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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

LEYLA SHAMS, as an individual and on  
behalf of all others similarly situated,

Plaintiff,

vs.

REVATURE LLC, a Virginia corporation;  
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV394270

**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: June 4, 2025  
Time: 1:30 p.m.  
Dept.: 19

Action Filed: February 14, 2022  
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on June 4, 2025, at 1:30 p.m., or as soon thereafter as the  
3 matter may be heard, in Department 19 of the above-referenced Court located at 191 N. First  
4 Street, San Jose, California 95113, Plaintiff Leyla Shams (“Plaintiff”) will seek an Order  
5 approving the concurrently filed PAGA Settlement Agreement (“Agreement” or “Settlement”),  
6 pursuant to the procedures set forth in Labor Code section 2698, *et seq.*

7 This motion will be based on this notice of motion, the attached memorandum of points  
8 and authorities, the accompanying declarations of Max W. Gavron, Larry W. Lee, William L.  
9 Marder, Plaintiff Leyla Shams, the records and file herein, and on such other evidence as may be  
10 presented at the hearing of the motion.

11  
12 DATED: May 12, 2025

DIVERSITY LAW GROUP, P.C.

13  
14 By:   
15 Larry W. Lee  
16 Kristen M. Agnew  
17 Kwanporn “Mai” Tulyathan  
18 Max W. Gavron  
19 Attorneys for Plaintiff and the Aggrieved Employees  
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## TABLE OF CONTENTS

|                                                                                                                     | <u>Page</u> |
|---------------------------------------------------------------------------------------------------------------------|-------------|
| <b>I. INTRODUCTION.....</b>                                                                                         | <b>8</b>    |
| <b>II. PROCEDURAL HISTORY.....</b>                                                                                  | <b>8</b>    |
| <b>A. The PAGA Notice.....</b>                                                                                      | <b>8</b>    |
| <b>B. The Operative Complaint.....</b>                                                                              | <b>8</b>    |
| <b>C. The Court Compels the Arbitration of Plaintiff’s “Individual” Claims.....</b>                                 | <b>9</b>    |
| <b>D. The Parties Engage in Discovery and Investigation .....</b>                                                   | <b>10</b>   |
| <b>E. The Reach a Settlement Through Arm’s Length Negotiations .....</b>                                            | <b>10</b>   |
| <b>III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT.....</b>                                                            | <b>11</b>   |
| <b>A. The Aggrieved Employees.....</b>                                                                              | <b>11</b>   |
| <b>B. The Gross Settlement Amount.....</b>                                                                          | <b>11</b>   |
| <b>C. The Allocation of the Net Settlement Amount .....</b>                                                         | <b>11</b>   |
| <b>D. Attorneys’ Fees, Litigation Costs, and Service Payment.....</b>                                               | <b>12</b>   |
| <b>E. Settlement Administration Costs.....</b>                                                                      | <b>12</b>   |
| <b>F. The <i>Cy Pres</i> Recipient.....</b>                                                                         | <b>12</b>   |
| <b>G. The Scope of the Released Claims .....</b>                                                                    | <b>13</b>   |
| <b>IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED</b>                                                 | <b>13</b>   |
| <b>A. PAGA Overview.....</b>                                                                                        | <b>13</b>   |
| <b>B. Class Action Settlement Standards Do Not Govern the Settlement Approval Process<br/>for PAGA Claims .....</b> | <b>15</b>   |
| <b>C. The Settlement is Reasonable and Effectuates PAGA’s Objectives.....</b>                                       | <b>16</b>   |
| <b>D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of<br/>Litigation.....</b>           | <b>16</b>   |
| <b>1. Plaintiff’s Claims are Contested .....</b>                                                                    | <b>16</b>   |
| <b>a. The Alleged 2802 Violation .....</b>                                                                          | <b>16</b>   |
| <b>b. The Alleged Section 204 Violation.....</b>                                                                    | <b>17</b>   |

|    |    |                                                                        |    |
|----|----|------------------------------------------------------------------------|----|
| 1  | 2. | Recovery of Civil PAGA Penalties is Uncertain.....                     | 17 |
| 2  | 3. | Maximum PAGA Civil Penalties Recoverable After Trial.....              | 18 |
| 3  | 4. | Settlement is Reasonable When Compared to the Realistic Amount of PAGA |    |
| 4  |    | Civil Penalties at Issue.....                                          | 19 |
| 5  | E. | The Scope of the Release is Appropriately Limited.....                 | 20 |
| 6  | F. | The Attorneys' Fees and Costs are Reasonable .....                     | 20 |
| 7  | G. | The Settlement Administrator's Costs Should be Approved.....           | 25 |
| 8  | H. | Plaintiff's Service Payment Should be Approved .....                   | 25 |
| 9  | I. | Notice to the LWDA Has Been Provided.....                              | 26 |
| 10 | V. | CONCLUSION .....                                                       | 26 |

## **TABLE OF AUTHORITIES**

### **Page(s)**

#### **State Cases**

|                                                                                                  |            |
|--------------------------------------------------------------------------------------------------|------------|
| <i>Arias v. Superior Court</i> , 46 Cal. 4th 969 (2009) .....                                    | 13, 14, 20 |
| <i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....                   | 21         |
| <i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988).....                      | 23         |
| <i>Consumer Advocacy Group, Inc. v. Kintetsu</i> , 141 Cal. App. 4th 46 (2006).....              | 16         |
| <i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629 (1998).....                  | 24         |
| <i>Gzim Kovacevic v. Pure Wafer, Inc.</i> , Santa Clara County Superior Court Case No. 22CV39881 | 19         |
| <i>Ketchum v. Moses</i> , 24 Cal. 4th 1122 (2001) .....                                          | 24         |
| <i>Kim v. Reins International California, Inc.</i> , 9 Cal. 5th 73 (2020) .....                  | 13         |
| <i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016) .....                               | 20, 22     |
| <i>Laffitte v. Robert Half Int'l</i> , 231 Cal. App. 4th 860 (2014) .....                        | 23         |
| <i>Lealao v. Beneficial California, Inc.</i> , 82 Cal. App. 4th 19 (2000) .....                  | 23, 24, 25 |
| <i>Martino v. Denevi</i> , 182 Cal. App. 3d 553 (1986) .....                                     | 23         |
| <i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021) .....                              | 16         |
| <i>Neary v. Regents of Univ. of Cal.</i> , 3 Cal. 4th 273 (1992) .....                           | 16         |
| <i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084 (2000).....                                | 24         |
| <i>Raines v. Coastal Pac. Food Distributors, Inc.</i> , 23 Cal. App. 5th 667 (2018).....         | 18         |
| <i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977) .....                                            | 20, 21, 24 |
| <i>Serrano v. Unruh</i> , 32 Cal. 3d 621 (1982) .....                                            | 24         |
| <i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495 (2009) .....                | 23         |
| <i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal. App. 4th 1112 (2012) .....        | 17, 18     |
| <i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001).....                        | 20, 23     |

#### **Federal Cases**

|                                                                                 |    |
|---------------------------------------------------------------------------------|----|
| <i>Baumann v. Chase Inv. Servs. Corp.</i> , 747 F.3d 1117 (9th Cir. 2014) ..... | 14 |
| <i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....                      | 20 |

|    |                                                                                                         |        |
|----|---------------------------------------------------------------------------------------------------------|--------|
| 1  | <i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907 (S.D. Ohio 2001).....                              | 26     |
| 2  | <i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....                             | 22     |
| 3  | <i>Cook v. Niedert</i> , 142 F.3d 1004 (7th Cir. 1998).....                                             | 26     |
| 4  | <i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240 (S.D. Ohio 1991)..       | 26     |
| 5  | <i>Gaskill v. Gordon</i> , 160 F.3d 361 (7th Cir. 1998).....                                            | 21     |
| 6  | <i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 27, 2007)   |        |
| 7  | .....                                                                                                   | 26     |
| 8  | <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998) .....                                   | 15     |
| 9  | <i>Hartley v. On My Own, Inc.</i> , 2020 WL 5017608 (E.D. Cal. Aug. 25, 2020) .....                     | 19     |
| 10 | <i>In re Dun &amp; Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366 (S.D. Ohio 1990) ..... | 26     |
| 11 | <i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294 (3d Cir. 2005).....                             | 22     |
| 12 | <i>Kang v. Wells Fargo Bank, N.A.</i> , 2021 WL 5826230 (N.D. Cal., 2021).....                          | 16     |
| 13 | <i>Magadia v. Wal-Mart Assocs. et al.</i> , 2019 U.S. Dist. Lexis 91792 (N.D. Cal. 2019).....           | 18, 19 |
| 14 | <i>Manzo v. McDonald's Restaurants of California, Inc.</i> , 2022 WL 4586236 (E.D. Cal. 2022).....      | 19     |
| 15 | <i>Martin v. AmeriPride Servs.</i> , 2011 U.S. Dist. LEXIS 61796 (S.D. Cal. June 9, 2011).....          | 21     |
| 16 | <i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54 (1980).....                                  | 24     |
| 17 | <i>Ochoa- Hernandez v. Cjaders Foods, Inc.</i> , 2010 WL 1340777 (N.D. Cal. April 2, 2010)....          | 14, 15 |
| 18 | <i>Ramirez v. Benito Valley Farms, LLC</i> , 2017 WL 3670794 (N.D. Cal. Aug. 25, 2017) .....            | 19     |
| 19 | <i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> , 108 F.R.D. 237 (1985)      | 23     |
| 20 | <i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948 (9th Cir. 2009).....                                 | 25     |
| 21 | <i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....                   | 26     |
| 22 | <i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1997) .....                            | 20, 21 |
| 23 | <b>Statutes</b>                                                                                         |        |
| 24 | Business and Professions Code § 16600.....                                                              | 8, 9   |
| 25 | Business and Professions Code § 16600.5.....                                                            | 9      |
| 26 | Business and Professions Code § 17200, <i>et seq.</i> .....                                             | 8      |
| 27 | Labor Code § 2699(i).....                                                                               | 14     |
| 28 |                                                                                                         |        |

|    |                                                                                                           |              |
|----|-----------------------------------------------------------------------------------------------------------|--------------|
| 1  | Labor Code § 2699(c) .....                                                                                | 14           |
| 2  | Labor Code § 2699(g)(l) .....                                                                             | 20           |
| 3  | Labor Code § 2699(i).....                                                                                 | 15           |
| 4  | Labor Code § 2699.3(a)(2) .....                                                                           | 14           |
| 5  | Labor Code § 2699.3(a)(l) .....                                                                           | 14           |
| 6  | Labor Code § 204.....                                                                                     | 8, 9, 13, 17 |
| 7  | Labor Code § 210.....                                                                                     | 13           |
| 8  | Labor Code § 2698, <i>et seq.</i> .....                                                                   | 8, 9         |
| 9  | Labor Code § 2699(a) .....                                                                                | 14           |
| 10 | Labor Code § 2699.3.....                                                                                  | 8            |
| 11 | Labor Code § 2802.....                                                                                    | 8, 13        |
| 12 | Labor Code § 450.....                                                                                     | 8            |
| 13 | <b>Other Authorities</b>                                                                                  |              |
| 14 | Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 11.25, <i>et seq.</i> (4th ed. 2002) |              |
| 15 | .....                                                                                                     | 15           |
| 16 | Alba Conte & Herbert B. Newberg, <i>4 Newberg on Class Actions</i> § 13.64 (Supp. 2004) .....             | 15           |
| 17 | Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> ,     |              |
| 18 | 7 J. of Empirical Leg. Stud. 248 (2010).....                                                              | 21           |
| 19 | <i>Manual for Complex Litigation, Fourth</i> § 21.632 (Fed. Jud. Ctr., 4th ed. 2004) .....                | 15           |
| 20 |                                                                                                           |              |
| 21 |                                                                                                           |              |
| 22 |                                                                                                           |              |
| 23 |                                                                                                           |              |
| 24 |                                                                                                           |              |
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1 **I. INTRODUCTION**

2 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section  
3 2698, *et seq.*, Plaintiff Leyla Shams (“Plaintiff”) hereby moves the Court for an order approving  
4 the non-reversionary settlement with Defendant Revature LLC (“Defendant”) (collectively with  
5 Plaintiff, the “Parties”), as set forth in the concurrently filed PAGA Settlement Agreement  
6 (“Agreement” or “Settlement”).

7 As demonstrated below and in the accompanying declaration of Max W. Gavron, the  
8 proposed settlement warrants the Court’s approval. This settlement was reached after extensive  
9 investigation and informal discovery, including Defendant’s production of relevant pay records,  
10 as well as data pertaining to the size and scope of the aggrieved employees. Furthermore,  
11 pursuant to the terms of the Settlement, Defendant will pay the gross amount of \$285,000.00 (the  
12 “Gross Settlement Amount”), which includes an estimated payment of approximately  
13 \$140,500.00 in civil penalties to aggrieved employees and the California Labor and Workforce  
14 Development Agency (“LWDA”). The proposed release is narrowly tailored to release only  
15 claims for civil penalties under PAGA predicated on the specific Labor Code violations alleged  
16 in the Complaint.

17 The proposed settlement constitutes an adequate, fair, and reasonable settlement on  
18 behalf of the LWDA and aggrieved employees, and accomplishes the goals of the PAGA.

19 **II. PROCEDURAL HISTORY**

20 **A. The PAGA Notice**

21 On November 22, 2021, Plaintiff submitted written notice under Labor Code section  
22 2699.3 to the LWDA and Defendant, alleging that Defendant violated Labor Code sections 204,  
23 450, and 2802 (the “PAGA Notice”). *See* Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 2.

24 **B. The Operative Complaint**

25 On February 14, 2022, Plaintiff filed a putative class and representative action complaint  
26 against Defendant, alleging (1) violation of Labor Code section 2802; (2) violation of Business  
27 and Professions Code section 16600; (3) violation of Business and Professions Code section  
28 17200, *et seq.*; (4) negligent misrepresentation; and (5) violation of Labor Code section 2698, *et*

1 *seq.*, the Private Attorneys General Act (“PAGA”). Gavron Decl. ¶ 3. Plaintiff sought damages  
2 and civil penalties, as well as attorneys’ fees, and costs. *See id.* ¶ 3.

3 The complaint alleges that Defendant required employees to undergo its training program  
4 and pay Defendant for the cost of the training program upon separation of employment. Plaintiff  
5 alleges that Defendant negligently misrepresented the nature of the unlawful training program to  
6 employees, and used this as leverage to restrict employees’ ability to engage in a lawful  
7 profession and/or trade. *See id.* ¶ 4.

8 The complaint also alleged that because the training was performed remotely, employees  
9 were required to use their own computer/internet for the training. Employees were also required  
10 to utilize their personal cell phones to communicate with Defendant and its employees. Despite  
11 being required to use their own equipment, employees were not reimbursed for the costs incurred  
12 for these work-related tasks. *See id.* ¶ 5.

13 In addition, the complaint alleged that employees were required to sign a contract that  
14 unlawfully restrained them from engaging in a lawful profession and/or trade in violation of  
15 Business and Professions Code sections 16600 and 16600.5. *See id.* ¶ 6.

16 Finally, the complaint alleges that Defendant had a policy of paying wages to employees  
17 after the seventh day following the close of the payroll period, in violation of Labor Code section  
18 204. *See id.* ¶ 7.

19 **C. The Court Compels the Arbitration of Plaintiff’s “Individual” Claims**

20 On March 21, 2022, Defendant removed the action to federal court. *See* Gavron Decl. ¶ 8.

21 Defendant subsequently filed a motion to compel arbitration of Plaintiff’s individual  
22 claims and dismiss or stay the action, pursuant to a signed arbitration agreement containing a  
23 class action waiver. The Court granted Defendant’s motion to compel arbitration on August 17,  
24 2022, and subsequently issued a stay of action as to the remaining non-individual PAGA claims,  
25 pending resolution of the arbitration. *See id.* ¶ 9. Accordingly, all that remained in the lawsuit  
26 were Plaintiff’s non-individual claims predicated on violation of the PAGA. *Id.* ¶ 9.

27 On September 30, 2022, Plaintiff filed a demand for arbitration of her individual claims  
28 against Defendant before the American Arbitration Association (“AAA”). *See id.* ¶ 10.

1           **D.       The Parties Engage in Discovery and Investigation**

2           Following the removal to federal court and resolution of Plaintiff's arbitration  
3 proceeding, the Parties continued engaging in discovery. *See* Gavron Decl. ¶ 11. This included  
4 the exchange of initial disclosures in the federal action, as well as written discovery propounded  
5 by Plaintiff, including requests for production of documents, requests for admissions, and  
6 interrogatories following remand to the Superior Court. *See id.* ¶ 11. Defendant provided written  
7 responses and documents for Plaintiff's review. *Id.* ¶ 11.

8           The Parties later agreed to redirect their efforts towards resolution of the action. *See*  
9 Gavron Decl. ¶ 12. In connection with the Parties' negotiations, Defendant produced relevant  
10 pay records, and other data relating to the size and scope of the group of aggrieved employees, as  
11 well as information permitting Plaintiff to fully understand the nature and scope of the  
12 allegations. *See id.* ¶ 12. Based on the information provided by Defendant, Plaintiff's counsel  
13 conducted a full penalties analysis as to the value of the PAGA claims. *Id.* ¶ 12.

14           **E.       The Reach a Settlement Through Arm's Length Negotiations**

15           On February 6, 2024, the Parties engaged in mediation with experienced neutral Michael  
16 J. Loeb, Esq., to resolve Plaintiff's individual claims in arbitration. *See* Gavron Decl. ¶ 15. After  
17 thorough arm's length negotiations, the Parties entered into an agreement to settle Plaintiff's  
18 arbitration claims in their entirety. *See id.* ¶ 15.

19           On August 14, 2024, the Parties conducted a second mediation with Mr. Loeb to discuss  
20 Plaintiff's non-individual PAGA claims against Defendant. *See id.* ¶ 16. The Parties conducted  
21 settlement negotiations at arm's length in an adversarial position. *See id.* ¶ 16. As part of these  
22 negotiations, the Parties extensively discussed all aspects of the case, including the risks and  
23 delays of further litigation, the risks to the Parties of proceeding with trial, and the possibility of  
24 appeals, among other things. *See id.* ¶¶ 16. While the Parties did not reach an agreement at its  
25 conclusion, settlement discussions facilitated by Mr. Loeb continued in the months following  
26 mediation, and the Parties subsequently negotiated the terms of the PAGA Settlement  
27 Agreement. *See id.* ¶ 16.

### III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the Settlement are described below and set forth in detail in the concurrently filed PAGA Settlement Agreement, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Max W. Gavron.

#### A. The Aggrieved Employees

The current action is being settled on behalf of the following employees: any current or former non-exempt, hourly service worker who was employed by Defendant at Revature LLC, in the State of California during the PAGA Period (“Aggrieved Employees”). *See* Settlement Agreement (“SA”) ¶ 1.4. The PAGA Period is the period from November 22, 2020, through April 30, 2023. *See id.* ¶ 1.20. Based on Defendant’s records, there are approximately 950 Aggrieved Employees. *Id.* ¶ 20. These individuals worked an approximate maximum of 9,500 pay periods during the PAGA Period. *Id.* ¶ 3.2.

#### B. The Gross Settlement Amount

The Settlement Agreement requires Defendant to pay the amount of Two Hundred Eighty-Thousand Dollars (\$285,000.00) (the “Gross Settlement Amount”). *See* SA ¶ 3.1. Based on this amount, Defendant will pay approximately \$30.00 per pay period to resolve the claims in this case. *See* Gavron Decl. ¶ 20.

#### C. The Allocation of the Net Settlement Amount

The balance of the Gross Settlement Amount remaining after deduction of the approved attorneys’ fees and litigation costs, settlement administration fees, and Plaintiff’s service payment (the “PAGA Penalties”), will be available for distribution to the LWDA and Aggrieved Employees. *See* SA ¶¶ 1.23, 3.3, 3.2.1-3.2.4. The PAGA Penalties will total approximately \$140,500.00. *See* Gavron Decl. ¶ 25. Seventy-five percent (75%) of the PAGA Penalties, or approximately \$105,375.00, will be paid to the LWDA (“LWDA PAGA Payment”). *See* SA ¶¶ 1.23; Gavron Decl. ¶ 25. The remaining twenty-five percent (25%), or approximately \$35,125.00, will be distributed to Aggrieved Employees (“Net Settlement Amount”). *See* SA ¶ 1.23; Gavron Decl. ¶ 25.

Based on the number of Aggrieved Employees, employees will be entitled to recover, on

1 average, up to \$36.97 each (\$35,125.00 / 950 employees). *See* Gavron Decl. ¶ 26. However, the  
2 amount that any particular Aggrieved Employee will be entitled to recover will be greater or  
3 lower than this average depending on the number of pay periods in which the individual was  
4 employed as a non-exempt employee by Defendant during the PAGA Period. *See* SA ¶ 1.12.  
5 This is fair, as it directly allocates greater penalties to Aggrieved Employees who have allegedly  
6 suffered greater harm. *See* Gavron Decl. ¶ 26.

7 **D. Attorneys' Fees, Litigation Costs, and Service Payment**

8 As part of the Settlement, Defendant does not object to Plaintiff's counsel's request for  
9 attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Ninety-Five  
10 Thousand Dollars (\$95,000.00), and reimbursement for litigation costs in an amount up to Thirty  
11 Thousand Dollars (\$30,000.00), subject to the Court finally approving this Settlement. *See* SA ¶  
12 3.2.2.<sup>1</sup> Any costs or fees not approved will revert to the PAGA Penalties. Gavron Decl. ¶ 25.

13 Also, as part of the Settlement, Defendant does not object to Plaintiff's request for a  
14 service payment to Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000.00). *See*  
15 SA ¶ 3.2.2. Any portion of the enhancement payment that is not approved by the Court shall  
16 become part of the PAGA Penalties. *See id.*

17 **E. Settlement Administration Costs**

18 The Settlement provides for the payment of the fees and expenses reasonably incurred by  
19 the Settlement Administrator. *See* SA ¶ 3.2.3. The Parties have agreed to utilize Phoenix  
20 Settlement Administrators to administer the settlement, with the administration costs estimated to  
21 be Nine Thousand Five Hundred Dollars (\$9,500.00). *See* SA ¶¶ 1.2, 3.2.3; Gavron Decl. ¶ 24.

22 **F. The *Cy Pres* Recipient**

23 Any uncashed checks will be paid out pursuant to California Code of Civil Procedure  
24 section 384 to the *cy pres* recipient, the Justice Gap Fund. *See* SA ¶ 4.3.3. The Justice Gap Fund  
25

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26  
27 <sup>1</sup> At the time the Parties negotiated the Settlement Agreement, Plaintiff's counsel did not have a  
28 final tally of the litigation costs incurred to date. As such, the Parties included a maximum  
amount that could be attributed to costs under the settlement. Plaintiff's counsel requests  
reimbursement of \$21,655.53 for litigation-related expenses. *See* Gavron Decl. ¶ 54.

1 provides funding for legal aid organizations across the state providing free civil legal services to  
2 low-income residents. *See* Gavron Decl. ¶ 27. Plaintiff’s counsel warrant and represent that they  
3 do not have a relationship, financial or otherwise, with the *cy pres* recipient. *See* Gavron Decl. ¶  
4 28; Declaration of Larry W. Lee (“Lee Decl.”) ¶ 5; Declaration of William L. Marder (“Marder  
5 Decl.”) ¶ 7.

#### 6 **G. The Scope of the Released Claims**

7 Upon the deposit of the Gross Settlement Amount, Plaintiff and the LWDA will release  
8 the Released Parties from the Released PAGA Claims. *See* SA ¶ 5.2. As defined in the  
9 Agreement, the term “Released PAGA Claims” means:

10 all PAGA claims that have been pled or could have reasonably been  
11 pled on Plaintiff’s behalf based on the factual allegations contained  
12 in the PAGA letter sent by Plaintiff and including, but not limited to,  
13 civil penalties pursuant to PAGA for or related to alleged violations  
14 of Labor Code sections Labor Code sections 204, 210, and 2802,  
15 injunctive relief as it relates to the claims listed above, declaratory  
relief as it relates to the claims listed above, liquidated damages,  
penalties recoverable pursuant to the claims listed above, interest,  
fees, costs throughout the PAGA Period.

16 *See id.* ¶¶ 1.27, 5.2. The Settlement is not intended to release does not extend to violations of any  
17 predicate statutes other than PAGA. *See 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  
22 violations of the California labor laws and to obtain penalties that previously could only be  
23 obtained by the State. The PAGA was enacted because the Legislature determined that it was “in  
24 the public interest to allow aggrieved employees, acting as private attorneys general, to recover  
25 civil penalties for Labor Code violations,” since the State had not been able to fully or  
26 adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Kim v.*  
27 *Reins International California, Inc.*, 9 Cal. 5th 73, 81 (2020) (“The Labor Commissioner and  
28 other agencies were likewise hampered in their enforcement of civil penalties by inadequate

1 funding and staffing constraints. [] To facilitate broader enforcement, the Legislature enacted  
2 PAGA, authorizing “aggrieved employees” to pursue civil penalties on the state’s behalf”;  
3 *Ochoa- Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, \*4 (N.D. Cal. April 2, 2010)  
4 (“The act’s declared purpose is to supplement enforcement actions by public agencies, which  
5 lack adequate resources to bring all such actions themselves. Unlike class actions, these civil  
6 penalties are not meant to compensate unnamed employees because the action is fundamentally a  
7 law enforcement action.” [Citations omitted.]

8 Labor Code section 2699(a) states that any Labor Code provision “that provides for a  
9 civil penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered  
10 through a civil action brought by an aggrieved employee on behalf of himself or herself and  
11 other current or former employees pursuant to the procedures specified in Section 2699.3.” An  
12 “aggrieved employee” means “any person who was employed by the alleged violator and against  
13 whom one or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to  
14 commencing an action, the allegedly aggrieved employee must provide notice to the LWDA and  
15 the employer setting forth the “specific provisions of [the Labor Code] alleged to have been  
16 violated, including the facts and theories to support the alleged violation.” Lab. Code §  
17 2699.3(a)(1). If the LWDA decides not to investigate the allegations or issue a citation to the  
18 employer, the proposed representative plaintiff is entitled to commence a PAGA action after 65  
19 days. Lab. Code § 2699.3(a)(2).

20 The California Supreme Court has explained that a plaintiff who brings a PAGA claim  
21 “represents the same legal right and interest as state labor law enforcement agencies,” and brings  
22 PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal. 4th at 986. Of the civil  
23 penalties recovered, 75 percent goes to the LWDA, and the remaining 25 percent goes to the  
24 “aggrieved employees” for collecting the penalties on behalf of the State Lab. Code § 2699(i);  
25 *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA  
26 representative’s recovery is “an incentive to perform a service to the state, not restitution for  
27 wrongs done to members of the class”).

28 //

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

3           In class action cases, the purpose of the Court’s preliminary evaluation of the settlement  
4 is to determine whether it is within the “range of reasonableness,” and thus whether notice to the  
5 class of the terms and conditions of the settlement, and the scheduling of a formal fairness  
6 hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* §  
7 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a  
8 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms  
9 and must direct the preparation of notice of the certification, proposed settlement, and date of the  
10 final fairness hearing.” *Manual for Complex Litigation, Fourth* ¶ 21.632 (Fed. Jud. Ctr., 4th ed.  
11 2004). To make the preliminary fairness determination, courts may consider several relevant  
12 factors, including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely  
13 duration of further litigation; the risk of maintaining class action status through trial; the amount  
14 offered in settlement; the extent of discovery completed and the stage of the proceedings; [and]  
15 the experience and views of counsel...” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th  
16 Cir. 1998).

17           By contrast, court approval of PAGA settlements is governed by section 2699(1) of the  
18 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties  
19 sought as part of a proposed settlement agreement pursuant to this part.” The parties are not  
20 obligated to “satisfy class action requirements,” including the standards for class action  
21 settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff  
22 need not satisfy class action requirements” to assert a PAGA claim). Notably, unlike the class  
23 action settlement approval process, there is also no statutory mechanism for this Court to conduct  
24 a two-step settlement approval review. Cal. Lab. Code § 2699(i). In addition, “[u]nnamed  
25 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out  
26 of the representative PAGA claim” or “contest a settlement, if any, reached between the parties.”  
27 *Ochoa-Hernandez*, 2010 WL 1340777 at \*13.

28 //

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

2           The Court’s focus in a PAGA case is not the amount that aggrieved employees will  
3 ultimately receive as a result of a settlement. Instead, “a trial court should evaluate a PAGA  
4 settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes  
5 to remediate present labor law violations, deter future ones, and to maximize enforcement of  
6 state labor laws.” *See Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021) (emphasis  
7 added); *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at \*15 (N.D. Cal., 2021)  
8 (evaluating a PAGA settlement under the standard of whether the settlement terms “are  
9 fundamentally fair, reasonable, and adequate in view of PAGA’s public policy goals”). Here, the  
10 Settlement vindicates the rights of Aggrieved Employees who have experienced alleged  
11 violations of the Labor Code. Additionally, the six-figure Gross Settlement Amount acts as a  
12 deterrent to other California employers.

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

20           **D.       The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**  
21                       **Litigation**

22           Though Plaintiff is reasonably confident that she would prevail at trial, proceeding in  
23 litigation entails significant risk on the underlying merits of Plaintiff’s theories, in addition to the  
24 still-developing law under PAGA.

25                       **1.       Plaintiff’s Claims are Contested**

26                               **a.       The Alleged 2802 Violation**

27           Plaintiff alleges that Defendant required employees to pay for its training program upon  
28 separation of employment and failed to reimburse employees for expenses incurred while

1 undergoing training, such as the costs of using personal computers and internet. *See* Gavron  
2 Decl. ¶ 13. Plaintiff also alleges that employees were required to use their personal cell phones  
3 for work purposes, but were not reimbursed. *See id.* Defendant argued that any choice by  
4 employees to use personal devices to conduct work activities was purely a personal decision, and  
5 thus not a “reasonable and necessary” expense subject to reimbursement. Gavron Decl. ¶ 13.

6 **b. The Alleged Section 204 Violation**

7 Plaintiff alleges that Defendant had a policy of paying wages to employees after the  
8 seventh day following the close of the payroll period, in violation of Labor Code section 204. *See*  
9 Gavron Decl. ¶ 14. Although Defendant disputes that its policy was ever unlawful, Defendant  
10 revised its policies to pay employees within 7 days of the close of the payroll period, effective  
11 April 2023. *See id.* Defendant produced exemplary wage statements for Plaintiff’s review to  
12 confirm this change. *See id.*

13 Defendant has denied violation of any applicable laws and liability for any claims  
14 asserted in the action. Specifically, Defendant argued that it complied with the law by timely  
15 paying employees all wages due and owing. *See id.* ¶ 14. Moreover, Defendant argued that even  
16 if the Court ultimately found its employment practices violative of the Labor Code, the Court has  
17 discretion under PAGA to reduce the maximum allowable PAGA penalties at its discretion. *Id.*  
18 Defendant may have sought summary judgment on this issue or proceeded to trial. Should  
19 Defendant have prevailed, the State of California and Aggrieved Employees would have been  
20 left with zero recovery. Even if Plaintiff prevailed at trial, Defendant could have appealed, which  
21 would have continued litigation in this action for several years, thus depriving the State and  
22 Aggrieved Employees of any recovery for the foreseeable future.

23 **2. Recovery of Civil PAGA Penalties is Uncertain**

24 However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential  
25 recovery is uncertain. Defendant contends that it made a good faith effort to comply with the  
26 law. As argued by Defendant, in deciding whether to award the maximum penalty amount,  
27 courts may focus on whether the employer made a good faith effort to follow the law. For  
28 example, in *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal upheld the trial

1 court's significant reduction of PAGA penalties by 30% because the employer was not initially  
2 on notice that it was in violation of the law and because it would have been unfair to award  
3 penalties where the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136  
4 (2012). When the employer made aware of the violations, it timely took steps to come into  
5 compliance. *Id.* By contrast, the imposition of full penalties was justified when an employer took  
6 a “cavalier approach to fulfilling its contractual and statutory obligations” and demonstrated  
7 “reckless disregard.” *Id.* Furthermore, as the California Court of Appeal has affirmed, trial courts  
8 are well within their discretion to reduce PAGA penalties “for technical violations that cause no  
9 injury,” especially where the “violation was inadvertent.” *Raines v. Coastal Pac. Food*  
10 *Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018).

11 In this case, Defendant asserted that a substantial reduction in potential PAGA penalties  
12 was warranted because: (1) even assuming that Plaintiff could establish the predicate violations,  
13 the alleged violations were minor, if at all; and (2) Aggrieved Employees did not suffer  
14 substantial economic harm as a result of the alleged violations of Labor Code. *See* Gavron Decl.  
15 ¶ 37. Thus, Defendant contends that no PAGA penalties were needed to punish or deter  
16 Defendant for its payroll policies, much less to deter it from committing any future violations  
17 that were completely foreclosed by its new payroll practices. *See id.*

### 18 3. Maximum PAGA Civil Penalties Recoverable After Trial

19 Defendant has indicated that Aggrieved Employees worked a maximum of 9,500 pay  
20 periods during the period of November 22, 2020, through April 30, 2023. *See* Gavron Decl. ¶ 32.  
21 Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the standard  
22 penalty of \$100 per pay period yields \$950,000 in potential liability. *See id.* In the alternative, if  
23 the Court were to “stack” penalties, (*i.e.*, award multiple PAGA penalties for different Labor  
24 Code violations in the same pay period), the potential PAGA penalties could total as high as  
25 approximately \$1.9 million. *See id.* ¶ 33.

26 However, trial courts routinely award far less than the statutory maximum amount of civil  
27 penalties, even where an underlying violation of the Labor Code is found. Indeed, in the matter  
28 of *Magadia v. Wal-Mart Assocs. et al.*, while the trial court imposed substantial PAGA penalties

1 upon the defendant, such amount still represented reductions of 67% and 80% of the potential  
2 PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at \*87-\*100 (N.D. Cal. 2019). Here,  
3 Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However,  
4 Plaintiff is aware that Defendant could make a compelling argument to the contrary, particularly  
5 under the legal and factual issues in this case.

6 **4. Settlement is Reasonable When Compared to the Realistic Amount of**  
7 **PAGA Civil Penalties at Issue**

8 Assuming that the Court awards \$100 per pay period at issue, without stacking, the Gross  
9 Settlement Amount is approximately 30% of the maximum amount of penalties at issue. *See*  
10 Gavron Decl. ¶¶ 32-41. Alternatively, if the Court were to award multiple PAGA penalties for  
11 different Labor Code violations in the same pay period, the Gross Settlement Amount is  
12 approximately 15% of the penalties at issue. Settlement for this reduced value allows for the  
13 distribution of penalties in an amount which accounts for the risk of continued litigation, and  
14 Defendant's likely arguments that higher penalties would have been confiscatory. *See id.* ¶¶ 39-  
15 41. It also sufficiently deters Defendant from engaging in similar conduct in the future, which is  
16 one of the primary goals of PAGA.

17 The amount of a PAGA settlement need not represent any particular percentage of the  
18 potential penalty amount that may be recovered after trial. *See Manzo v. McDonald's Restaurants*  
19 *of California, Inc.*, 2022 WL 4586236, at \*6 (E.D. Cal. 2022) ("There is no express or even  
20 baseline percentage of recovery required"). Consequently, trial courts routinely approve PAGA  
21 settlements representing only a tiny fraction of the potential verdict value of the claim. *See id.*  
22 (approving PAGA allocation that "is less than one percent (1%) of the verdict value" of the  
23 claim"); *Hartley v. On My Own, Inc.*, 2020 WL 5017608, \* 4 (E.D. Cal. Aug. 25, 2020)  
24 (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment  
25 per employee of \$61); *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, \*4 (N.D. Cal.  
26 Aug. 25, 2017) (considering early stage of litigation, defendant's weak financial condition, and  
27 injunctive relief provided by settlement, approving PAGA settlement of 4.5% of verdict value).  
28 Here, the Gross Settlement Amount exceeds the typical PAGA settlement both in terms of the

total dollar amount and as a percentage of overall settlement value.

**E. The Scope of the Release is Appropriately Limited**

The limited scope of the release also supports approval. *See* Section III-G, *supra*. The Settlement only releases Defendant from civil PAGA predicated on Labor Code violations alleged in the PAGA Notice, as well as attorneys' fees and costs. The Settlement would not impact any other Aggrieved Employees' ability to pursue PAGA claims predicated on other Labor Code violations or any Labor Claims not predicated on PAGA.<sup>2</sup>

**F. The Attorneys' Fees and Costs are Reasonable**

Plaintiff's counsel seeks a fee award calculated as one-third of the total value of the settlement for the successful prosecution and resolution of this action. Labor Code section 2699(g)(1) provides for the recovery of attorneys' fees and costs in any successful action brought under PAGA. Although this is not a class action, in class actions California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in

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<sup>2</sup> Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at 987; *see also*, Lab. Code § 2699(g)(1) (non-party Aggrieved Employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").

1 holding that when class action litigation establishes a monetary fund for the benefit of the class  
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,  
3 the court may determine the amount of a reasonable fee by choosing an appropriate percentage  
4 of the fund created”). Under the percentage of the fund method, the Court’s objective remains to  
5 “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th  
6 Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it  
7 at a level that will approximate what the market will set.... The judge, in other words, is trying to  
8 mimic the market in legal services”).

9 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal.  
10 3d at p. 35; *Vincent*, 557 F.2d at p. 769. Similarly, in *City and County of San Francisco v. Sweet*,  
11 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund  
12 doctrine has been applied “consistently in California when an action brought by one party creates  
13 a fund in which other persons are entitled to share.” The reasons for applying the common fund  
14 doctrine include: “fairness to the successful litigant, who might otherwise receive no benefit  
15 because his recovery might be consumed by the expenses; correlative prevention of an unfair  
16 advantage to the others who are entitled to share in the fund and who should bear their share of  
17 the burden of its recovery; encouragement of the attorney for the successful litigant who will be  
18 more willing to undertake and diligently prosecute proper litigation for the protection or recovery  
19 of the fund if he is assured that he will be properly and directly compensated should his efforts  
20 be successful.” *Id.*

21 Here, the fee award representing one-third of the Gross Settlement Amount is consistent  
22 with other comprehensive surveys of class action settlements and fee awards. *See Martin v.*  
23 *AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that  
24 “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result  
25 in recovery of a common fund under \$10 million”); *see also* Eisenberg & Miller, *Attorney Fees*  
26 *in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248,  
27 262, fn. 16 (2010) (independent studies of class action litigation nationwide conclude that fees in  
28 the range sought here are consistent with market rates). The results delivered by Plaintiff’s

1 counsel also support the requested percentage of the fund. Here, Plaintiff's counsel secured a  
2 \$285,000.00 non-reversionary common fund settlement.

3 In addition, it is recognized that one of the primary factors justifying an enhanced  
4 attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of*  
5 *Detroit v. Grinnell Corp.*:

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

10 495 F.2d 448, 470 (2d Cir. 1974). For Plaintiff's counsel, the fees here were wholly contingent in  
11 nature and the case presented far more risks than the usual contingent fee case. Among the risks  
12 was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a  
13 corporate Defendant.

14 As secondary support for the percentage of the fund method, courts have discretion to  
15 "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court  
16 "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the  
17 trial court's primary determination of the fee as a percentage of the common fund and thus does  
18 not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at  
19 p. 505; *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar  
20 cross-check does not trump the primary reliance on the percentage of common fund method]").

21 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar  
22 cross-check is extraordinarily high or low, the trial court should consider whether the percentage  
23 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the  
24 court is not necessarily required to make such an adjustment." *Id.* Thus, a lodestar cross-check is  
25 aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases,  
26 performing a cross-check "undermines" one of the primary reasons for using the percentage  
27 method: aligning counsel's incentives with the benefits delivered to the class and discouraging  
28 protracted litigation. *Id.* at p. 506 (finding trial courts "retain the discretion to forgo a lodestar

cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked trial judge”).

Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 881-82 (2014). The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

With respect to Plaintiff’s counsel’s lodestar, to date, at least approximately 159.6 hours have been expended by Class Counsel in this matter. *See* Gavron Decl. ¶ 51, Ex. B; Lee Decl. ¶ 9, Ex. A; Marder Decl. ¶ 15, Ex. A. Counsel anticipates spending an additional 5 hours on this matter through its final resolution, including preparing for the approval hearing, conferring with the Settlement Administrator regarding distribution of payment to Aggrieved Employees, and fielding phone calls regarding inquiries about the Settlement. *See id.* Counsel requests hourly rates of \$700-\$900 per hour. *See* Gavron Decl. ¶ 52; Lee Decl. ¶ 10; Marder Decl. ¶ 16. 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).

1 Reasonable hours include, in addition to time spent during litigation, the time spent  
2 before the action is filed, including time spent interviewing the clients, investigating the facts and  
3 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,  
4 62 (1980). Further, the fee award should include fees incurred to establish and defend the  
5 attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus,  
6 Plaintiff's counsel requests that the court find that these hours were reasonable in this litigation.  
7 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
8 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095  
9 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the  
10 attorney's skill and experience, the nature of the work performed, the relevant area of expertise  
11 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.  
12 4th 629, 632-33 (1998).

13 Here, Plaintiff's counsel's skill and experience justify the requested rate. As shown in the  
14 supporting declaration, Plaintiff's counsel has significant experience in the area of employment  
15 and wage and hour class actions. *See* Gavron Decl. ¶¶ 44-50; Lee Decl. ¶ 6-8; Marder Decl. ¶ 8-  
16 14. Specifically, Plaintiff's counsel's practice focuses on representing employees in employment  
17 matters, particularly wage and hour cases. *See* Gavron Decl. ¶ 43; Lee Decl. ¶ 7; Marder Decl. ¶¶  
18 8-14. As such, based on the hours and applicable rate, the total lodestar to be expended by  
19 Plaintiff's counsel through finalizing this settlement will be approximately \$125,920.00. *See*  
20 Gavron Decl. ¶ 53; Lee Decl. ¶ 10; Marder Decl. ¶ 15.

21 Once the court establishes the lodestar amount, it may enhance the fee award by a  
22 multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. The pertinent  
23 factors include the difficulty of the questions involved and the skill in presenting them, the  
24 contingent nature of the fee award, the extent to which the litigation precluded other  
25 employment, and the percentage-of-the-fund the attorney would have received on the fair  
26 market. *Id.*, *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive and the court can  
27 consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th  
28 1122, 1139 (2001).

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

6 Here based upon Plaintiff’s counsel’s lodestar of \$125,920.00, Plaintiff’s request for a fee  
7 award of \$95,000.00 is more than reasonable and fair. As the Court can see, the lodestar well is  
8 such that Plaintiff’s counsel requests a negative multiplier of 0.75 [ $\$95,000.00$  (requested fees) ÷  
9  $\$125,920.00$  (lodestar amount)]. Based thereon, Plaintiff’s counsel’s request for attorneys’ fees  
10 in the amount of \$95,000.00 is fair and reasonable, and the Court should approve this amount.

11 Additionally, Plaintiff’s counsel’s cost reimbursement request in the amount of  
12 \$21,655.53 is also reasonable. *See* Gavron Decl. ¶ 54, Exhibit C. The costs were all directly  
13 incurred in the prosecution of this action, including mediation costs, filing fees, postage, and  
14 copying. *See id.* As such, the requested costs should be awarded as fair and reasonable.

#### 15 **G. The Settlement Administrator’s Costs Should be Approved**

16 The Parties have agreed to pay actual costs of administration, or Nine Thousand Five  
17 Hundred Dollars (\$9,500.00), to the Settlement Administrator, Phoenix Settlement  
18 Administrators, to administer this Settlement. *See* SA ¶¶ 1.2, 3.2.3. The Parties believe that the  
19 administration fee is reasonable and should be approved. Gavron Decl. ¶ 24.

#### 20 **H. Plaintiff’s Service Payment Should be Approved**

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

27 Here, Plaintiff seeks \$10,000.00 for her service award, which is intended to compensate  
28 Plaintiff for the time spent on this case, including reviewing pleadings and the potential for

hesitation from later prospective employers that might find out she brought this claim. *See* SA ¶ 3.2.1; Declaration of Leyla Shams ¶¶ 7, 8. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at \*51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

**I. Notice to the LWDA Has Been Provided**

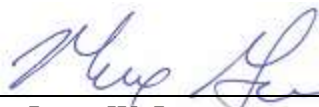
Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. *See* Gavron Decl. ¶ 55, Exhibit D.

**V. CONCLUSION**

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

DATED: May 12, 2025

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