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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

DENISE WILLIAMS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

ADVANCED CLINICAL LLC, an Illinois
limited liability company; ADVANCED
RESOURCES, L.L.C., a California limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 21-CIV-03494

*(Assigned to the Honorable Nancy L. Fineman,
Dept. 4, for all purposes)*

**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: April 1, 2025

Time: 2:00 p.m.

Place: Dept. 4

FAC Filed: August 13, 2021

Jury Trial Date: None set

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

2 **PLEASE TAKE NOTICE** that on April 1, 2025, at 2:00 p.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Nancy L. Fineman, judge presiding, in
4 Department 4 of the above referenced Court located at 400 County Center, Redwood City,
5 California 94063, Plaintiff Denise Williams (“Plaintiff”) will seek an Order approving the
6 concurrently filed Joint Stipulation of PAGA Settlement and Release, pursuant to the procedures
7 set forth in Labor Code § 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”).

8 This motion will be based on this notice of motion, the attached memorandum of points
9 and authorities, the accompanying declarations of Larry W. Lee, Mai Tulyathan, and Plaintiff
10 Denise Williams, the records and file herein, and on such other evidence as may be presented at
11 the hearing of the motion.

12
13 Dated: December 16, 2024

DIVERSITY LAW GROUP

14
15 By: 

16 Larry W. Lee
17 Mai Tulyathan
18 Attorneys for Plaintiff and the Aggrieved
19 Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*,
4 Plaintiff Denise Williams (“Plaintiff”) hereby moves the Court for an order approving the non-
5 reversionary PAGA settlement as set forth in the concurrently filed Joint Stipulation of PAGA
6 Settlement and Release (the “Settlement Agreement” or “Settlement”).¹

7 This lawsuit is premised upon Defendant Advanced Clinical LLC’s (“Defendant”) alleged
8 violation of California Labor Code § 2698 *et seq.*, the Private Attorneys General Act of 2004
9 (“PAGA”).² Specifically, Plaintiff alleges that Defendant violated the PAGA by failing to provide
10 off-duty rest breaks, failing to provide accurate itemized wage statements, and failing to reimburse
11 business expenses to its employees. Based on these violations, Plaintiff sought civil penalties under
12 the PAGA on behalf of the State of California and other similarly aggrieved employees.

13 As will be explained in further detail below, based on the California Supreme Court’s opinion
14 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles,*
15 *LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as called for under the
16 PAGA³ on behalf of the State of California and other similarly situated aggrieved employees, without
17 seeking class certification or meeting the requirements of class certification (*i.e.*, numerosity,
18 typicality, commonality, and adequacy). As such, while the PAGA settlement reached herein is on
19 behalf of the State of California and other aggrieved employees, the usual two-step preliminary and
20 final approval process is not required. Rather, all that is required is an approval by this Court of any

21 _____
22 ¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the
23 Settlement Agreement. The Settlement Agreement is attached as **Exhibit B** to the Declaration of Mai
Tulyathan (“Tulyathan Decl.”).

24 ² On December 12, 2024, the Parties submitted a stipulation to dismiss Advanced Resources, L.L.C.
25 from this Action, without prejudice. Advanced Resources, L.L.C. is not a party to the Settlement
26 Agreement, and the release covered by the Settlement Agreement does not include Advanced
Resources, L.L.C. (Settlement Agreement ¶ 26.)

27 ³ The PAGA statute was recently amended. However, the new revision of the statute only applies “to
28 a civil action brought on or after June 19, 2024.” Labor Code § 2699(v)(1). Accordingly, Plaintiff cites
to the subsections of the PAGA as set forth in the applicable version of the statute.

1 settlement of the PAGA claims by the Parties.

2 The Parties have reached such a PAGA settlement, and now seek this Court’s approval of
3 their settlement which provides for the payment of civil penalties under the PAGA. As demonstrated
4 below, the proposed settlement warrants the Court’s approval. The settlement was reached after
5 investigation and discovery (formal and informal discovery), which includes the exchange of
6 information regarding Defendant’s payroll practices, the size of the PAGA group, and the number of
7 pay periods at issue. The Parties also participated in private mediation with wage-and-hour mediator
8 Michael J. Loeb, Esq. in March 2022, but did not reach a settlement. The Parties resumed litigation
9 and discovery thereafter. In June 2024, the Parties resumed settlement negotiations, and agreed to
10 this settlement after months of arm’s length negotiations.

11 Pursuant to the terms of the Parties’ proposed Settlement Agreement, Defendant will pay the
12 total amount of \$585,000.00 (the “Gross Settlement Amount”). This amount encompasses a
13 settlement of PAGA claims asserted in this lawsuit, an enhancement award to Plaintiff in the amount
14 of \$10,000.00, attorneys’ fees to Plaintiff’s counsel (“PAGA Counsel”) in the amount of
15 \$195,000.00, PAGA Counsel’s litigation costs of up to \$20,000.00⁴, and settlement administration
16 costs in an amount not to exceed \$9,000.00.

17 Assuming the Court grants the foregoing amounts in full, the Net Settlement Amount is
18 estimated to be approximately \$360,261.32. (Settlement Agreement at ¶ 13; Tulyathan Decl. at ¶ 19.)
19 Pursuant to the PAGA, 75% of the Net Settlement Amount, or \$270,195.99, will be paid to the Labor
20 & Workforce Development Agency (“LWDA”), and 25% of the Net Settlement Amount, or
21 \$90,065.33, will be paid to Aggrieved Employees⁵. (Settlement Agreement at ¶ III.7.) The proposed
22 settlement also has a limited release for Aggrieved Employees. The proposed release for the
23 Aggrieved Employees is narrowly tailored to release only claims for civil penalties under PAGA
24 arising out of the facts alleged or that could have been alleged in this lawsuit predicated on violations
25

26 ⁴ As further discussed below, PAGA Counsel seeks reimbursement of the actual litigation costs of
27 \$10,738.68. (Tulyathan Decl. at ¶ 43.)

28 ⁵ The term “Aggrieved Employee” means all current and former employees of Defendant in the State
of California who were paid wages at any time during the period of June 1, 2020, through July 4, 2021.
(Settlement Agreement ¶ 2.)

of Labor Code §§ 201-203, 226(a), 226.7, and 2802, and does not release any other claims.
(Settlement Agreement at ¶ 25.)

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

II. PROCEDURAL BACKGROUND

A. The Allegations.

On June 1, 2021, Plaintiff submitted her written notice under Labor Code § 2699.3 (the “PAGA Notice”) to the California Labor & Workforce Development Agency (“LWDA”) and Defendant. (Tulyathan Decl. at ¶ 2, Ex. A.) As set forth in the PAGA Notice, Plaintiff alleged that Defendant violated Labor Code §§ 201-203, 226.7, 226(a), and 2802. (*Id.*) On June 28, 2021, Plaintiff filed her class action complaint in the Superior Court of California, County of San Mateo, asserting four causes of action for: (1) violation of Labor Code § 226.7; (2) violation of Labor Code § 226; (3) violation of Labor Code § 2802; and (4) violation of Business and Professions Code § 17200, *et seq.* ***Error! Bookmark not defined.*** (the “Action”). (*Id.*)

On July 7, 2021, Defendant submitted a letter to the LWDA asserting that it cured the wage statement defects under Labor Code § 226(a). (*Id.* at ¶ 3.) After further responses from Plaintiff and Defendant to the LWDA, on August 6, 2021, the LWDA issued a decision concluding that Defendant had cured the wage statement violation under Labor Code § 226(a)(8), but not the alleged violation of Labor Code § 226(a)(7). (*Id.*) The Parties also met and conferred regarding arbitrability based on arbitration agreement executed by Plaintiff. (*Id.* at ¶ 4.)

After meet and confer discussions, on August 13, 2021, Plaintiff filed her First Amended Complaint alleging only a single cause of action for violation of the PAGA, Labor Code § 2698, *et seq.*, predicated on violations of Labor Code § 201-203, 226, 226.7, and 2802. (Tulyathan Decl. at ¶ 5.) Specifically, Plaintiff alleged that the wage statements issued by Defendant failed to identify any employee identification number and/or the last four digits of the employees’ social security number, in violation of Labor Code § 226(a)(7). Plaintiff also alleges that Defendant failed to provide duty-free rest periods in violation of Labor Code § 226.7. In particular, Plaintiff alleges that because of

1 staffing issues, Plaintiff and aggrieved employees had to remain on-duty during the rest breaks and
2 continue working through their shifts. Plaintiff also alleges that Defendant failed to reimburse
3 business expenses in violation of Labor Code § 2802. Finally, as a result of such violations,
4 Defendant violated Labor Code §§ 201-203 by not paying employees all of their wages owed at
5 separation of employment due to the unpaid rest period premiums. (*Id.* at ¶ 6.)

6 **B. History of Litigation and Settlement Negotiations.**

7 After the filing of the First Amended Complaint, the Parties agreed to engage in mediation.
8 (*Id.* at ¶ 7.) On March 28, 2022, the Parties participated in a private mediation with wage-and-hour
9 mediator Michael J. Loeb, Esq. The Parties did not reach a settlement at mediation, and resumed
10 litigation thereafter. (*Id.*)

11 Plaintiff propounded written discovery, including Requests for Production of Documents and
12 Special Interrogatories in June 2022. (Tulyathan Decl. at ¶ 8.) In July 2022, Defendant objected to
13 Plaintiff's written discovery, and indicated its intention to file a motion to compel arbitration and stay
14 discovery based on the Supreme Court's ruling in *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct.
15 1906 (2002). (*Id.* at ¶ 9.) Plaintiff ultimately filed motions to compel discovery responses on August
16 4, 2023. The Parties continued to meet and confer regarding the discovery, and the Court issued its
17 ruling on the discovery motions on November 14, 2023. (*Id.* at ¶ 10.)

18 In connection with the Parties' meet and confer discussions surrounding the depositions of
19 Defendant's Person(s) Most Knowledgeable, the Parties agreed to resume settlement negotiations.
20 (*Id.* at ¶ 11.) In connection with discovery and the Parties' settlement discussions, Defendant
21 provided Plaintiff with information pertaining to the size of the PAGA group, the number of wage
22 statements and pay periods at issue, as well as Defendant's payroll policies. (*Id.*) The data provided
23 allowed Plaintiff's counsel to analyze Defendant's potential liability and exposure. (*Id.*)

24 Following arm's length negotiations between the Parties conducted over the course of several
25 months, the Parties were able to reach an agreement in principle. (Tulyathan Decl. at ¶12.) The
26 Parties then finalized the settlement terms in the concurrently filed Settlement Agreement, a true and
27 correct copy of which is attached as **Exhibit B** to the Declaration of Mai Tulyathan. The settlement
28 is the result of informed and non-collusive arm's length negotiations.

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

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

4 **A. The Aggrieved Employees**

5 The aggrieved employees affected by this Settlement include “all current and former
6 employees of Advanced Clinical in California who were paid wages at any time from June 1, 2020,
7 through July 4, 2021.” (Settlement Agreement ¶ II.2.) The PAGA Period is defined as the period of
8 June 1, 2020, through July 4, 2021.⁶ (*Id.* ¶ II.20.) Based upon Defendant’s records, there are 1,029
9 Aggrieved Employees during the PAGA Period. (Settlement Agreement ¶ III.2.)

10 **B. Settlement Sum and Allocation**

11 The Settlement Agreement requires Defendant to pay the Gross Settlement Amount of One
12 Hundred Twenty-Five Thousand Dollars (\$585,000.00). (Settlement Agreement ¶ III.2.) The terms
13 of the Settlement Agreement provide for an award of attorneys’ fees not to exceed one-third of the
14 Gross Settlement Amount, or \$195,000.00, and reimbursement of litigation costs of up to \$20,000.00
15 to PAGA Counsel (Settlement Agreement ¶ III.6);⁷ enhancement payment to Plaintiff in the amount
16 of \$10,000.00 for serving as the PAGA representative (Settlement Agreement ¶ III.4); and settlement
17 administration costs to the Settlement Administrator of up to \$9,000.00 (Settlement Agreement ¶
18 III.5.).

19 The balance of the Gross Settlement Amount remaining after deduction of the amounts above
20 will be available for distribution to the LWDA and Aggrieved Employees (the balance of the Gross
21 Settlement Amount remaining after the above deductions shall be referred to as the “Net Settlement
22 Amount”). (Settlement Agreement ¶¶ III.7.) Pursuant to the PAGA, seventy-five percent (75%) of
23 the Net Settlement Amount, or approximately \$270,195.99, will be distributed to the LWDA. (*Id.* ¶
24 III.7; Tulyathan Decl. at ¶ 19.) The remaining twenty-five percent (25%) of the Net Settlement
25 Amount, or approximately \$90,065.33, will be distributed to the Aggrieved Employees. (Settlement

26 _____
27 ⁶ Defendant amended its wage statement practices as of July 4, 2021, to identify the necessary
information under Labor Code § 226(a)(7). (Tulyathan Decl. at ¶ 17.)

28 ⁷ As explained below, PAGA Counsel seeks reimbursement of actual litigation costs in the amount of
\$10,738.68.

1 Agreement ¶ III.7; Tulyathan Decl. at ¶ 20.)

2 The portion of the Net Settlement Amount distributed to the Aggrieved Employees will be
3 distributed on a *pro rata* basis, based on the number of pay periods in which Aggrieved Employees
4 were paid wages during the PAGA Period. (Settlement Agreement ¶ III.9; Tulyathan Decl. at ¶ 21.)

5 Defendant has represented that there are 1,029 Aggrieved Employees. (Tulyathan Decl. at ¶
6 22.) Based thereon, on a raw average, each PAGA Group Member may potentially recover
7 approximately **\$87.53** from the portion of the Net Settlement Amount attributable to the Aggrieved
8 Employees. (*Id.*) The amount any particular Aggrieved Employee will be entitled to recover will
9 fluctuate depending on the number of pay periods he or she was paid wages during the PAGA Period.
10 This is fair, as it directly allocates greater penalties to individual Aggrieved Employees who have
11 allegedly suffered greater harm. (*Id.*)

12 Funds from uncashed individual settlement payment checks will be distributed to the cy pres
13 beneficiary: Legal Aid At Work, a non-profit legal services organization that provides legal services
14 and policy advocacy for and on behalf of California low-income individuals and/or low-wage
15 earners. (Settlement Agreement ¶ III.16; Tulyathan Decl. at ¶ 45.)

16 As part of the Settlement Agreement, Defendant does not object to PAGA Counsel's request
17 for attorneys' fees of one-third (1/3) of the Gross Settlement Amount, *i.e.*, One Hundred Ninety-Five
18 Thousand Dollars (\$195,000.00), plus reimbursement of litigation costs not to exceed Twenty
19 Thousand Dollars (\$20,000.00), subject to the Court approving this Settlement. (Settlement
20 Agreement ¶ III.6.) Any portion of the attorneys' fees and costs not approved by the Court will be
21 added to the Net Settlement Amount. (*Id.*) Also, as part of the Settlement Agreement, Defendant
22 does not object to Plaintiff's request for a service award of Ten Thousand Dollars (\$10,000.00), in
23 recognition for Plaintiff's efforts in obtaining the benefits of the settlement on behalf of other
24 purported aggrieved employees. (*Id.* ¶ III.4.)

25 Finally, the Settlement Agreement provides for the payment of the fees and expenses
26 reasonably incurred by the Settlement Administrator. (*Id.* ¶ III.5) The Parties have agreed to retain
27 Phoenix Settlement Administrators to administer the Settlement, with the administration costs
28 estimated not to exceed \$9,000.00. (*Id.* ¶¶ III.5; Tulyathan Decl. at ¶ 23.)

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

2 In exchange for the payments described above, Plaintiff and the Aggrieved Employees will
3 release the Released Parties from the following limited release:

4 [A]ll claims for civil penalties under the PAGA which reasonably arise
5 out of or are reasonably related to the factual allegations alleged in the
6 operative First Amended Complaint in the Action, for penalties pursuant
7 to PAGA based on violations of Labor Code §§ 201-203, 226(a), 226.7,
8 and 2802, that accrued during the PAGA Period. The Released PAGA
9 Claims does not apply to settle or release any claims against Advanced
10 Resources, L.L.C.

11 (Settlement Agreement ¶ II.25.) Based thereon, the Settlement does not release Defendant from
12 violations of any predicate statutes other than PAGA and will not affect a waiver of individual claims
13 by Aggrieved Employees against Defendant for any of the underlying Labor Code claims. (*Id.*) The
14 release is expressly limited to claims for civil penalties under the PAGA pertaining to the violations
15 of Labor Code §§ 201-203, 226(a), 226.7, and 2802 that accrued during the PAGA Period. (*Id.*) The
16 release applicable to Aggrieved Employees expressly excludes claims outside of the PAGA Period,
17 and excludes non-PAGA claims or any individual claims. (*Id.*)

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

19 **A. PAGA Overview**

20 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the
21 LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of
22 the California labor laws and to obtain penalties that previously could only be obtained by the State.
23 The PAGA was enacted because the Legislature determined that it was “in the public interest to allow
24 aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code
25 violations,” since the State had not been able to fully or adequately enforce its labor laws. *Arias v.*
26 *Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa- Hernandez v. Cjaders Foods, Inc.*, 2010 WL
27 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s declared purpose is to supplement enforcement
28 actions by public agencies, which lack adequate resources to bring all such actions themselves.
Unlike class actions, these civil penalties are not meant to compensate unnamed employees because
the action is fundamentally a law enforcement action.”).

 Labor Code § 2699(a) states that any Labor Code provision “that provides for a civil penalty

1 to be assessed and collected by the [LWDA] may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved employee” means
4 “any person who was employed by the alleged violator and against whom one or more of the alleged
5 violations was committed.” Cal. Lab. Code § 2699, subd. (c). Prior to commencing an action, the
6 allegedly aggrieved employee must provide notice to the LWDA and the employer setting forth the
7 “specific provisions of [the Labor Code] alleged to have been violated, including the facts and
8 theories to support the alleged violation.” Cal. Lab. Code § 2699.3, subd. (a)(1). If the LWDA decides
9 not to investigate the allegations or issue a citation to the employer, the proposed representative
10 plaintiff is entitled to commence a PAGA action after 65 days. Cal. Lab. Code § 2699.3, subd. (a)(2).

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

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

21 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement is to
22 determine whether it is within the “range of reasonableness,” and thus whether notice to the class of
23 the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are
24 worthwhile. *See* Alba Conte & Herbert B. Newberg (4th ed. 2002 and Supp. 2004) 4 *Newberg on*
25 *Class Actions* § 11.25 *et seq.* and § 13.64 (“*Newberg*”). The “judge must make a preliminary
26 determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct
27 the preparation of notice of the certification, proposed settlement, and date of the final fairness
28 hearing.” (*Manual for Complex Litigation, Fourth* (Fed. Jud. Ctr., 4th ed. 2004) § 21.632.) To make

1 the preliminary fairness determination, courts may consider several relevant factors, including “the
2 strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation;
3 the risk of maintaining class action status through trial; the amount offered in settlement; the extent of
4 discovery completed and the stage of the proceedings; [and] the experience and views of counsel....”
5 *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

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

12 Notably, unlike the class action settlement approval process, there is also no statutory
13 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code § 2699,
14 subd. (1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
15 they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if any,
16 reached between the parties.” *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. 2010) 2010 WL
17 1340777, p. *13.)

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

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

28 The Settlement is also consistent with the State’s public policy favoring resolution of

1 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
2 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
3 parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial
4 manner without court intervention into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu*
5 (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal.* (1992) 3 Cal. 4th 273,
6 277- 278).

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

8 The limited scope of the release supports approval of this PAGA settlement. If approved, the
9 Settlement would release the Released Parties from PAGA claims predicated on the underlying
10 violations of Labor Code §§ 201-203, 226(a), 226.7, and 2802 only, that accrued during the PAGA
11 Period, and nothing more. (Settlement Agreement ¶¶ I.25, III.17.) The Settlement would *not* impact
12 any other aggrieved employees’ ability to pursue PAGA claims predicated on other allegations aside
13 from those raised in this lawsuit or any Labor Code claims not predicated on the PAGA.

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

22 Accordingly, the aggrieved employees will be subject to only a limited release strictly
23 confined to the civil penalties available under PAGA for violation of Labor Code §§ 201-203, 226(a),
24 226.7, and 2802 that accrued during the PAGA Period. (Settlement Agreement ¶¶ I.25, III.17.) The
25 release is therefore appropriately tailored and the settlement should be approved.

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

28 Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in

litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the still-developing law under PAGA. (Tulyathan Decl. at ¶ 29.)

1. Plaintiff's Claims are Contested

Plaintiff asserts that her representative PAGA claims are based on the allegations that Defendant failure to: (a) provide proper off-duty rest breaks, or provide rest period premium compensation in lieu thereof, in violation of Labor Code §§ 201-203 and 226.7; (b) provide accurate itemized wage statements, in violation of Labor Code § 226(a); and (c) reimburse business expenses, in violation of Labor Code § 2802. (*Id.* at ¶ 28.)

Defendant has denied violations of any applicable laws and denied liability for any claims asserted in the Action. (*Id.* at ¶ 30.) In this regard, Defendant argued that it has a compliant rest break policy. With respect to the expense reimbursement claim, Defendant contends that employees were provided with a laptop to utilize for work-related purposes, such that employees did not need to utilize their own cell phones. For the wage statements, Defendant argued that the alleged violation is a technical one and the Court has discretion under PAGA to reduce the maximum allowable PAGA penalties, or to decide not to award PAGA penalties at all. Furthermore, Defendant has indicated that it has since revised its wage statements to comply with Section 226(a)(7), and thus this limits any potentially recoverable PAGA penalties to the State of California and aggrieved employees. (*Id.*)

Should Defendant have prevailed on its arguments or defenses above, the State of California and aggrieved employees would have been left with minimal or zero recovery. (*Id.*)

2. Recovery of Penalties After Trial

Defendant represents that there was a total of approximately 16,381 pay periods where wages were paid to Aggrieved Employees between June 1, 2020 through July 4, 2021. Therefore, pursuant to the PAGA, Plaintiff calculated total exposure to be as high as \$7,371,480.00 if the Court were to award a \$250 penalty for each pay period encompassed by the proposed settlement where a wage statement was issued and a \$100 penalty for the other violations. (Tulyathan Decl. at ¶ 26; *see Raines v. Coastal Pac. Food Dist.* (2018) 23 Cal. App. 5th 667.) The breakdown is as follows:

- \$4,095,280.00 for PAGA for wage statement violations;
- \$1,638,100.00 for PAGA for the rest period violations;

- \$1,638,100.00 for PAGA 2802 violations.

(Tulyathan Decl. at ¶ 26.) This analysis “stacks” PAGA penalties, although Plaintiff would expect a more modest maximum civil penalty recovery of \$1,638,100.00 if these civil penalties were not assessed at a rate of multiple violations per employee pay period (based on a \$100 penalty rate). (*Id.* at ¶ 27.)

However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of 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, 517, 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. Upon review, the Court of Appeal found such a 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 and oppressive, or confiscatory”).

Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendant could (and would) make a compelling argument to the contrary. (Tulyathan Decl. at ¶ 30.)

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 case law and settlements, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Settlement for a 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.

Here, the total amount of PAGA penalties range from \$1,638,100.00 to \$7,371,480.00. (Tulyathan Decl. at ¶ 32.) The Gross Settlement Amount is \$585,000.00. Thus the Gross Settlement

1 Amount represents between approximately **35% to 7.94%** of the potential penalties at issue. (*Id.*)
2 The Gross Settlement Amount of \$585,000.00 exceeds PAGA settlements that courts have approved
3 in other cases, when considered as a percentage of the overall settlement value of the case.
4 (Tulyathan Decl. at ¶ 32; *see, e.g., Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL
5 928133, *9 (approving total PAGA allocation that was 0.49% of \$408,420.32 gross settlement;
6 *Moore v. PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, *8 (approving total PAGA
7 allocation that was 0.5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.* (N.D. Cal. 2013)
8 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement).

9 A PAGA allocation need not represent any particular percentage of the overall settlement
10 value in order to secure court approval, and courts routinely approve PAGA settlements representing
11 only a tiny fraction of the overall settlement value. In sum, this settlement is fair, reasonable, and
12 consistent with PAGA’s policies and purposes under these circumstances.

13 **F. The Attorneys’ Fees are Reasonable**

14 PAGA Counsel seeks a fee award of one-third (1/3) of the Gross Settlement Amount, or
15 \$195,000.00, for the successful prosecution and resolution of this action. PAGA allows a prevailing
16 plaintiff to obtain attorneys’ fees and costs. (Cal. Lab. Code § 2699, subd. (g).) Similar to awarding
17 fees in a class action, California state and federal courts have recognized that an appropriate method
18 for determining award of attorneys’ fees for representative actions is to use a percentage of the total
19 value of benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91
20 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 (“*Serrano III*”); *Boeing Co. v. Van*
21 *Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759,
22 769.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread
23 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear
24 the entire burden alone.” (*Vincent*, 557 F. 2d at p. 769.)

25 Under California law, the award of attorneys’ fees in common fund wage and hour class
26 action settlements is under the percentage method. (*See Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th
27 480, 503 (“We join the overwhelming majority of federal and state courts in holding that when class
28 action litigation establishes a monetary fund for the benefit of the class members, and the trial court

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

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

25 As a secondary support for the percentage of the fund method, when fees are allocated by
26 percentage method, courts have discretion to “cross-check” the fees awarded through the lodestar
27 method. However, the *Laffitte* Court “emphasize[d] [that] the lodestar calculation, when used in this
28 manner, does not override the trial court’s primary determination of the fee as a percentage of the

1 common fund and thus does not impose an absolute maximum or minimum on the potential fee
2 award.” *Laffitte*, 1 Cal. 5th at p. 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d
3 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the primary reliance on the
4 percentage of common fund method”).

5 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
6 cross-check is extraordinarily high or low, the trial court should consider whether the percentage used
7 should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
8 necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at
9 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-
10 check “undermines” one of the primary reasons for using the percentage method: aligning counsel’s
11 incentives with the benefits delivered to the class and discouraging protracted litigation. *Id.* at p. 506
12 (finding trial courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third*
13 *Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial*
14 *California, Inc.*, 82 Cal. App. 4th 19, pp. 29-30 (2000) (citing the recommendations of the Third
15 Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach set
16 forth in this Report are now echoed by many authorities, who have been most vocal about the manner
17 in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked trial
18 judge”).

19 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
20 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g.*,
21 *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
22 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43,
23 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*,
24 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand).

25 With respect to Plaintiff’s Counsel’s lodestar, to date, approximately 229.6 hours have been
26 expended by Plaintiff’s Counsel this matter. (Tulyathan Decl. at ¶ 40, Ex. E; Declaration of Larry W.
27 Lee (“L. Lee Decl.”) at ¶ 10, Ex. A.) Plaintiff’s Counsel expects to incur approximately 15 additional
28 hours to handle any post-approval matters and any settlement issues. (Tulyathan Decl. at ¶ 41; Lee

Decl. at ¶ 11.) Mr. Larry Lee requests an hourly rate of \$850.00 per hour. (Lee Decl. at ¶ 12.) Ms. Tulyathan requests an hourly rate of \$600.00 per hour. (Tulyathan Decl. at ¶ 42.) The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*].

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

Plaintiff's Counsel's skill and experience justify the requested rate. As shown in the supporting declarations, Plaintiff's Counsel have significant experience in the area of employment and wage and hour class actions. Specifically, Plaintiff's Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. (Tulyathan Decl. at ¶ 36-39; Lee Decl. at ¶¶ 8-9.) As such, based on the hours and applicable rate, the total lodestar to be expended by Plaintiff's Counsel through finalizing this settlement will be approximately \$167,785.00, based on 244.6 total hours. (Tulyathan Decl. at ¶ 42; Lee Decl. at ¶ 12.)

Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at p. 48. The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-

1 of-the-fund the attorney would have received on the fair market. *Id.*; *Lealao*, 82 Cal. App. 4th at p.
2 49. However, this list is not exhaustive and the court can consider other factors it deems important in
3 setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

4 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
5 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at p. 52 (the promptness of
6 settlement “cannot be used to justify the refusal to apply a multiplier”). According to *Lealao*, courts
7 placed “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished,
8 for achieving this goal in a timely fashion. *Id.*

9 Here, based upon Plaintiff’s Counsel’s lodestar of \$167,785.00, Plaintiff’s request for a low
10 multiplier of approximately **1.16** is reasonable and fair, particularly based on the factors described
11 above and that it is **well below** the typical range of multipliers awarded by the court. (*Wershba v.*
12 *Apple Computer, Inc.* (Ct. App. 2001) 91 Cal.App.4th 224 (noting that courts using the lodestar
13 method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2
14 to 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of
15 the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement);
16 *Vandervort v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the
17 common fund, based on a multiplier of 2.52).)

18 As such, the requested fee award in the amount of \$195,000.00 is fair and reasonable, and
19 should be awarded in its entirety.

20 **G. The Costs are Reasonable**

21 Additionally, PAGA Counsel’s request for reimbursement of actual litigation costs in the
22 amount of \$10,738.68 is also reasonable, given that the Settlement Agreement allows for
23 reimbursement of litigation costs of up to \$20,000.00. (Settlement Agreement ¶ II.18 and III.6.) As
24 set forth in PAGA Counsel’s declaration, PAGA Counsel incurred actual litigation costs in the
25 amount of \$10,738.68, which are costs that were directly incurred in the prosecution of this action,
26 including filing fees, court costs, mediation costs, service of process costs, and postage. (Tulyathan
27 Decl. at ¶ 43, Ex. F.) As such, the requested costs should be awarded as fair and reasonable.

28 //

1 **H. The Settlement Administrator’s Fees Should be Approved**

2 The Parties have agreed to pay actual costs of administration from the Gross Settlement
3 Amount, which will not exceed \$9,000.00, to the Settlement Administrator – Phoenix Settlement
4 Administrators, to administer this Settlement. (Settlement Agreement ¶ II.28.; Tulyathan Decl. at ¶
5 23, Ex. D.) The Parties believe that the settlement administration costs is reasonable and should be
6 approved.

7 **I. Plaintiff’s Enhancement Payment Should be Approved**

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

13 Here, Plaintiff seeks \$10,000.00 for the service award, which is intended to compensate
14 Plaintiff for the time spent on this case, including reviewing pleadings, including her PAGA letter to
15 the LWDA, the complaint, the Settlement Agreement, and her declaration, and for providing
16 information and documents for this lawsuit and the resulting settlement. (Declaration of Denise
17 Williams (“Williams Decl.”) at ¶¶ 5.) This requested enhancement is consistent with awards
18 approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294,
19 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs.*
20 *Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three
21 incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio
22 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission*
23 *Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative);
24 *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27,
25 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*,
26 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in
27 ERISA case).

28 Additionally, by serving as the PAGA representative and filing the lawsuit, which is public

1 record, Plaintiff also faced significant risk in not being able to find prospective employment and/or
2 face retaliation from prospective employers. In this regard, future employers are less likely to hire
3 and/or continue employment with individuals who have filed employment-related lawsuits,
4 particularly cases of this nature.

5 As Plaintiff's requested service award is a modest amount, the Court should approve this
6 service award as requested.

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

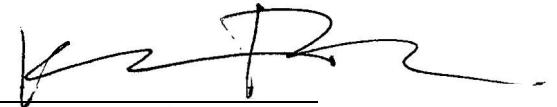
8 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion, the
9 Settlement Agreement, and Proposed Order to the LWDA's website. (Tulyathan Decl. at ¶ 44, Ex.
10 G.)

11 **V. CONCLUSION**

12 Based on the above, Plaintiff requests that the Court approve the current PAGA settlement.
13

14 Dated: December 16, 2024

DIVERSITY LAW GROUP

15
16 By: 

Larry W. Lee
Mai Tulyathan
Attorneys for Plaintiff and the Aggrieved
Employees
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