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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SHASTA

JENIFER FISHER, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SHASCADE COMMUNITY SERVICES,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. CVCV21-0198378

*Assigned for All Purposes to Hon. Tamara L.
Wood, Department 8*

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT; DISMISS CLASS CLAIMS
WITHOUT PREJUDICE, PAGA CLAIMS
AND INDIVIDUAL CLAIM WITH
PREJUDICE**

Date: August 28, 2023

Time: 8:30 a.m.

Dept.: 8

Judge: Hon. Tamara L. Wood

Filed: October 15, 2021

FAC Filed: January 20, 2022

SAC Filed: July 21, 2022

Trial Date: None Set

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Jenifer Fisher (“Plaintiff”) seeks approval of a Private Attorneys General Act (“PAGA”) Settlement in the gross amount of \$45,000. *See generally* Exhibit A (Proposed PAGA Settlement [“Agreement”]). Although originally brought as a class and PAGA action, the class claims and allegations will be dismissed without prejudice under the Agreement due to financial distress claims raised by Defendant Shascade Community Services, Inc. (“Defendant”), (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). Plaintiff believes dismissing putative class member’s claims without prejudice is the more appropriate course of action due to the substantial compromises that would have had to have been made to ensure any settlement could be funded. Based on the claims and Plaintiff’s investigation, Plaintiff did not believe a reasonable class settlement could have been achieved with the level of compromise required. However, in reviewing the claims, Plaintiff felt a reasonable PAGA settlement could still be achieved. Thus, under the Agreement, the class claims and allegations are being dismissed without prejudice and Plaintiff’s individual claims and the PAGA claims would be dismissed with prejudice. Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2-3. Plaintiff brought PAGA claims on behalf of the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees who worked for Defendant. *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 38 Aggrieved Employees.

Plaintiff has alleged that Defendant violated California law by failing to pay minimum wages, failing to pay overtime wages, failing to provide meal periods or pay premium in lieu thereof, failing to provide rest periods or pay premium in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, failing to pay reimbursement for expenses, failing to maintain accurate records, failing to provide all required sick pay, and violating California Labor Code sections 558 & 558.1. *See generally* Exhibit B; *see also* Decl. Rodriguez), ¶¶ 2, 10-11. Defendant has denied all of Plaintiff’s allegations and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 6. However, subject to Court approval, the Parties have been able to compromise and settle the PAGA claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of

1 the issues in this case. *See* Decl. Rodriguez, ¶¶ 3, 7-8, 10-11. The Agreement was entered into in good
2 faith by the Parties to resolve heavily contested claims and guarantees a reasonable recovery for
3 Aggrieved Employees and the LWDA. Accordingly, Plaintiff requests that the Court: (1) make a
4 finding that Plaintiff has exhausted all administrative remedies and that Plaintiff is authorized to enter
5 into the proposed Agreement on behalf of the LWDA; (2) approve the proposed Agreement as fair,
6 reasonable, and adequate; (3) set dates for and direct distribution of payment and the Notice of
7 Settlement (Exhibit E) to Aggrieved Employees affected by the settlement as set forth in the Agreement
8 and (4) adopt the implementation schedule contained in the proposed order.

9 **II. PROCEDURAL AND LITIGATION HISTORY**

10 On September 9, 2021, and January 19, 2022, Plaintiff gave written notice to the LWDA and
11 Defendant providing facts and the legal basis for all claims asserted in the Complaint and the claims that
12 are being resolved under the Agreement. *See* Exhibit C (Plaintiff's Ltrs. to the Labor and Workforce
13 Development Agency). Plaintiff also submitted the \$75.00 filing fee. *See* Decl. Rodriguez ¶ 4. The
14 September 9, 2021, and January 19, 2022, notices were also sent via certified mail to Defendant on the
15 same day. *See* Exhibit C. The LWDA did not provide any response to Plaintiff's notices
16 correspondence within the statutorily required time frame and, as a result, Plaintiff became authorized to
17 act as a Private Attorney General for the asserted claims. *See* Decl. Rodriguez ¶ 4. Plaintiff filed this
18 lawsuit on October 15, 2021, and uploaded a copy of the filed First Amended Complaint and Second
19 Amended Complaint to the LWDA on January 25, 2022, and July 22, 2022, respectively. *See* Decl.
20 Rodriguez ¶ 4. No trial date has been set in this matter. *See id.*

21 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

22 Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims.
23 *See id.* at ¶¶ 8, 10-11. Plaintiff worked during the time all of Defendant's policies and practices at issue
24 in the Complaint were in effect and provided information regarding these policies and practices,
25 enabling pre-filing investigations to take place. *See* Declaration of Jenifer Fisher ("Decl. Fisher") ¶ 2-3;
26 Decl. Rodriguez ¶ 8. The Parties engaged in formal and informal discovery and exchange of documents,
27 including a representative sampling of employee data, such as timecards, paystubs, payroll data and
28 relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The

discovery covered all aspects of the asserted claims, including merits issues, damages, the scope and configuration of Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez ¶ 8. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.* at ¶¶ 8, 10-11.

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately sixteen (16) months, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-9. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Kimberly S. Deck and a mediator's proposal, that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 9.

b. The Terms of the Agreement

1. The scope of Aggrieved Employees covered under the Agreement includes all individuals who have, or continue to, perform work for Defendants in California as non-exempt employees in the position of Job Coach from October 15, 2020, up to either (1) to the Final Approval Date or (2) sixty (60) days after the Agreement was signed, whichever is earlier. *See* Exhibit A, ¶ 1.2. There are approximately 38 Aggrieved Employees. *See id.*

2. Defendant will pay the Gross Settlement Amount of \$45,000. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.4.

3. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the Settlement Administrator, who has provided a maximum cost estimate of \$2,850. *See* Exhibit D (ILYM Group, Inc. Quote); Exhibit A, ¶ 1.25; Decl. Rodriguez, ¶ 24.

1 4. The Parties agree that up to thirty-five (35%) of the Gross Settlement Amount (\$15,750)
2 may be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not
3 oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
4 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved
5 by the Court in an amount not to exceed \$16,000. *See id.* At the time this motion was filed, the
6 estimated total costs incurred and that will be incurred in the future as a result of the litigation and
7 implementing the terms of the Agreement are \$15,395.97. *See* Decl. Rodriguez ¶ 22; Exhibit G
8 (Plaintiff's Itemized Costs).

9 5. Any allocated amounts under the Agreement for Settlement Administrator Costs and
10 attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net
11 Settlement Amount and be paid out to the LWDA and Aggrieved Employees as set forth in the
12 Agreement. *See* Exhibit A, ¶¶ 1.11, 1.13, 1.17, 5.2-5.3, 5.7. These amounts will be paid from the Gross
13 Settlement Amount, not in addition to the Gross Settlement Amount. *See id.* at ¶¶ 1.13, 1.17, 5.1-5.3,
14 5.7.

15 6. Any and all claims for civil penalties under the PAGA that asserted in the Complaint or
16 that could have been asserted based on the facts alleged will be deemed fully, finally, and forever
17 released against the Released Parties. *See* Exhibit A, ¶¶ 1.16, 1.23-1.24, 6.1.

18 7. The Settlement Administrator will perform searches to locate Aggrieved Employees
19 based on the last contact information in Defendant's possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches
20 will include reference to the U.S. Postal Service's National Change of Address Database and, for any
21 notice returned as undeliverable, skip tracing using the individual's social security number and other
22 pertinent identifying information. *See id.* Although not required to provide a notice of settlement to
23 Aggrieved Employees in connection with the Individual Settlement Amount, the Agreement provides
24 that Aggrieved Employees will receive a notice giving them information concerning all material terms
25 of the settlement. *See id.* at ¶ 7.5; Exhibit E; *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
26 1340777, at *5 (N.D. Cal. 2010) ("Unnamed employees need not be given notice of the PAGA claim,
27 nor do they have the ability to opt-out of the representative PAGA claim"); *see also* *Arias v. Superior*
28

1 Ct., 46 Cal.4th 969, 984-988 (2009) (rejecting a defendant's due process argument that aggrieved
2 employees must be given notice similar to class members in class actions).

3 8. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that is
4 not claimed by them by cashing their respective settlement checks within 270 days of issuance, the
5 remaining amount shall be donated equally, i.e. 50/50, to Capital Pro Bono, Inc., and the Center for
6 Workers' Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.4. The designated beneficiaries
7 clearly promote the law consistent with the objectives and purposes underlying the lawsuit, as they are
8 non-profits aimed at assisting employees with wage and hour claims who cannot afford legal
9 representation, including providing representation for employees in wage claims before the California
10 Labor Commissioner. See *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720, 722-724 (2006);
11 see also Decl. Rodriguez, ¶¶ 28-32.

12 **c. Allocation of Settlement Funds**

13 A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount
14 any attorneys' fees and costs and Settlement Administrator Costs awarded by the Court. See Exhibit A,
15 ¶¶ 1.13, 5.7. The Net Settlement Amount shall be divided between the PAGA Payment and payment to
16 Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount.
17 See Cal. Lab. Code § 2699(i). 25% of the Net Settlement Amount will be paid to Aggrieved Employees
18 See *id.* Each Individual Settlement Amount shall be determined by taking the Qualifying Pay Periods
19 for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all
20 Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount.
21 See Exhibit A, ¶¶ 1.2, 1.11, 1.13, 5.7.

22 **V. THE AGREEMENT SHOULD BE APPROVED AS PLAINTIFF MET ALL**
23 **STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND**
24 **THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE**

25 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
26 representative of the LWDA have been complied with and the Court has reviewed and approved the
27 terms of the PAGA settlement. See Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court has broad
28 discretion in making the decision to approve or reject a settlement for civil penalties as the statutory
scheme authorizes the Court to determine whether, in certain circumstances, penalties should be

1 assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of
2 the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine
3 “whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
4 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA,*
5 *Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same
6 established framework Courts use to evaluate whether class action settlements are fair, reasonable, and
7 adequate. *See id.*; *see also Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5
8 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O’Connor v. Uber*
9 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by
10 comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v.*
11 *NCI Group, Inc.*, 2018 WL 1409590, *1–*2 (C.D. Cal. 2018) (same). This framework has been used
12 many times over by multiple Courts. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS
13 14971, *6, n.4-5 (E.D. Cal. 2017); *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal.
14 2017); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017);
15 *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55,*
16 *Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*,
17 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL
18 2029061 at *2 (N.D. Cal. 2019). An important difference in the analysis, however, is that the evaluation
19 should focus on the amount of the settlement as a whole rather than any individual aggrieved
20 employee’s share because a PAGA lawsuit is fundamentally a law enforcement action where the “relief
21 is designed to protect the public[,] not to benefit private parties.” *See Moniz*, 72 Cal.App.5th at 74
22 (internal quotation and citations omitted).

23 **a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim**

24 An aggrieved employee must give written notice of the facts, theories, and statutes supporting
25 the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing
26 fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An “aggrieved employee”
27 means any person who was employed by the alleged violator and against whom one or more of the
28 alleged violations was committed.” *id.* at § 2699(c). If the LWDA does not provide notice of its intent

1 to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil
2 action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not
3 enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has
4 not cured certain alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A).
5 An aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
6 same time the agreement is submitted to Court. *See id.* at § 2699(1)(2).

7 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
8 *See Decl. Rodriguez ¶ 4; Exhibit C.* The notice letters to the LWDA sets forth all claims and theories of
9 liability stated in the Complaint as well as supporting facts. *See Exhibit C.* Plaintiff also paid the
10 \$75.00 filing fee. *See Decl. Rodriguez ¶ 4.* As the LWDA did not provide any notice of its intent to
11 investigate within the required time frame and no cure under the statute took place, Plaintiff is
12 authorized resolve those claims contained in the notice letter(s) and the operative Complaint. *See id.*;
13 Exhibit B; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire
14 motion for approval to the LWDA for its consideration at the same time this motion was filed. *See*
15 *Rodriguez ¶ 25; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).*

16 **b. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

17 Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable,
18 and adequate include the strength of the case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
20 extent of discovery completed and the stage of the proceedings, and the experience and views of
21 counsel. *See Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
22 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
23 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
24 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
25 intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.App.4th at 1802.
26 Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where substantial
27 resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v.*
28

1 *Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synocor ERISA Litigation*, 516 F.3d 1095,
2 1101 (9th Cir. 2008);.

3 **i. The Agreement is a Result of Extensive, Non-Collusive Arm's Length Negotiations**
4 **Between the Parties**

5 Settlement of the PAGA claims was reached only after substantial litigation and extensive arm's
6 length negotiations lasting nearly sixteen (16) months, which included a full day mediation and
7 resolution through a mediator's proposal. *See* Decl. Rodriguez, ¶¶ 7-9. At all times, the negotiations
8 were adversarial, although still professional in nature. *See id.*

9 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
10 **Information to Enter into an Informed and Reasonable Settlement**

11 The Parties were in possession of all necessary information during the negotiations. The Parties
12 engaged in substantial formal and informal discovery, which included all necessary components for
13 evaluating the PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 7-11. Plaintiff was
14 in possession of this information prior to calculating any damages in this case. *See id.* As a result,
15 Plaintiff was able to make a reasonable estimation of Defendant's potential liability. *See id.* For these
16 reasons, the settlement now before the Court was reached at a stage where "the parties certainly have a
17 clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *See Boyd*
18 *v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

19 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

20 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
21 actions. *See* Decl. Rodriguez, ¶¶ 14-22. Thus, Plaintiff's counsel are qualified to evaluate the PAGA
22 claims, the value of settlement versus moving forward with litigation, and viability of possible
23 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
24 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
25 benefit to Aggrieved Employees and the LWDA that the Agreement provides. *See id.*

iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A review of the PAGA Settlement Agreement's terms does not give rise to any doubts about its fairness. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 8% to 30% of the maximum value of the claims after accounting for potential discretionary reductions to civil penalties by the Court and between 10% and 81% of the more realistic range of recovery after accounting for potential discretionary reductions to civil penalties by the Court. See Decl. Rodriguez, ¶¶ 10-11. The \$45,000 Gross Settlement Amount is a reasonable compromise and exceeds approved settlement ranges in other PAGA cases whether comparing either absolute numbers or as a percentage of total available damages. See *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011)

1 (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund
2 settlement).

3 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

4 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
5 information be presented in representative action settlements “to ensure that the recovery represents a
6 reasonable compromise, given the magnitude and apparent merit of the claims being released,
7 discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing
8 the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th
9 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
10 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
11 also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed
12 on all the claims, provided there is a record that allows “an understanding of the amount that is in
13 controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

14 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
15 data points relied upon in reaching these ranges. See Decl. Rodriguez ¶¶ 10-11. The record
16 demonstrates that the compromises made by Plaintiff was reasonable and have resulted in a settlement
17 with recovery percentage well within the range of what has been found to be sufficient in several other
18 cases. See, *supra*, Section V.b.iv; see also *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th
19 Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery
20 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
21 disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no
22 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a
23 thousandth part of a single percent of the potential recovery”).

24 **c. Plaintiff’s Individual Settlement Agreement Reasonably Compensates Her In Exchange**
25 **For A General Release Of Her Individual Claims And Objective Criteria Demonstrates**
26 **That No Improper Preference Was Given To the Individual Claims Over The PAGA**
Claims In Resolving The

27 Plaintiff has entered into a separate individual settlement agreement resolving her individual
28 claims for \$15,000, which is separate and apart from the Gross Settlement Amount. Plaintiff has

provided general release of any and all claims she may have against Defendant, known and unknown, and she is waiving all protections afforded by California Civil Code section 1542. *See* Decl. Fisher, ¶ 8. In this case, Plaintiff has calculated the maximum PAGA penalties to be \$825,086.40 and Plaintiff's individual damages to be \$67,124.80.¹ *See* Decl. Rodriguez, ¶¶ 10-11, 36. Although many of the issues affecting the merits applied to Plaintiff's individual claims and the PAGA claims equally, only the PAGA claims were subject to the potential discretionary reductions applicable to PAGA claims generally. *See id.* Putting those potential discretionary reductions aside, Plaintiff actually compromised more on the value of her individual claims than on the value of the PAGA claims. *See id.* Thus, in settling her individual claims, no improper preference was given to the individual claims over the PAGA claims.

VI. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS AND CLAIMS ADMINISTRATION COSTS ARE REASONABLE AND SHOULD BE APPROVED

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-481 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a

¹ Defendant contests these damages and penalty amounts and enters the settlement to buy its peace.

1 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
2 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

3 Although this litigation is under the PAGA and not a class action, the basis for a common fund
4 applies with equal force. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this
5 case because there is a sufficiently identifiable class of beneficiaries (*e.g.* Aggrieved Employees and the
6 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff counsel were able
7 to negotiate on behalf of the LWDA and Aggrieved Employees, and the fee can be shifted with
8 exactitude to those benefiting as the fee request is a specific, lump-sum of the common fund.

9 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
10 the fund, depending on the circumstances of the case. *See* Newberg on Class Actions, (3rd Ed. 1992), §
11 14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
12 generally approved as reasonable in representative litigation settlements below \$10 million. *See Martin*
13 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
14 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
15 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
16 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
17 action settlement). Plaintiff’s request of \$15,750 (35%) falls within these typical fee arrangements. *See*
18 *Decl. Rodriguez*, ¶ 22.

19 Plaintiff’s counsel seeks reimbursement of \$15,395.97 for the expenses they have and will
20 continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than
21 the \$16,000 provided for in the Agreement. An itemization for these costs is being filed with this
22 motion as Exhibit G. All expenses were necessarily incurred to properly litigate this case. *See id.* The
23 appropriate analysis in determining whether particular costs are compensable is whether they are of the
24 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
25 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of pocket
26 expenses that ‘would normally be charged to a fee paying client.’”); *Abrams v. Lightolier, Inc.*, 50 F.3d
27 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v.*
28 *Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if

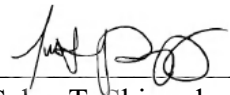
1 normally billed to client). The categories of expenses for which Plaintiff's counsel seek reimbursement
2 here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the
3 common fund. See Decl. Rodriguez, ¶ 23. The \$2,850 in Settlement Administrator Costs is also within
4 ranges approved by Courts and should be approved in this case. See *Patel*, 2019 WL 2029061, *2
5 (\$5,261 for settlement administrator's fees was not excessive where PAGA group consisted of 40
6 employees); Exhibit D; Decl. Rodriguez, ¶ 23.

7 **VII. CONCLUSION**

8 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
9 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including
10 Plaintiff's Counsel's application for reasonable attorneys' fees and costs and Settlement Administrator
11 Costs; approve the Notice of Settlement and payment distribution procedures; and adopt the
12 implementation schedule identified in the proposed order, which is being filed concurrently herewith.

13
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15 Dated: August 1, 2023

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16
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