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

AMY CETNAROWSKI, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

MELON HOLDINGS, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVCV21-01007

[Assigned for all purposes to the Hon. Debra L.
Givens, Department 1]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE THE PARTIES'
SETTLEMENT AGREEMENT PURSUANT
TO THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004; AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: September 19, 2022
Time: 10:00 a.m.
Dept.: 4

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

2 PLEASE TAKE NOTICE that on September 19, 2022, at 10:00 a.m., or as soon thereafter
3 as the matter be heard in Department 4 of the Superior Court of the State of California for the
4 County of Yuba located at 215 5th Street, Marysville, CA 95901, Plaintiff Amy Cetnarowski
5 (“Plaintiff”) will, and hereby does, move the Court for entry of an order approving the proposed
6 Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement and Release Agreement
7 (“Settlement Agreement”) entered into in the above-captioned civil action between Plaintiff and
8 Defendant Melon Holdings, LLC (“Defendant”) (Plaintiff and Defendant shall collectively be
9 referred to as the “Parties”) under the Labor Code Private Attorneys General Act of 2004 (the
10 “PAGA”).

11 This motion is made pursuant to California Labor Code section 2699(1)(2), which requires
12 trial courts to “review and approve any settlement of any civil action filed pursuant to [PAGA],”
13 *see* Cal. Lab. Code § 2699(1)(2), and on the grounds that the parties’ settlement is fundamentally
14 fair, adequate, and reasonable in light of the PAGA’s policies and purposes. As set forth in the
15 concurrently filed declaration of Max Gavron, a copy of the Parties’ proposed Settlement
16 Agreement and this Motion was electronically submitted to the Labor and Workforce
17 Development Agency in accordance with California Labor Code sections 2699(1)(2) and
18 2699(1)(4) concurrent with the filing of this motion.

19 This motion is based on this notice of motion and motion for approval of the Parties’
20 Settlement Agreement attached to the Declaration of Max Gavron and the Settlement Agreement
21 attached thereto as **Exhibit A**, concurrently filed herewith; the attached memorandum of points
22 and authorities in support of this motion; the concurrently filed declarations of Max Gavron (and
23 any exhibits attached thereto), Larry Lee, and Plaintiff in support of this motion; all pleadings,
24 records, and files in this action; and upon such other matters as may be properly presented to, or
25 received by, the Court at or before the hearing on this motion.

1 DATED: August 24, 2022

DIVERSITY LAW GROUP, P.C.

2
3 By:

Larry W. Lee

4 Max W. Gavron

5 Attorneys for Plaintiff and the Aggrieved
6 Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Amy Cetnarowski (“Plaintiff”) respectfully requests the
4 Court’s approval of the Private Attorneys General Act (Labor Code § 2698, *et seq.*) Settlement
5 and Release Agreement (the “Settlement Agreement”). After this lawsuit was commenced, the
6 Parties engaged in multiple meet and confer efforts regarding the merits of the case, and the
7 potential exposure and liability. Ultimately, the Parties agreed to terms for complete settlement of
8 the Action, which was negotiated at arm’s-length with each Party having had the opportunity to
9 consider all known facts and circumstances. As part of their settlement negotiations, Defendant
10 produced data regarding the aggrieved employees, including the total number of employees and
11 the total pay periods potentially encompassed by this lawsuit, from which Plaintiff’s counsel
12 calculated the maximum PAGA penalty exposure. (Declaration of Max Gavron (“Gavron Decl.”)
13 ¶ 12). Based on this information and evidence of Defendant’s financial condition and ability to
14 pay, the Parties have settled this case on a representative PAGA basis for \$70,000.00, or
15 approximately 16.67% of the originally calculated maximum exposure. (*Id.*)

16 The Settlement Agreement allocates one-third of the Gross Settlement Amount for
17 attorneys’ fees, or \$23,333.33, up to \$10,500.00 in litigation costs incurred by Plaintiffs’ counsel,
18 \$10,000.00 to Plaintiff for a service award, and up to \$3,000.00 for settlement administration
19 costs. (*Id.* at §§ III.2(a)-(d)). The remainder, or the “PAGA Penalty Fund,” is allocated to the
20 payment of civil penalties under PAGA, 75 percent of the civil penalties for distribution to the
21 Labor and Workforce Development Agency (the “LWDA”) and 25 percent of the civil penalties
22 for distribution to the “aggrieved employees” on whose behalf Plaintiff filed this action as
23 required by PAGA. (*Id.* at § III.2(e)).

24 Under PAGA, the Court must review and approve the proposed settlement. *See* Cal. Lab.
25 Code § 2699 (1)(2). Accordingly, Plaintiff brings this motion to request approval of the Settlement
26 Agreement on the grounds it is fundamentally fair, adequate, and reasonable in light of PAGA’s
27 policies and purposes and the facts and circumstances discussed in detail below.

II. FACTUAL AND PROCEDURAL BACKGROUND

On September 30, 2021, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of her intent to pursue a representative PAGA action, on behalf of herself and the State of California as well as on behalf of other aggrieved employees (the “PAGA Notice”). Gavron Decl. ¶ 3.

On October 19, 2021, Plaintiff filed a Class Action Complaint for: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of Labor Code §§ 510, 558, and 1194; (4) violation of Labor Code § 2802; (5) violation of Labor Code § 226; and (6) violation of Business and Professions Code § 17200, *et seq.* Gavron Decl. ¶ 4.

On December 7, 2021, Plaintiff filed her First Amended Class and Representative Action Complaint (“FAC”) adding an additional violation of Labor Code §2698, *et seq.*, the Private Attorney Attorneys General Act (“PAGA”). Gavron Decl. ¶ 5.

On January 6, 2022, Defendant filed an Answer to the Plaintiff’s FAC. Gavron Decl. ¶ 6.

On February 9, 2022, the Parties agreed to the dismissal of her individual claims and putative class action claims without prejudice and the filing of a Second Amended Representative PAGA Action Complaint (“SAC”) to allege a single cause of action for violation of Labor Code §2698, *et seq.*, the PAGA considering Defendant’s contentions regarding an applicable arbitration agreement. Gavron Decl. ¶ 7.

On March 11, 2022, Defendant filed its answer to Plaintiff’s SAC. Gavron Decl. ¶ 8.

Thereafter, the Parties engaged in informal discovery and engaged in several meet and confer efforts. Defendant provided information regarding the number of potentially aggrieved employees, the number of pay periods at issue and other information to evaluate the potential exposure. While the Parties had scheduled a mediation, they began direct settlement negotiations and were ultimately successful in coming to a proposed resolution. Gavron Decl. ¶ 9.

The Parties agreed to terms for complete settlement of the Action, which was negotiated at arm’s-length with each Party having had the opportunity to consider all known facts and circumstances. (Gavron Decl. ¶ 10)

1 Given Defendant's financial condition, the Parties have agreed that Defendant will fund
2 the first payment of the Gross Settlement Amount in the amount of \$35,000.00 within thirty
3 calendar days of the Effective Date, and the second payment in the amount of \$35,000.00 on or
4 before January 31, 2023. (Settlement Agreement at § V.2). The Settlement Agreement allocates
5 one-third of the Gross Settlement Amount for attorneys' fees, or \$23,333.33, up to \$10,500.00 in
6 litigation costs incurred by Plaintiffs' counsel, \$10,000.00 to Plaintiff for a service award, and up
7 to \$3,000.00 for settlement administration costs. (*Id.* at §§ III.2(a)-(d), V.3(a)-(d)). The
8 remainder, or the "PAGA Penalty Fund," is allocated to the payment of civil penalties under
9 PAGA, 75 percent of the civil penalties for distribution to the Labor and Workforce Development
10 Agency (the "LWDA") and 25 percent of the civil penalties for distribution to the "aggrieved
11 employees" on whose behalf Plaintiffs filed this action as required by PAGA. (*Id.* at § III.2(e),
12 V.3(e)).

13 The Settlement Agreement provides the following release:

14 Upon the approval by the Court of this Agreement and funding of
15 the GSA by Defendant, each of the PAGA Members, including
16 Plaintiff, shall, for the Covered Period, fully release and forever
17 discharge the Released Parties, subject to the terms and conditions
18 hereof and the approval of the Court, from the Covered Claims and
19 any other form of relief or remedy in law, equity, or whatever kind
20 or nature that were asserted or could have been asserted based on
21 the facts alleged in the Action.

22 (*Id.* at § IV.1). The Settlement Agreement defines "Covered Claims" as

23 [A]ny and all claims, demands, rights, liabilities, and/or causes of
24 action under the PAGA for civil penalties, which are premised on
25 alleged violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510,
26 512, 558, 1194, and 2802, as well as any other claims which could
27 have been brought based on the facts alleged in the Action within
28 the Covered Period.

29 (*Id.* at § II.9). Plaintiff also executed a general release as part of the Settlement Agreement,
30 including a waiver of Civil Code § 1542. (*Id.* at § IV.2).

31 Each PAGA Member will receive an individual payment proportionate to the number of
32 Eligible Pay Periods worked. (*See id.* § III.3). Each Individual Settlement Payments will be

1 considered the payment of a civil penalty and treated as IRS Form 1099 income. (*See id.*)

2 **III. STANDARD OF REVIEW**

3 Although PAGA requires courts to “review and approve” the settlement of any civil action
4 filed under PAGA, *see* Cal. Lab. Code § 2699 (l)(2), neither the Legislature, the California
5 Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard
6 PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959,
7 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a PAGA
8 settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL 1899912, at *2
9 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating PAGA
10 settlements.”). The LWDA itself has acknowledged the lack of a “specific benchmark” and stated
11 only that the relief provided under PAGA must be “genuine and meaningful,” “consistent with the
12 underlying purpose of the statute to benefit the public” and, in the context of a class action,
13 “meet[] the standards of being ‘fundamentally fair, reasonable, and adequate’ with reference to
14 the public policies underlying the PAGA.” *See* California Labor and Workforce Development
15 Agency’s Comments on Proposed PAGA Settlement at 2–3, *O’Connor v. Uber Techs.*, No. 3:13-
16 CV-03826, ECF No. 736 (N.D. Cal. July 29, 2016).

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

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1 **IV. ARGUMENT**

2 **A. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant**
3 **to Labor Code section 2699(1)(2)**

4 When enacting PAGA, the Legislature intended to ensure that the LWDA retained
5 “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end,
6 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed
7 settlement to the LWDA online “at the same time that it is submitted to the court,” to give LWDA
8 an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699 (1)(2),
9 2699(1)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement
10 Agreement and this Motion to the LWDA through the LWDA’s online filing system in
11 conjunction with this Motion. (See Gavron Decl. ¶ 27, Exh. B).

12 **B. The Court Should Approve the Settlement Agreement**

13 **1. The Settlement Agreement Is Entitled to a Presumption of Fairness**

14 In class actions, judicial review of a settlement’s fairness is designed to protect class
15 members who had no say in the negotiation of the settlement by ensuring that the settlement is not
16 the product of “fraud,” “overreaching,” or “collusion” by the negotiating parties and that “due
17 regard” was given to the rights and interests of absent class members subject to the settlement.
18 *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800–01 (1996). Although PAGA actions
19 and class action have certain “fundamental” differences, *see Sakkab v. Luxottica Retail North*
20 *America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015), PAGA settlements are also subject to Court
21 approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing the scope of a
22 judgment in a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D.
23 Cal. 2016).

24 Against this backdrop, California courts have identified a set of circumstances entitling
25 class action settlements to a “presumption of fairness.” *See Dunk*, 48 Cal. App. 4th at 1802. In
26 particular, a presumption of fairness arise where “(1) the settlement is reached through arm’s-
27 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
28 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of

1 objectors is small.” *See id.*

2 All of the factors that would give rise to a presumption of fairness in the context of a class
3 action settlement are present in this PAGA action. After this lawsuit was commenced, the Parties
4 agreed to engage in arms’ length negotiations between highly experienced counsel. As part of
5 their settlement negotiations, Defendant produced data regarding the aggrieved employees, from
6 which Plaintiff’s counsel calculated the maximum PAGA penalties and analyzed Defendant’s
7 potential liability. (Gavron Decl. ¶ 12). Both Plaintiff’s and Defendant’s counsel has significant
8 experience in litigating wage and hour class and PAGA actions, which further supports the
9 reasonableness of the settlement. (Gavron Decl. ¶¶ 19-25; Declaration of Larry W. Lee (“Lee
10 Decl.”) ¶¶ 6-7). Therefore, the Settlement Agreement is entitled to a presumption of fairness.

11 **2. The Scope of the Settlement Agreement is Fair, Adequate, and**
12 **Reasonable**

13 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the
14 “vigorous assessment and collection of civil penalties as provided in the Labor Code” to
15 sometimes be “the only meaningful deterrent to unlawful conduct,” the Legislature enacted
16 PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement
17 capability of the LWDA with private enforcement actions by “aggrieved employees” acting as
18 private attorneys general. See 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS*
19 *Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of
20 in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA to
21 collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see also*
22 *Iskanian*, 59 Cal. 4th at 381–82. In that role, the named plaintiff “take[s] on a special
23 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.” *See*
24 *O'Connor*, 201 F. Supp. 3d at 1134.

25 Plaintiff’s claims in this action are based on alleged violations of Labor Code sections
26 201-203, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.* *See generally* Pl.’s Am.
27 Cmplt. When reviewing a settlement agreement, “the test is not the maximum amount plaintiffs
28 might have obtained at trial on the complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal.

1 App. 4th 224, 250 (2001), nor is it “whether the settlement agreement is perfect in the
2 estimation the reviewing court.” *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).
3 The test is “whether the settlement is reasonable under all of the circumstances.” *See Wershba*,
4 91 Cal. App. 4th at 250. Relevant considerations include the strength of a Plaintiffs’ case and the
5 risk, expense, complexity, and likely duration of further litigation. *See Kullar v. Foot Locker*
6 *Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In
7 PAGA settlements, courts also consider their authority to award less than the maximum penalty
8 authorized by PAGA. *See Cal. Lab. Code § 2699(e)(2)*; *see also Smith*, 2018 WL 1899912 at *3.

9 Here, Defendant produced information regarding the number of aggrieved employees and
10 pay periods at issue, which permitted Plaintiff to analyze Defendant’s potential exposure and
11 liability. (Gavron Decl. ¶ 12). As detailed in the Settlement Agreement, § II.12, there were
12 approximately 4,199 pay periods at issue during the time encompassed by this settlement.
13 PAGA’s penalty structure is based on the number of violations of the Labor Code committed
14 during a given pay period. *See Cal. Lab. Code § 2699(f)*. Defendant’s potential exposure could
15 be as high as \$419,900.00 if the Court were to award a \$100 penalty for each pay period
16 encompassed by the proposed settlement. (Gavron Decl. ¶ 12). However, Defendant argued that
17 its exposure was significantly less because it maintained legally compliant policies, complied
18 with the law at all times, and that it maintained arbitration agreements applicable to its
19 employees, which it contended precluded Plaintiff’s PAGA claims. (Gavron Decl. ¶ 12). On
20 June 15, 2022, the United States Supreme Court issued its decision in *Viking River Cruises, Inc.*
21 *v. Moriana*, No. 20-1573, 2022 WL 2135491, at *10 (U.S. June 15, 2022), which Defendant
22 would have argued precludes Plaintiff’s PAGA claim altogether. *Id.* (holding that Federal
23 Arbitration Act (“FAA”) preempted portion of California Supreme Court’s holding in *Iskanian v.*
24 *CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348 (2014) and that PAGA claims may be arbitrable
25 under the FAA).

26 While the PAGA does provide for a potentially heightened penalty of \$200 for
27 “subsequent” violations, many courts do not award that penalty unless there has been a prior
28 citation by the LWDA or court ruling demonstrating that the employer previously violated the

1 Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord*
2 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10,
3 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are
4 not subject to heightened penalties for subsequent violations unless and until a court or
5 commissioner notifies the employer that it is in violation of the Labor Code”); *see also*
6 *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent
7 penalty unless prior citation or court ruling). Thus, Defendant argued that even if Plaintiff was
8 able to establish any violation of the Labor Code, the PAGA penalties assessed for these
9 violations will be computed at the \$100 rate, as opposed to the \$200 per pay period rate at
10 maximum, and there is a likelihood that a further reduction of the penalty would be appropriate
11 given its good faith efforts to comply with the Labor Code and its contentions that it complied
12 with the Labor Code at all times. (Gavron Dec. ¶ 9.)

13 Defendant also argued that even if Plaintiff prevailed, the recoverable penalties under
14 PAGA are minimal. Indeed, courts to consider the issue have refused to “stack” PAGA
15 penalties and often significantly reduce the penalties awarded. *See Carrington v. Starbucks*
16 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
17 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27
18 Cal.App.5th 809. If the Court in this case were to reduce penalties to \$5 a pay period, as was
19 approved in *Carrington*, the potential exposure amounts to approximately \$20,995.00 (4,199
20 pay periods x \$5.00).

21 Under the circumstances of this case, the payment of \$70,000.00 in civil penalties in fair,
22 adequate, and reasonable. The payment of \$70,000.00 in exchange for a release of only those
23 claims for civil penalties that are pleaded in the action or that could have been pleaded based on
24 the facts alleged in the PAGA Notice or the Complaint will have a substantial deterrent effect on
25 Defendant and other California employers and will confer benefits on the PAGA Members, who
26 will each receive a portion of the settlement.

27 Finally, Defendant’s ability to pay was a factor in evaluating the reasonableness of this
28 settlement. The \$70,000.00 Gross Settlement Amount is the highest Defendant could pay while

1 remaining in business. For this reason, Defendant needs to make installment payments.
2 Settlement Agreement ¶ V.2. This heavily favors approval of the settlement. *Torrisi v. Tucson*
3 *Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (holding that lower court properly approved
4 class action settlement because of the defendant's financial condition; "Here one factor
5 predominates to make clear that the district court acted within its discretion. That factor is
6 Tucson's financial condition.").

7 In sum, this settlement is fair, reasonable, and consistent with PAGA's policies and
8 purposes under these circumstances.

9 **3. The Settlement Agreement Apportions Civil Penalties between the**
10 **LWDA and the Settlement Group as Required by PAGA**

11 Except when civil penalties are recovered from a defendant who did not have any
12 employees at the time of an alleged violation, civil penalties recovered under PAGA must be
13 distributed so that 75 percent of the civil penalties are paid to the to LWDA and 25 percent are
14 paid to the "aggrieved employees" on whose behalf the PAGA action was brought. *See* Cal. Lab.
15 Code § 2699(i). In full compliance with that rule, the Settlement Agreement requires the PAGA
16 Penalty Fund to be paid to the LWDA and 25 percent of the PAGA Penalty Fund to be paid
17 Settlement Group. (Settlement Agreement at § III.3). The Settlement Group will receive
18 penalties based on the number of pay periods they worked during the applicable period using a
19 pro rata distribution formula. (*Id.*)

20 **4. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable**
21 **Amount to the Payment of Attorneys' Fees**

22 PAGA allows a prevailing Plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab.
23 Code § 2699(g). In recognition of this, the Settlement Agreement allows Plaintiff's counsel to
24 request up to \$23,333.33, in attorneys' fees. (*See* Settlement Agreement at §§ III.2(a), III.4). This
25 amount is fair, adequate, and reasonable in light of policies and purposes.

26 In class and representative actions, state and federal courts have held that when the action
27 establishes a monetary fund for the benefit of the class members out of which attorneys' fees may
28 be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate

percentage of the fund created.” *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3 percent of the fund and joining “the overwhelming majority of federal and state courts” in approving the “percentage method” as a reasonable means for determining attorney fee awards in class actions). While different from class action settlements in important ways, PAGA settlements also involve the establishment of a common fund for the benefit of persons other than the named Plaintiff, so the reasons for utilizing the percentage method are the same. *See id.* (noting that the percentage method provides “ease of calculation,” “alignment of incentives between counsel and the class,” “a better approximation of market conditions in a contingency case,” and the “encouragement . . . to seek an early settlement”). The \$23,333.33 requested by Plaintiff’s counsel represents one-third of the Gross Settlement Amount, which is consistent with awards usually approved in class actions. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008) (“[F]ee awards in class actions average around one-third of the recovery”); *see also Laffitte*, 1 Cal. 5th at 506 (upholding the approval of a fee award equal to one-third of the total settlement amount).

5. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Litigation Costs

PAGA also allows a prevailing Plaintiff to recover litigation costs. *See* Cal. Lab. Code § 2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s counsel to request up to \$10,500.00 in litigation costs. (Settlement Agreement at §§ III.2(b), III.4).

Plaintiff’s counsel requests \$6,736.45 for the reimbursement of litigation costs. As set forth in accompanying declarations of Plaintiff’s counsel, these costs were all directly incurred in the prosecution of this action, including, but not limited to, filing fees, service fees, and mediation fees. (Lee Decl. ¶ 8, Exh. A). As such, Plaintiff’s counsel’s request for costs in the amount of \$6,736.45 is fair, adequate, reasonable, and consistent with PAGA’s policies. Because this amount is less than what was provided in the Settlement Agreement, the difference will be distributed to the LWDA and Aggrieved Employees.

6. Plaintiff’s Service Award Should Be Approved

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

1 request a service award. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009)
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”) (emphasis added).
5

6 Here, Plaintiff respectfully requests \$10,000.00 for her service award, which is intended to
7 compensate Plaintiff for the time spent on this case and for executing a general release, including
8 of Civil Code § 1542, which was not required by aggrieved employees. (Declaration of Amy
9 Cetnarowski ¶¶ 3-5). This requested enhancement is consistent with awards approved in other
10 common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D.
11 Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*,
12 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive
13 awards of \$35,000). Plaintiff also took the risk of bringing the lawsuit, which was a matter of
14 public record. Future employers may be less likely to hire an employee who has previously filed
15 an action against an employer. This in conjunction with Plaintiff’s agreement to provide a general
16 release supports the requested award.

17 **7. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable**
18 **Amount to the Payment of Settlement Administration Costs**

19 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff’s
20 Counsel, and the LWDA, but also to Defendant’s current and former employees, significant time
21 and effort will be required to administer the Settlement Agreement if it is approved by this Court.
22 The administrator is responsible for several things including calculating each PAGA Member’s
23 shares; issuing appropriate tax forms to all parties who receive payments under the Settlement
24 Agreement; mailing payments to Plaintiff, Plaintiff’s Counsel, the LWDA, and each Settlement
25 Group Member; and voiding any checks not cashed by Settlement Group Members so that the
26 unclaimed amount can be forwarded to the State of California Controller’s Office Unclaimed
27 Property Fund in the name of the PAGA Members who did not cash their respective PAGA
28 Member Shares. (*See Settlement Agreement* § V.6.)

1 In contemplation of these expenses, the parties will engage Phoenix Settlement
2 Administrators to act as a third-party settlement administrator and have allocated up to \$3,000.00
3 to cover the cost of settlement administration. (Settlement Agreement §§ II.8, III.2(d), V.3(d)).

4 **V. CONCLUSION**

5 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
6 Agreement pursuant to Labor Code section 2699(l)(2).
7

8 DATED: August 24, 2022

DIVERSITY LAW GROUP, P.C.

9 By:  _____

10 Larry W. Lee

11 Max W. Gavron

12 Attorneys for Plaintiff and the Aggrieved
13 Employees
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