the PAGA claims asserted on behalf "PAGA
16 Settlement Group Members" defined as all persons employed by Defendant during the Covered
17 Period in non-exempt positions. Nothing in this motion, the Settlement Agreement, nor the
18 Proposed Order will prevent any current or former employee except for Plaintiff from claiming
19 or pursuing individual claims against Defendant for violations of the California Labor Code.

20 The Parties and their respective counsel agree that the settlement of the PAGA claims for
21 the consideration and on the terms set forth herein is fair, reasonable, and adequate, given all
22 known facts and circumstances and the risks inherent in litigation, including potential appellate
23 issues. In addition, Plaintiff, as a designated private attorney general, believes the settlement
24 amount entered into is in the best interest of the LWDA and that the PAGA Settlement is fair,
25 reasonable, and adequate, given the inherent risk of litigation.

The Plaintiff now requests the Court's approval of the Parties' Settlement Agreement of
this representative action entitled *Nancy Mares v. Community Integrated Work Program, Inc., et*

1 *al.*, which was assigned case number RG21111310 (the “Action”). Plaintiff’s counsel represents
2 that he provided the LWDA a file stamped copy of the Complaint within 10 days of its filing and
3 has agreed to provide the LWDA relevant portions of Settlement Agreement pursuant to Labor
4 Code § 2699(l)(1) and (2). (Bass Decl., ¶ 7.)

5 **II. LEGAL ANALYSIS**

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

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

17 Labor Code § 2699(l)(2) requires that any proposed settlement of a PAGA action be
18 submitted to the LWDA. Plaintiff will complete this requirement by concurrently submitting a
19 copy of the Settlement and this filing to the LWDA through its online portal. (Bass Decl. ¶ 8.)

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

21 Labor Code § 2699(l)(2) provides that the superior court shall review and approve any
22 settlement of any civil action filed pursuant to the PAGA. “Since a representative action under
23 PAGA allows an individual employee to seek monetary relief arising out of unlawful conduct
24 directed at a group of employees, PAGA actions bear a superficial resemblance to a type of class
25 action. There are, however, several factors distinguishing representative PAGA actions and class
actions. First, a unique feature of a representative action under PAGA is that it is ‘fundamentally

1 a law enforcement action designed to protect the public and penalize the employer for past illegal
2 conduct.’ (internal citation omitted). The purpose is not to collect damages on behalf of other
3 employees or provide restitution to victims of Labor Code violations.” *Cunningham v. Leslie's*
4 *Poolmart, Inc.*, 2013 U.S. Dist. LEXIS 90256, *16-17, 2013 WL 3233211 (C.D. Cal. June 25,
5 2013); *see Franco v. Athens Disposal Co., Inc.*, 171 Cal. App. 4th 1277, 1300 (2009)
6 (“Restitution is not the primary object of a PAGA action, as it is in most class actions.”).

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

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

14 The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the
15 same time that it is submitted to the Superior Court for review and approval. Lab. Code §
16 2699(l)(2). However, the Labor Code does not authorize the LWDA to interfere with, obstruct,
17 object, or otherwise impede a request for approval of a PAGA settlement. Indeed, the time for
18 the LWDA to comment on a settlement is during the short window in which it must inform the
19 aggrieved employee that it declines to investigate. Lab. Code § 2699.3(a)(2)(B). Once that
20 window shuts, the aggrieved employee is deputized to act on behalf of the LWDA in a civil
21 action. The Labor Code is clear that all that is required to obtain court approval of a PAGA
22 settlement is for the proposed settlement to be sent to the LWDA. Lab. Code § 2699(l)(2).

23 Here, the LWDA had opportunity to investigate and obtain civil penalties by citation after
24 Plaintiff submitted her PAGA notice to the LWDA. (Bass Decl., Ex. 2). “If the [LWDA] intends
25 to investigate the alleged violation, it shall notify the employer and the aggrieved employee or
representative by certified mail of its decision within 65 calendar days of the postmark date of
the notice.” Lab. Code § 2699.3(a)(2)(B). “Within 120 calendar days of that decision, the

1 [LWDA] may investigate the alleged violation and issue any appropriate citation.” *Id.* Here, the
2 LWDA chose not to investigate the alleged violation. All that is required now regarding LWDA
3 involvement is for the requisite documentation to be submitted to the LWDA pursuant to Labor
4 Code § 2699(1)(2). That has been done. (Bass Decl. ¶¶ 7-8.).

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

6 Plaintiff conducted a thorough investigation into the facts of the Action, including by
7 reviewing Defendant’s production of responsive documents and information requested for
8 mediation. Altogether, Defendant produced over a thousand pages of documents and
9 information related to the PAGA claim. Plaintiff’s counsel analyzed this data, including
10 substantial time and payroll records, as well as wage statements in order to evaluate the potential
11 damages and for respective counsel to engage in meaningful settlement discussions. Plaintiff’s
12 counsel received, among other things, the following information and evidence with which to
13 properly evaluate both her individual claim and the PAGA claim: (1) information bearing on the
14 number of “aggrieved employees” and the number of pay periods during the PAGA period; (2)
15 wage statements for Plaintiff and all of the aggrieved individuals; (3) the corresponding time
16 records for Plaintiff and all of the aggrieved individuals; and Defendant’s company policies.
17 Plaintiff’s counsel closely reviewed the documents and data provided by Defendant to determine
18 the amount of potential PAGA penalties and other remedies potentially available to Plaintiff and
19 the aggrieved individuals based on the claims alleged in the Action.

20 As a result of this investigation, Plaintiff learned that there are a maximum of 440
21 “PAGA Settlement Group Members”, including Plaintiff, throughout the State of California for
22 the period between June 30, 2020 and May 31, 2022 (the “Covered period”). (Bass Decl. ¶ 10.).
23 However, due to the pandemic and the Shelter-in-Place Order, Defendant laid off well over a
24 hundred employees during the Covered Period so approximately one-third of the employees were
25 not aggrieved individuals during this time. (*Id.*) The amount of the settlement equals an
approximate penalty of \$4.88 per aggrieved employee per pay period. (*Id.*)

1 This settlement is fair and reasonable considering the probability of recovery in this
2 matter and the role of judicial discretion in right-sizing any penalty amount. For PAGA claims,
3 the courts are not obligated to impose the maximum penalties and have discretion to lower the
4 penalties. Specifically, Labor Code §2699(e)(2) provides that “a court may lower penalties if it
5 finds that a higher amount would result in an award that is “unjust, arbitrary and oppressive or
6 confiscatory.” In the present action, Defendant provided substantial evidence that an award of
7 penalties would be unjust, arbitrary and oppressive or confiscatory and any potential violations
8 were immediately corrected upon receiving Plaintiff’s PAGA notice.

9 In addition, the settlement amount is fair and reasonable in light of applicable case law.
10 See *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1136 (2012) (“In
11 summary, the trial court stated that ... the facts and circumstances that the trial court specified in
12 its statement of decision in support of the finding, the trial court reasonably determined that
13 imposition of the maximum statutory penalty amount against defendants would be unjust — if
14 not also arbitrary, oppressive, or confiscatory.”); see also *Carrington v. Starbucks Corp.*, 30 Cal.
15 App. 5th 504, 529 (2018) (“Although the trial court may have disagreed with Starbucks
16 regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into
17 consideration when it imposed the penalty, as evident from the significant reduction of the \$50
18 maximum penalty (per initial violation) to the penalty imposed—only \$5 per initial violation.”).

19 Furthermore, PAGA settlements of amounts significantly lower have been approved. See,
20 e.g., *Navarro v. Ordaz Cultured Marble & Onyx, Inc.* (N.D. Cal. Feb. 23, 2015) No. C 13-00847
21 LB, Doc No. 71, slip op. at *2 (approving \$20,000 PAGA settlement for 13 aggrieved
22 employees); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at
23 *14 (approving PAGA penalties of \$10,000 for 2,055 class members and aggrieved employees);
24 *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving
25 PAGA settlement payment of \$10,000 for approximately 1,869 class members and aggrieved
employees); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
at *1 (approving \$10,000 PAGA settlement payment for approximately 2,7852 class members

1 and aggrieved employees)). Here, in contrast, this settlement amount on behalf of the aggrieved
2 employees and the state is significantly more than previously approved settlements for similar
3 claims.

4 **E. Attorneys' Fees and Costs in the Settlement are Fair and Reasonable**

5 In the Settlement, Defendant agreed, subject to Court approval, to pay Plaintiff's Counsel
6 an award of reasonable attorneys' fees in the amount of \$140,250 and \$20,000 in costs. To date,
7 Plaintiff's Counsel has incurred \$8,225.97 in litigation costs. (Bass Decl., ¶ 12, Ex. 4).¹ In terms
8 of their actual time spent on the matter, Plaintiff's Counsel will have collectively spent more than
9 142.30 hours, and multiplying the hours by their hourly rates, Plaintiff's Counsel's incurred fees
10 exceed \$104,775. (Bass Decl., ¶¶ 12-13, Ex. 4). Plaintiff's Counsel anticipate spending
11 additional time working with the Settlement Administrator through the disbursement and
12 accounting process. (Bass Decl., ¶ 13).

13 Though there are two methods for determining the appropriateness of a fee award, the
14 starting point for determining a fees' appropriateness is to assess the amount of time spent by the
15 attorneys working. In *Lealao v. Beneficial California*, the court held that:

16 The starting point of every fee award, once it is recognized that the court's role in
17 equity is to provide just compensation for the attorney, must be a calculation of
18 the attorney's services in terms of the time he has expended on the case.

19 Anchoring the analysis to this concept is the only way of approaching the problem
20 that can claim objectivity, a claim which is obviously vital to the prestige of the
21 bar and the courts. [citation omitted]

22 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Plaintiff's Counsel's actual fees incurred
23 litigating this case will exceed \$104,775. (Bass Decl. ¶ 13). Beyond a simple review of
24 Plaintiff's Counsel's hours worked, the fee award requested comports with attorneys' fee awards
25 issued by other courts under both the "common fund" and "lodestar" methods of shaping fees.

Because the requested award is well within the typical multiplier approved by California
courts, and because it is fully supported by the factors that California courts consider in

¹ No more than an additional \$9,000 will be paid to the settlement administrator to effectuate the
settlement and is currently estimated to cost \$7,250. Bass Decl. ¶ 28.

determining the reasonableness of attorney fee awards in similar cases, Plaintiff's Counsel respectfully submit that their request for \$140,250 in attorneys' fees is appropriate.

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

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

California courts generally recognize two standard methods for calculating attorneys' fee awards in common fund settlements. The more prevalent "percentage of the fund" (also known as the "common fund" or "common benefit") method calculates attorneys' fees based on a percentage of the common benefit bestowed. The "lodestar-plus-multiplier" method uses counsel's "lodestar" as a basis - determined by multiplying the hours counsel expended by their hourly rates - which the Court may then enhance by a multiplier, taking into account a variety of factors. The "lodestar-plus-multiplier" method is often considered to cross-check the propriety of the "common fund" award.

1. The "Common Fund" Doctrine

The California Supreme Court has held it is advisable for trial courts to employ the "common fund" doctrine to award attorneys' fees and costs to counsel in similar actions, where litigants proceeding in a representative capacity have secured a monetary settlement or judgment on behalf of others. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court has specifically endorsed the use of the percentage of the fund method in paradigmatic common fund

1 cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the ‘common
2 fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed...”]; *see also*,
3 *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.*, 557 F.2d
4 759, 769 (9th Cir.1977).

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

12 Various federal courts have made similar attorneys’ fee awards of a similar or greater
13 percentage to that requested in this case. (*See, e.g., In re Pacific Enters. Sec. Litig.* (9th Cir.
14 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*
15 *Sec. Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs’ counsel 32.8% of the
16 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526
17 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*
18 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199
19 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y.
20 1981) 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles*
21 (1974) 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery
22 achieved).

23 In fact, fees amounting to one-third of the settlement fund are often awarded. In
24 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable
25 Steven Czuleger awarded a 40% attorney fee request in an overtime-exemption action; in

1 *Bushnell v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald
2 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,
3 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded
4 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3),
5 the court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-
6 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour action; and
7 in both *Rippee v. Boston Market Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA))
8 and *Barile v. Boston Market Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the
9 Honorable Barry Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour action.

10 In this case, one-third (1/3) of the original Gross Settlement Amount in attorney's fees is
11 fair and reasonable in light of the substantial time spent by Plaintiff's Counsel litigating this case
12 and the substantial benefit to be received by the state and the aggrieved employees. Moreover,
13 the award is approved by the Plaintiff and Defendant. Accordingly, the fee request here is
14 warranted and should be granted.

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

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

21 The lodestar method requires that a trial court first determine a "lodestar" figure based on
22 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
23 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
24 figure is over \$104,775. The lodestar figure may then be increased by the application of a
25 "multiplier." *Id.* This settlement comes after protracted litigation, and Plaintiff's Counsel has

provided this Court with both a summary of their hourly rates and hours billed in this matter that attest to their diligent efforts. To summarize the lodestar, Plaintiff's Counsel's time summaries show that they worked over 142.30 hours on this case, not even including all hours spent on this filing, and which will occur through the distribution and accounting process thereafter. (Bass Decl., ¶¶ 12-14). Based on their hourly rates, the lodestar calculation produces \$104,775 in fees. *Id.*

G. Plaintiff's Counsel's Costs Are Reasonable

In the course of this litigation, Plaintiff's Counsel have incurred costs totaling \$8,225.97 and will incur additional expenses through the completion of the disbursement and accounting process (including, but not limited to, filing this Motion and appearance at the hearing, and other appearances and communications regarding final accounting). Such litigation-related costs are reimbursable in representative actions. *In re United Energy Corp. Sec. Litig.*, 1989 U.S. Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting Newberg, Attorney Fee Awards § 2:19 (1987)].

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

H. The Proposed Incentive Payment to the Plaintiff is Reasonable

The Parties have agreed to an Incentive Payment of no more than \$5,000 to Plaintiff. The service award is proper for several reasons. First, the award is proper considering that Plaintiff spent a substantial amount of her own time to ensure that the representative claims could proceed and to ensure that the state and aggrieved employees members received a benefit in this case. (Bass Decl., ¶¶ 15-20). Plaintiff worked with counsel to assist in this case. (Bass Decl., ¶18). Specifically, Plaintiff met with her attorneys before the lawsuit was filed and discussed her

1 experiences working for Defendants at length while searching for all documents she had related
2 to her employment with Defendants. *Id.* During the litigation Plaintiff remained in close contact
3 with her counsel and engaged in numerous telephone conversations regarding the claims in the
4 case and Defendant’s defenses to those claims. *Id.* Plaintiff also had numerous conversations
5 with her counsel regarding the potential of the lawsuit, as well as the terms of the ultimate
6 Settlement Agreement, of which Plaintiff reviewed the drafts. *Id.* It is estimated that over the
7 course of the lawsuit, Plaintiff spent 50-60 hours working on the case for the benefit of both
8 herself, the state, and the other aggrieved employees. Declaration of Nancy Mares (“Mares
9 Decl.”) ¶ 7.

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

13 Lastly, courts have frequently approved substantial incentive payments to representatives
14 in similar lawsuits. See *In re Southern Ohio Correctional Facility*, *supra*, 175 F.R.D. at 272
15 (recognizing that “[c]ourts routinely approve incentive awards to compensate named plaintiffs
16 for the services they provided and the risks they incurred during ... litigation.”); *Ingram v. The*
17 *Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (\$300,000 incentive award to each named
18 plaintiff); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-
19 251 (S.D. Ohio 1991) (incentive payments of \$50,000); *In re Dunn & Bradstreet Credit Services*
20 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting
21 to \$35,000 to \$55,000 for each representative); see also, *Van Vranken v. Atlantic Richfield Co.*,
22 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re v.*
23 *Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of
24 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
25 settlement to be unreasonable).

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

5 **III. CONCLUSION**

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

10 DATED: June 24, 2022

MAKAREM & ASSOCIATES, APLC

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13 Ronald W. Makarem
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