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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

CHRISTINA TORREZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

HEALTHCARE STAFFING
PROFESSIONALS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2022-2077

**PLAINTIFF CHRISTINA TORREZ'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: March 21, 22, 23, 24 or 28, 2023
Time: 9:00 a.m.
Dept: 10C

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

2 **PLEASE TAKE NOTICE** that on March 21, 22, 23, 24 or 28, 2023, at 10:00 a.m., or as
3 soon thereafter as the matter may be heard, before the Honorable Jayne Lee, judge presiding, in
4 Department 10C of the above referenced Court located at 180 E. Weber Avenue, Stockton,
5 California 95202, Plaintiff Christina Torrez (“Plaintiff”) will seek an Order approving the
6 concurrently filed Joint Stipulation of Settlement and Release under the Private Attorneys
7 General Act (“Agreement” or “Settlement”), pursuant to the procedures set forth in Labor Code
8 section 2698, *et seq.*

9 This motion will be based on this notice of motion, the attached memorandum of points
10 and authorities, the accompanying declarations of Kristen M. Agnew and Plaintiff Christina
11 Torrez, the records and file herein, and on such other evidence as may be presented at the
12 hearing of the motion.

13
14 DATED: February 24, 2023

DIVERSITY LAW GROUP, P.C.

15
16 By: _____

17 Larry W. Lee
18 Kristen M. Agnew
19 Nick Rosenthal
20 Attorneys for Plaintiff Christina Torrez
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section
4 2698, *et seq.*, Plaintiff Christina Torrez (“Plaintiff”) hereby moves the Court for an order
5 approving the non-reversionary PAGA settlement as set forth in the concurrently filed Joint
6 Stipulation of Settlement and Release under the Private Attorneys General Act (“Agreement” or
7 “Settlement”). The operative Complaint sets forth a single cause of action for violation of PAGA
8 predicated on Defendant Healthcare Staffing Professionals, Inc.’s (“Defendant”) alleged policy
9 and practice of paying wages beyond the time periods as allowed pursuant to Labor Code section
10 204. Plaintiff seeks to recover civil penalties against Defendant on behalf of the State of
11 California and all current and former California employees of Defendant in the State of
12 California who were paid wages at any time from January 12, 2021 to April 29, 2022
13 (“Aggrieved Employees”).

14 As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the
15 proposed settlement warrants the Court’s approval. This settlement was reached with the
16 assistance of a private mediator and after extensive investigation and informal discovery.
17 Pursuant to the terms of the proposed Settlement, Defendant will pay the gross amount of
18 \$189,000.00 (the “Maximum Settlement Amount”), which includes a payment of approximately
19 \$75,564.24 in civil penalties to the Labor and Workforce Development Agency (“LWDA”). The
20 proposed release is narrowly tailored to release only claims for civil penalties under PAGA
21 predicated on Labor Code section 204.

22 The proposed Settlement constitutes an adequate, fair, and reasonable settlement on
23 behalf of the LWDA and Aggrieved Employees, and accomplishes the goals of PAGA.

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1 **II. PROCEDURAL HISTORY**

2 **A. Summary of the Litigation and Settlement.**

3 **1. The History of the Key Pleadings.**

4 On January 12, 2022, Plaintiff submitted her written notice under Labor Code section
5 2699.3 (the “PAGA Notice”) to the LWDA and Defendant alleging claims against Defendant for
6 violation of Labor Code section 204. (Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 3.)
7 Pursuant to Labor Code section 204(d), all earned wages must be paid by the seventh day
8 following the close of the pay period. As set forth in the PAGA Notice, Plaintiff contends that
9 Defendant had a consistent policy of paying wages to employees more than ten days following
10 the close of the pay period. (*Id.*)

11 On March 18, 2022, Plaintiff initiated the instant representative PAGA Action against
12 Defendant in the Superior Court of California, County of San Joaquin (the “Action”). (Agnew
13 Decl. ¶ 4.) Plaintiff asserts a single cause of action for violation of the PAGA, predicated on
14 Defendant’s alleged violation of Labor Code section 204. (*Id.*) As alleged in the complaint,
15 Plaintiff seeks to recover PAGA penalties on behalf of all current and former employees who
16 worked for Defendant in the State of California. (*Id.*)

17 On or about June 20, 2022, Defendant filed an Answer. (Agnew Decl. ¶ 5.) Defendant
18 denies all allegations in the Action and all claims of any wrongdoing whatsoever. (*Id.*)

19 **2. Investigation and Discovery.**

20 In light of the narrow claims at issue, Plaintiff and Defendant (collectively, the “Parties”)
21 agreed to participate in a private global mediation with Warren T. Jackson, a respected and
22 experienced mediator knowledgeable of both the wage and hour laws and representative claims
23 at issue in this Action. (Agnew Decl. ¶ 7.) Prior to the mediation, Defendant produced data
24 relevant to the potential value of the claims, including the number of Aggrieved Employees and
25 data related to the number of pay periods in which Aggrieved Employees were paid on or after
26 the eighth day following the close of the pay period. (*Id.* at ¶¶ 6, 8.) Defendant confirmed that
27 there were 1,074 Aggrieved Employees who received approximately 18,467 wage statements
28

1 from the start of the PAGA liability period on January 12, 2021, through April 29, 2022. (*Id.* at ¶
2 8.) Using the data provided by Defendant, Plaintiff’s Counsel performed a comprehensive
3 damages analysis. (*Id.*)

4 On or about December 12, 2022, the Parties engaged in an all-day mediation session
5 before Mr. Jackson. (Agnew Decl. ¶ 9.) After a full day of negotiation, the Parties were able to
6 reach an agreement for settlement and the key terms. (*Id.*) The Parties thereafter worked to
7 memorialize the terms of the settlement in a long-form settlement agreement. (*Id.*)

8 On or about February 1, 2023, the Parties executed the Joint Stipulation of Settlement and
9 Release under the Private Attorneys General Act. (Agnew Decl. ¶ 10.) Based on their own
10 independent investigation and evaluation, Plaintiff’s Counsel is of the opinion that the settlement
11 with Defendant for the consideration and on the terms set forth in the Settlement Agreement is
12 fair, reasonable, and adequate and is in the best interest of Plaintiff and the Aggrieved
13 Employees, in light of all known facts and circumstances, including the risk of significant delay,
14 the uncertainty associated with litigation, the various defenses asserted by Defendant, and the
15 numerous potential appellate issues. (Agnew Decl. ¶ 24.) Defendant and its counsel also agree
16 that the settlement is fair, reasonable, and adequate.

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

18 The material terms of the settlement are described below and set forth in detail in the
19 concurrently filed Settlement Agreement.

20 **A. The Aggrieved Employees.**

21 The Settlement covers all current and former California employees of Healthcare Staffing
22 Professionals, Inc. who were paid wages by Defendant at any time from January 12, 2021,
23 through April 29, 2022 (the “Aggrieved Employees”). (Settlement Agreement § B-2.) Based
24 upon Defendant’s records, there are 1,074 Aggrieved Employees who received approximately
25 18,467 wage statements reflecting the payment of wages from the start of the PAGA liability
26 period on January 12, 2021, through April 29, 2022. (*Id.*)

27 **B. Settlement Sum and Allocation.**

28 The Settlement Agreement requires Defendant to pay the gross amount of One Hundred

Eighty-Nine Thousand Dollars (\$189,000.00) (the “Maximum Settlement Amount”). (Settlement Agreement § B-9.) The balance of the Maximum Settlement Amount remaining after deduction of the approved Enhancement Payment to Plaintiff, attorneys’ fees and costs and the Settlement Administration Costs (the “PAGA Penalties Fund”), will be available for distribution to the LWDA and Aggrieved Employees. (*Id.* at §§ B-10, C-4.) Plaintiff estimates that the PAGA Penalties fund will total \$100,752.34. (Agnew Decl. ¶ 16.) Seventy-Five percent of the PAGA Penalties Fund, or approximately \$75,564.24, will be paid to the LWDA for PAGA penalties. (*Id.*; Settlement Agreement § C-4.) The remaining twenty-five percent, or approximately \$25,188.10, will be distributed to Aggrieved Employees. (Agnew Decl. ¶ 16; Settlement Agreement § C-4.)

Based on the number of Aggrieved Employees, employees will be entitled to recover, on average, up to \$23.45 each. (Agnew Decl. ¶18.) The amount that any particular Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of pay periods in which the employee received the payment of wages during the PAGA Period. (*Id.*; Settlement Agreement § C-5) This is fair, as it directly allocates greater penalties to individual Aggrieved Employees who have allegedly suffered greater harm. (Agnew Decl. ¶ 17.)

As part of the Settlement Agreement, Defendant does not object to Plaintiff’s Counsel’s request for attorneys’ fees of approximately one-third of the Maximum Settlement Amount, *i.e.* Sixty Six Thousand One Hundred Fifty Dollars (\$66,150.00), plus up to Ten Thousand Dollars (\$10,000.00) for reimbursement of litigation costs, subject to the Court finally approving this Settlement.¹ (Settlement Agreement § C-9.) Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff’s request for an Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500.00). (*Id.* at §§ B-7, C-8.)

Finally, the Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. (Settlement Agreement § C-10.) The

¹ As set forth below, Plaintiff’s Counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$7,597.66. (Agnew Decl. ¶ 13.)

Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be \$7,000.00. (*Id.* at §§ B-16, C-10.)

C. Scope of the Released Claims.

In exchange for the payments described above, Plaintiff, the State of California, and Aggrieved Employees will release Defendant and Released Parties from:

All claims for all civil PAGA penalties predicated on Labor Code section 204, including but not limited to costs and attorneys' fees related thereto, that were alleged or could have been alleged based on the facts and allegations made in the notice Plaintiff filed with the LWDA and the operative Complaint filed in the Action and accrued during the PAGA Period.²

(Settlement Agreement §§ B-15, E-2.) The Settlement, however, does not release Defendant from violations of any predicate statutes other than PAGA, and will not affect a waiver of claims by Aggrieved Employees against Defendant for any of the underlying Labor Code claims. The release is expressly limited to claims for civil penalties under PAGA and is limited to pay periods in which the Aggrieved Employees were paid by Defendant. (*Id.* at §§ B-15, E-2.)

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview.

In 2004, California enacted PAGA, which allows Aggrieved Employees, on behalf of the LWDA and other Aggrieved Employees, to bring suit against their employers for alleged violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was "in the public interest to allow Aggrieved Employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate

² PAGA Period is defined to mean "the period of January 12, 2021, through April 29, 2022." (Settlement Agreement § B-11.)

resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” [citations omitted].)

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

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

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

In class action cases, the purpose of the Court’s preliminary evaluation of the settlement is to determine whether it is within the “range of reasonableness,” and thus whether notice to the

1 class of the terms and conditions of the settlement, and the scheduling of a formal fairness
2 hearing, are worthwhile. *See* 4 Herbert B. Newberg, *Newberg on Class Actions* § 11.25 *et seq.*,
3 and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge must make a preliminary
4 determination on the fairness, reasonableness, and adequacy of the settlement terms and must
5 direct the preparation of notice of the certification, proposed settlement, and date of the final
6 fairness hearing.” *Manual*, § 21.632 (4th ed. 2004). To make the preliminary fairness
7 determination, courts may consider several relevant factors, including “the strength of the
8 plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of
9 maintaining class action status through trial; the amount offered in settlement; the extent of
10 discovery completed and the stage of the proceedings; [and] the experience and views of
11 counsel...” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

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

18 Notably, unlike the class action settlement approval process, there is also no statutory
19 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
20 2699(1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
21 they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if
22 any, reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at*13.

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

24 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
25 ultimately receive as a result of a settlement, but instead, on whether the total settlement amount
26 achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement
27 agency funding for education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the
28

1 Settlement represents an extraordinary recovery for the Aggrieved Employees and the State, and
2 thus the Settlement certainly effectuates PAGA's purpose.

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

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

11 If approved, the Settlement would release Defendant and other releasees from all PAGA
12 claims predicated on the violation of Labor Code section 204, and nothing more. The Settlement
13 would not impact any other Aggrieved Employees' ability to pursue PAGA claims predicated on
14 other Labor Code violations or any Labor Claims not predicated on PAGA. Therefore, the
15 limited scope of the release also supports approval. Because an aggrieved employee's PAGA
16 action is a substitute for an action brought by the government, "judgment in [a PAGA] action is
17 binding not only on the named employee plaintiff but also on government agencies and any
18 aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 986. However, "the
19 nonparty employees, because they were not given notice of the action or afforded any
20 opportunity to be heard, would not be bound by the judgment as to remedies other than civil
21 penalties." *Id.* at 987; *see also*, Lab. Code § 2699(g)(l) (non-party Aggrieved Employees retain
22 all rights "to pursue or recover other remedies available under state or federal law, either
23 separately or concurrently with an action taken under this part").

24 Accordingly, the Aggrieved Employees will be subject to only a limited release strictly
25 confined to the statutory penalties available under PAGA for violation of Labor Code section
26 204.**Error! Bookmark not defined.** The release is therefore appropriately tailored.

27 //

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

3 Though Plaintiff is reasonably confident that she would prevail at trial, proceeding in
4 litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the
5 still-developing law under PAGA.

6 **1. Plaintiff's Claims are Contested.**

7 Plaintiff asserts that her representative PAGA claim is based on the allegation that
8 Defendant had a consistent policy of paying wages to Aggrieved Employees more than ten days
9 following the close of the pay period, in violation of Labor Code section 204. (Agnew Decl. ¶ 3.)
10 Defendant asserts multiple defense to this claim. First, Defendant argues that it was not properly
11 served with a copy of the PAGA Notice, as required by Labor Code section 2699.3 (*Id.* at ¶ 6.)
12 Section 2699.3 requires that a PAGA plaintiff "give written notice by...certified mail to the
13 employer." Although Plaintiff sent the PAGA notice by certified mail to Defendant's address
14 listed on the Secretary of State's website, Defendant claimed that it did not receive the notice.
15 (*Id.*) Defendant argued that, had it received the PAGA Notice in January 2022, it would have
16 remedied the alleged Section 204 violation sooner. (*Id.*)

17 Additionally, Defendant argues that it is not at fault for any untimely payment of wages.
18 (Agnew Decl. ¶ 20.) Defendant is a staffing agency and depends on its end client to provide the
19 hours worked for employees staffed at their facilities. (*Id.*) Defendant maintains that its client did
20 not provide the hours worked of Aggrieved Employees within a timeframe that would permit
21 Defendant to pay wages within seven days of the close of the pay period. (*Id.*) Defendant further
22 represented that its client contract did permit Defendant to pay employees based on the estimated
23 number of hours worked because the client would only pay for hours it verified and approved.
24 (*Id.*)

25 Defendant may have sought summary judgment on these issues. (Agnew Decl. ¶¶ 6, 21.)
26 Should Defendant have prevailed, the State of California and Aggrieved Employees would have
27 been left with zero recovery.)
28

1 **2. Recovery of Penalties After Trial.**

2 Defendant has indicated that there were 18,467 pay periods in which Aggrieved
3 Employees received the payment of wages during the PAGA Period. Therefore, pursuant to the
4 PAGA, Plaintiff has calculated total exposure at \$1,846,700. (Agnew Decl. ¶ 19.) However, even
5 if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain.
6 Pursuant to Labor Code section 2699(f)(2) the Court can decline to award the full amount of
7 PAGA penalties where “...if, based on the facts and circumstances of the particular case, to do
8 otherwise, would result in an award that is unjust, arbitrary and oppressive, or
9 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
10 *Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
11 maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying
12 with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such
13 reduction to be proper. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at *17 (noting that even if
14 PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court may
15 reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and
16 oppressive, or confiscatory”).

17 Courts routinely award far less than the statutory maximum amount of civil penalties,
18 even where an underlying violation of the Labor Code is found. Indeed, in the matter of *Magadia*
19 *v. Wal-Mart Assocs. et al.*, while the trial court imposed substantial PAGA penalties upon the
20 defendant, such amount still represented reductions of 67% and 80% of the potential PAGA
21 penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100. Moreover, this was only after the
22 plaintiff in *Magadia* had prevailed after trial.

23 Here, Plaintiff maintains that there does not exist any reason for reducing PAGA
24 penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the
25 contrary. (Agnew Decl. ¶¶ 22-23.)

26 //

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1 **3. Settlement Is Reasonable When Compared to the Value of the**
2 **Underlying Labor Code Claim.**

3 The Court’s assessment of the proposed Settlement must take into account that any
4 penalties awarded may be subject to substantial reduction. When this is considered, in
5 conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover
6 nothing, the proposed settlement is patently reasonable. Indeed, the Maximum Settlement
7 Amount is approximately 10.23% of the maximum amount of penalties at issue. (Agnew Decl. ¶
8 19.) Settlement for this reduced value allows for the distribution of penalties in an amount which
9 accounts for the risk of continued litigation, and Defendant’s likely arguments that higher
10 penalties would have been confiscatory. It also sufficiently deters Defendant from engaging in
11 similar conduct in the future, which is one of the primary goals of PAGA.

12 The proposed settlement exceeds PAGA settlements that courts have approved in other
13 cases, when considered as a percentage of the overall settlement value of the case. The proposed
14 settlement, in fact, far exceeds other PAGA settlements approved by courts—including those that
15 provide for less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v.*
16 *Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA
17 allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL
18 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of
19 \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013)
20 (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement). For example, in
21 *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were misclassified as
22 independent contractors. 2016 WL 3561742, (N.D. Cal. June 23, 2016). The parties’ settled all
23 Labor Code and PAGA claims for \$27 million, with a PAGA allocation of \$1 million – or 3.7%
24 of the total settlement. *Id.* at *2. In granting preliminary approval to the proposed settlement in
25 *Cotter*, the court noted that the PAGA allocation “might seem low when compared to the
26 maximum PAGA penalties,” but acknowledged that it was in fact “quite high compared to the
27 typical amount apportioned to claims for PAGA penalties in wage and hour settlements.” *Id.* at
28

1 *5.

2 A PAGA allocation need not represent any particular percentage of the overall settlement
3 value in order to secure court approval, and courts routinely approve PAGA settlements
4 representing only a tiny fraction of the overall settlement value. Here, on the other hand, the
5 Settlement proposes a payment of approximately \$75,564.24 in penalties to the LWDA and
6 approximately \$25,188.10 in penalties to the Aggrieved Employees, which is an outstanding
7 result in a PAGA only case. (*See* Agnew Decl. ¶ 16.) The proposed settlement sum in this case
8 vastly exceeds, both in terms of the total dollar amount and as a percentage of overall settlement
9 value, the typical PAGA settlement.

10 **F. The Attorneys' Fees are Reasonable.**

11 Plaintiff's Counsel seeks a fee award calculated as thirty-five percent of the total value of
12 the settlement for the successful prosecution and resolution of this action. Labor Code section
13 2699(g)(1) provides for the recovery of attorneys' fees and costs in any successful action brought
14 under PAGA. Although this is not a class action, in class actions California state and federal
15 courts have recognized that an appropriate method for determining award of attorneys' fees is
16 based on a percentage of the total value of benefits to class members by the settlement. *Wershba*
17 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34
18 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes*
19 *Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to
20 avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the
21 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.
22 2d at 769.

23 Recently, the California Supreme Court issued its ruling regarding the award of
24 attorney's fees in wage and hour class action settlements. Under California law, the award of
25 attorneys' fees in common fund wage and hour class action settlements should start with the
26 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the
27 overwhelming majority of federal and state courts in holding that when class action litigation
28 establishes a monetary fund for the benefit of the class members, and the trial court in its

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

8 An award of thirty-five percent of the fund in attorneys’ fees “mimics the marketplace”
9 as it is “supported by the fact that typical contingency fee agreements provide that class counsel
10 will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v.*
11 *Victoria Secret Stores LLC*, 2008 WL 8150856 at p. *16 n. 59 (C.D. Cal. 2008) (citing
12 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
13 *Competitive Fees*, 81 Wash U.L.Q. 653, 659 n.11 (Fall 2003)). Indeed, “empirical studies [that]
14 show that...fee awards in class actions average around one-third of the recovery.” *Chavez v.*
15 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

16 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
17 percent of the fund, which is similar to the percentage of fee award sought in this case. *Laffitte*, 1
18 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at
19 p. 487. As the Court held, only when the multiplier is “extraordinarily high or low [should] the
20 trial court [] consider whether the percentage method should be adjusted so as to bring the
21 imputed multiplier within a justifiable range.” *Id.* at 505. Moreover, in the *Laffitte* intermediate
22 court decision, the court observed that “33 1/3 percent of the common fund is consistent with,
and in the range of, awards in other class action lawsuits.” *Id.* at 871.

23 Here, the fee award representing 35% of the fund clearly falls within that range and is
24 consistent with other comprehensive surveys of class action settlements and fee awards. *See*
25 Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical
26 Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost
27 fee awards were between 25 percent and 35 percent, with almost no awards more than 35
28 percent”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study:*

1 1993-2008, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class
2 action litigation nationwide conclude that fees representing one-third of the total recovery is
3 consistent with market rates).

4 As such, the requested fee award is fair and reasonable, and should be awarded in its
5 entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of expense
6 to ensure the successful litigation of this action on behalf of all Class Members. For such
7 reasons, Class Counsel's request for attorneys' fees in the amount of \$66,150.00 is fair and
8 reasonable.

9 Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of
10 \$7,597.66 is also reasonable. (Agnew Decl. ¶ 33, Ex. B.) The costs were all directly incurred in
11 the prosecution of this action, including filing fees, postage and copying. (*Id.*) As such, the
12 requested costs should be awarded as fair and reasonable.

13 **G. The Settlement Administrator's Fees Should be Approved.**

14 The Parties have agreed to pay actual costs of administration, or \$7,000, to the Settlement
15 Administrator, Phoenix Settlement Administrators, to administer this settlement. (Settlement
16 Agreement § B-16.) The Parties believe that the administration fee is reasonable and should be
17 approved. (Agnew Decl. ¶ 15.)

18 **H. Plaintiff's Enhancement Payment Should Be Approved.**

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

25 Here, Plaintiff seeks \$7,500 for her service award, which is intended to compensate
26 Plaintiff for the time spent on this case, the potential for retaliation, and for executing a general
27 release, including for all known and unknown claims under Civil Code § 1542. (Declaration of
28 Christina Torrez ¶ 3.) This requested enhancement is consistent with awards approved in other

1 common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D.
2 Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*,
3 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive
4 awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)
5 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*,
6 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass*
7 *v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27,
8 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v.*
9 *Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class
10 representative in ERISA case).

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

12 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the
13 LWDA's website. (Agnew Decl. ¶ 34.)

14 **V. CONCLUSION**

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

17 DATED: February 24, 2023

DIVERSITY LAW GROUP, P.C.

19 By: _____

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21 Kristen M. Agnew
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