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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AMAN ROSENDO OSORIO, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

VEFO, INC., a California corporation; and
DOES 1 through 50, inclusive

Defendants.

Case No. 22STCV13154

*Assigned to Hon. Gail Killefer in Department
37*

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

Date: January 2, 2024
Time: 8:30 a.m.
Dept: 37

Reservation ID: 794664482266

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

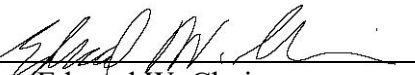
2 **PLEASE TAKE NOTICE** that on January 2, 2024, at 8:30 a.m., or as soon thereafter as
3 the matter be heard in Department 37 of the Superior Court of the State of California for the County
4 of Los Angeles, Stanley Mosk Courthouse, located at 111 N. Hill St., Los Angeles, CA 90012,
5 Plaintiff Aman Rosendo Osorio will, and hereby do, move the Court for entry of an order approving
6 the PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”) entered into in the
7 above-captioned civil action between Plaintiff and Defendant VEFO, Inc.. (“Defendant”) (Plaintiff
8 and Defendant shall collectively be referred to as the “Parties”) under the Labor Code Private
9 Attorneys General Act of 2004 (the “PAGA”).

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

18 This motion is based on this notice of motion and motion for approval of the Parties’
19 Settlement Agreement attached as Exhibit C to the Declaration of Edward W. Choi; the attached
20 memorandum of points and authorities in support of this motion; the concurrently filed
21 declarations of Edward W. Choi, David J. Lee, Plaintiff Aman Rosendo Osorio; all pleadings,
22 records, and files in this action; and upon such other matters as may be properly presented to, or
23 received by, the Court at or before the hearing on this motion.

24
25 Dated: December 1, 2023

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

26 By: 
27 Edward W. Choi

28 Attorneys for Plaintiff Aman Rosendo Osorio and
the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion Plaintiff Aman Rosendo Osorio (“Plaintiff”) respectfully requests
4 the Court’s approval of the PAGA Settlement Agreement¹ (the “Settlement Agreement” or
5 “Settlement”) with Defendant VEFO, Inc. (“Defendant”). The settlement was reached after
6 propounding written discovery and then agreeing to mediation and production of documents and
7 data on an informal basis. As part of the privileged settlement negotiations, Defendant produced
8 data regarding the Aggrieved Employees and the number of pay periods at issue for each of
9 Plaintiff’s claims from which Plaintiff’s counsel calculated the maximum PAGA penalty
10 exposure. Declaration of Edward W. Choi (“Choi Decl.”) ¶¶7-8. Based on this information, the
11 Parties have settled this case on a representative PAGA basis for \$45,000.00. Settlement
12 Agreement ¶3.1.

13 The Settlement Agreement allocates one-third of the Gross Settlement Amount for
14 attorneys’ fees, or \$15,000, up to \$4,000.00 in litigation costs incurred by Plaintiff’s Counsel,
15 \$5,000.00 to Plaintiff in exchange for a general release, and up to \$1,895.00 for settlement
16 administration costs. Settlement Agreement ¶4.1. The remainder, or the “PAGA Payment,” is
17 allocated to the payment of civil penalties under PAGA, of which 75% is to be distributed to the
18 Labor and Workforce Development Agency (the “LWDA”) and 25% of which is to be
19 distributed to the “Aggrieved Employees” on whose behalf Plaintiff filed this action as required
20 by PAGA. *Id.* ¶ 3.2.4.

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

25 ///

26
27
28 ¹ The PAGA Settlement Agreement is based on the Los Angeles Superior Court Model. A fully
executed agreement is being concurrently filed with this Motion.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On February 11, 2022, Plaintiff Aman Rosendo Osorio (“Osorio”) sent notice to the
3 LWDA giving notice of his intent to pursue a representative PAGA action, on behalf of herself
4 and the State of California as well as on behalf of other aggrieved employees (the “PAGA
5 Notice”). Choi Decl. ¶ 2, Ex. A.

6 On April 20, 2022, Plaintiff filed a Representative Action Complaint under the Private
7 Attorneys General Act of 2004 (“PAGA”) against Defendant in the Superior Court of California,
8 County of Los Angeles (the “Action”). Choi Decl. ¶ 3.

9 Plaintiff propounded interrogatories and request for production of documents on
10 Defendant. *Id.* ¶4. After receiving written discovery responses, the Parties agreed to disseminate
11 a *Belaire West* notice to the aggrieved employees. *Id.* ¶5. On November 22, 2022, the Court
12 granted the Parties Joint Stipulation regarding Belaire Notice to Putative Aggrieved Employees.
13 *Id.* The *Belaire West* notice process was completed on January 18, 2023. *Id.*

14 On June 13, 2023, the Parties engaged in private mediation before Hon. John Shook
15 (Ret.) which resulted in the settlement of this Action. *Id.* ¶ 6. During discovery, Defendant
16 produced redacted payroll records that contained the total number of pay periods at issue which
17 allowed Plaintiff to calculate the potential maximum penalties that could be awarded against
18 Defendant. *Id.* ¶7. Based on this information, the Parties conducted settlement negotiations. *Id.*

19 The Parties subsequently executed the Settlement Agreement, which is attached as
20 Exhibit C to the Choi Decl.

21 The Gross Settlement Amount is \$45,000.00. Settlement Agreement ¶1.10. Settlement
22 Agreement allocates 33 1/13% of the Gross Settlement Amount for attorneys’ fees (\$15,000.00)
23 and not more than \$4,000.00 in litigation costs incurred by PAGA Counsel, \$5,000.00 to
24 Plaintiff in exchange for a general release, and up to \$1,895.00 for settlement administration
25 costs. *Id.* ¶¶3.2.1 – 3.2.3. The remainder, is allocated to the payment to the LWDA and
26 Aggrieved Employees, PAGA Penalties in the amount of \$19,105 to be paid from the Gross
27 Settlement Amount, with 75% (\$14,328.75) allocated to the LWDA PAGA Payment and 25%
28 (\$4,776.25) allocated to the Individual PAGA Payments. *Id.* ¶3.2.4.

1 The Settlement Agreement provides the following Release by Aggrieved Employees:

2 “All Aggrieved Employees are deemed to release, on behalf of
3 themselves and their respective former and present representatives,
4 agents, attorneys, heirs, administrators, successors, and assigns, the
5 Released Parties from all claims for PAGA penalties that were
6 alleged, or reasonably could have been alleged, based on the PAGA
7 Period facts stated in the Operative Complaint and the PAGA
8 Notice.”

9 *Id.* ¶ 5.2. Plaintiff also executed a general release as part of the Settlement Agreement, including
10 a waiver of Civil Code § 1542. *Id.* ¶5.1.

11 There are approximately 30 Aggrieved Employees. *Id.* ¶4.1. Each PAGA Settlement
12 Employee will receive an Individual PAGA Payment proportionate to the number of pay periods
13 worked. *See Id.* ¶ 3.2.4.1. Aggrieved Employees assume full responsibility and liability for any
14 taxes owed on their Individual PAGA Payment. *Id.*

15 **III. STANDARD OF REVIEW**

16 Although PAGA requires courts to “review and approve” the settlement of any civil
17 action filed under PAGA, *see* Cal. Lab. Code § 2699 (1)(2), neither the Legislature, the California
18 Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard
19 PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d
20 959, 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a
21 PAGA settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL
22 1899912, at *2 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating
23 PAGA settlements.”). The LWDA itself has acknowledged the lack of a “specific benchmark”
24 and stated only that the relief provided under PAGA must be “genuine and meaningful,”
25 “consistent with the underlying purpose of the statute to benefit the public” and, in the context of
26 a class action, “meet[] the standards of being ‘fundamentally fair, reasonable, and adequate’
27 with reference to the public policies underlying the PAGA.” *See* California Labor and Workforce
28 Development Agency’s Comments on Proposed PAGA Settlement at 2-3, *O’Connor v. Uber
Techs. Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

Left to develop their own standards, federal district courts have typically followed the

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

10 **IV. ARGUMENT**

11 **A. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant** 12 **to Labor Code § 2699(l)(2)**

13 When enacting PAGA, the Legislature intended to ensure that the LWDA retained
14 “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end,
15 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the
16 proposed settlement to the LWDA online “at the same time that it is submitted to the court,” to
17 give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699
18 (l)(2), 2699 (l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement
19 Agreement and this motion to the LWDA through the LWDA’s online filing system in
20 conjunction with filing this motion. *See* Choi Decl. ¶ 14, Ex. B.

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

22 **1. The Settlement Agreement is Entitled to a Presumption of Fairness**

23 In class actions, judicial review of a settlement’s fairness is designed to protect class
24 members who had no say in the negotiation of the settlement by ensuring that the settlement is
25 not the product of “fraud,” “overreaching,” or “collusion” by the negotiating parties and that
26 “due regard” was given to the rights and interests of absent class members subject to the
27 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Although
28 PAGA actions and class action have certain “fundamental” differences (*see Sakkab v. Luxottica*

1 *Retail North America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)), PAGA settlements are also
2 subject to Court approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing
3 the scope of a judgment in a PAGA action); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d
4 1110, 1134 (N.D. Cal. 2016).

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

11 All of the factors that would give rise to a presumption of fairness in the context of a
12 class action settlement are present in this PAGA action. After this lawsuit was commenced, the
13 Parties agreed to engage in arm’s length negotiations between highly experienced counsel. As
14 part of their privileged settlement negotiations, Defendant produced data regarding the number
15 of pay periods at issue for each of the claims, from which Plaintiff’s Counsel calculated the
16 maximum PAGA penalties and analyzed Defendant’s potential liability. Choi Decl. ¶8. Both
17 Plaintiff’s and Defendant’s counsel have significant experience in litigating wage and hour class
18 and PAGA actions, which further supports the reasonableness of the settlement. Choi Decl. ¶12;
19 Declaration of David J. Lee (“Lee Decl.”) ¶4. Therefore, the Settlement Agreement is entitled to
20 a presumption of fairness.

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

22 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the
23 “vigorous assessment and collection of civil penalties as provided in the Labor Code” to
24 sometimes be “the only meaningful deterrent to unlawful conduct,” the Legislature enacted
25 PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement
26 capability of the LWDA with private enforcement actions by “aggrieved employees” acting as
27 private attorneys general. *See* 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS*
28 *Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of

1 in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA
2 to collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see*
3 *also Iskanian*, 59 Cal. 4th at 381-82. In that role, the named plaintiff “take[s] on a special
4 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.”
5 *See O’Connor*, 201 F. Supp. 3d at 1134.

6 Plaintiff’s claims in this action are based on alleged violations of Labor Code §§ 201-
7 203, 226, 226.7, 226.8, 1194, 1174, 2698, *et seq.* *See generally* Plaintiff’s Complaint and PAGA
8 notice. When reviewing a settlement agreement, “the test is not the maximum amount plaintiffs
9 might have obtained at trial on the complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal.
10 App. 4th 224, 250 (2001), nor is it “whether the settlement agreement is perfect in the
11 estimation the reviewing court.” *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir.
12 2012). The test is “whether the settlement is reasonable under all of the circumstances.” *See*
13 *Wershba*, 91 Cal. App. 4th at 250. Relevant considerations include the strength of a plaintiff’s
14 case and the risk, expense, complexity, and likely duration of further litigation. *See Kullar v.*
15 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); *see also Smith*, 2018 WL 1899912
16 at *2. In PAGA settlements, courts also consider their authority to award less than the maximum
17 penalty authorized by PAGA. *See* Cal. Lab. Code § 2699 (e)(2); *see also Smith*, 2018 WL
18 1899912 at *3.

19 Here, Defendant produced payroll records, which permitted Plaintiff to analyze
20 Defendant’s potential exposure and liability. Choi Decl. ¶¶7-8. Defendant’s potential exposure
21 could be as high as \$732,000 if the Court were to award a \$100 penalty for each pay period
22 encompassed by the proposed settlement for each of the violations alleged. *Id.* ¶8.

23 Defendant argued that the Court would not impose maximum penalties. Indeed, courts
24 have refused to “stack” PAGA penalties and often significantly reduce the penalties awarded.
25 *Id.* If penalties were not “stacked”, the total amount of exposure would amount to \$146,400.00
26 (1,464 pay periods X \$100). *Id.* Further, courts have discretion to reduce PAGA penalties.
27 *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392
28 (published Dec. 19, 2018) (approving PAGA penalty reduction to \$5 per pay period); *accord*

1 *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018). If the Court in this case were to reduce
2 penalties to \$5 a pay period, as was approved in *Carrington*, the potential exposure amounts to
3 approximately \$ 7,320.00 (5% of \$146,400). *Id.*

4 Under the circumstances of this case, the payment of \$45,000.00 in civil penalties in fair,
5 adequate, and reasonable. The payment of \$45,000.00 in exchange for a release of only those
6 claims for civil penalties that are pleaded in the Action or that could have been pleaded based on
7 the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the Action will
8 have a substantial deterrent effect on Defendant and other California employers and will confer
9 benefits on the Aggrieved Employees, who will each receive a portion of the settlement.

10 Numerous courts have held that **gross** settlements approximating between only 8 and
11 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
12 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
13 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
14 settlement amounting to only a fraction of the potential recovery does not per se render the
15 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should
16 be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the
17 settlement is fair and adequate depends on the "the difficulties in proving the case");
18 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
19 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
20 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
21 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
22 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
23 litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
24 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
25 approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A.,*
26 *Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was
27 reasonable).

28 In the present case, the Gross Settlement Amount is approximately 31% of the total

1 maximum exposure, if the penalties were not “stacked”, which is a very reasonable settlement
2 amount. In sum, this settlement is fair, reasonable, and consistent with PAGA’s policies and
3 purposes under these circumstances.

4 **3. The Settlement Agreement Apportions Civil Penalties Between the**
5 **LWDA and the Aggrieved Employees as Required by PAGA**

6 Except when civil penalties are recovered from a defendant who did not have any
7 employees at the time of an alleged violation, civil penalties recovered under PAGA must be
8 distributed so that 75% of the civil penalties are paid to the to LWDA and 25% are paid to the
9 “aggrieved employees” on whose behalf the PAGA action was brought. *See* Cal. Lab. Code §
10 2699 (i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net
11 PAGA Payment to be paid to the LWDA and 25% of the PAGA Payment to be paid to the
12 Aggrieved Employees. Settlement Agreement ¶ 3.2.4. The Aggrieved Employees will receive
13 penalties based on the number of pay periods they worked during the applicable period using a
14 pro rata distribution formula. *Id.* ¶3.2.4.1.

15 **4. The Settlement Agreement Allocates a Fair, Adequate, and**
16 **Reasonable Amount to the Payment of Attorneys’ Fees**

17 **a. Percentage of the Fund**

18 PAGA allows a prevailing plaintiff to recover reasonable attorneys’ fees. *See* Cal. Lab.
19 Code § 2699 (g). In recognition of this, the Settlement Agreement allows Plaintiff’s Counsel to
20 request up to 33 and 1/3 percent (\$15,000.00) in attorneys’ fees. *See* Settlement Agreement ¶
21 3.2.1. This amount is fair, adequate, and reasonable for two reasons.
22 In class actions, state and federal courts have held that when a class action establishes a
23 monetary fund for the benefit of the class members out of which attorneys’ fees may be paid,
24 courts may determine the amount of a reasonable fee by “choosing an appropriate percentage of
25 the fund created.” *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016). Specifically, the
26 *Laffitte* Court held:

27 “We join the overwhelming majority of federal and state courts in holding
28 that when class action litigation establishes a monetary fund for the benefit
of the class members, and the trial court in its equitable powers awards

1 class counsel a fee out of that fund, the court may determine the amount of
2 a reasonable fee by choosing an appropriate percentage of the fund
3 created. The recognized advantages of the percentage method—including
4 relative ease of calculation, alignment of incentives between counsel and
5 the class, a better approximation of market conditions in a contingency
6 case, and the encouragement it provides counsel to seek an early
7 settlement and avoid unnecessarily prolonging the litigation—convince us
8 the percentage method is a valuable tool that should not be denied our trial
9 courts.”

10 *Id.* at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9
11 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately
12 reflects the results achieved than the lodestar method and “establishes reasonable expectations on
13 the part of Plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
14 which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294,
15 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund
16 cases because it allows courts to award fees from the fund in a manner that rewards counsel for
17 success and penalizes it for failure.”).

18 Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required;
19 in many cases, performing a cross-check “undermines” one of the primary reasons for using the
20 percentage method: aligning counsel’s incentives with the benefits delivered to the class and
21 discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a
22 lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*
23 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of
24 the Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar
25 approach set forth in this Report are now echoed by many authorities, who have been most vocal
26 about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already
27 overworked trial judge.”).

28 The \$15,000.00 requested by Plaintiff’s Counsel represents one-third of the Gross
Settlement Amount, which is consistent with awards usually approved in class actions and
representative PAGA actions. Without waiving the attorney-client privilege, Named Plaintiff
authorized a fee split with my co-counsel as follows: Law Offices of Choi & Associates – 60%

1 and David Lee Law, APC – 40%. Choi Decl. ¶15; Lee Decl. ¶9; Declaration of Aman Rosendo
2 Osorio (“Osorio Decl.”) ¶8.

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

5 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code §
6 2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s Counsel to request up to
7 \$4,000.00 in litigation costs. Settlement Agreement ¶ 3.2.1.

8 Plaintiff’s Counsel request \$3,259.39 for the reimbursement of litigation costs. As set
9 forth in accompanying declarations of Plaintiff’s Counsel, these costs were all directly incurred in
10 the prosecution of this action, including, but not limited to, filing fees, service fees, and
11 mediation fees. Choi Decl. ¶ 13, Ex. B. As such, Plaintiff’s Counsel’s request for costs in the
12 amount of \$3,259.39 is fair, adequate, reasonable, and consistent with PAGA’s policies. Because
13 this amount is less than the \$4,000.00 that was provided in the Settlement Agreement, the
14 difference will be distributed to the LWDA and Aggrieved Employees.

15 **6. The Payments to Plaintiff Should Be Approved**

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

22 Here, Plaintiff respectfully requests \$5,000.00, which is intended to compensate Plaintiff
23 for the time spent on this case and for executing a general release, including of Civil Code §
24 1542, which was not required by Aggrieved Employees. Osorio Decl. ¶¶6-7. This requested
25 enhancement is consistent with awards approved in other common fund cases. *See Van Vranken*
26 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
27 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
28 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000). Plaintiff also

1 took the risk of bringing the lawsuit, which was a matter of public record. Future employers may
2 be less likely to hire an employee who has previously filed an action against an employer. This in
3 conjunction with Plaintiff's agreement to provide a general release supports the requested award.

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

7 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff's
8 Counsel, and the LWDA, but also to Defendant's current and former employees, significant time
9 and effort will be required to administer the Settlement if it is approved by this Court. Among
10 other things, the Settlement Administrator will calculate each PAGA Settlement Employee
11 Individual PAGA Payment; issue appropriate tax forms to all parties who receive payments
12 under the Settlement Agreement; mail payments to Plaintiff, Plaintiff's Counsel, the LWDA, and
13 each Aggrieved Employee; and void any checks not cashed by Aggrieved Employees so that the
14 unclaimed amount can be forwarded to the State of California Controller's Office Unclaimed
15 Property Law in the name of the PAGA Settlement Employees who did not cash their respective
16 Individual PAGA Payment. *See* Settlement Agreement ¶ 4.6.6.

17 In contemplation of these expenses, the parties will engage Phoenix Settlement
18 Administrators to act as a third-party settlement administrator and have allocated up to \$1,895.00
19 to cover the cost of settlement administration. Settlement Agreement ¶ 3.2.2.

20 **8. Notice to the Aggrieved Employees is Adequate**

21 The draft cover letter to be sent to the Aggrieved Employees adequately provides notice
22 of the claims that are being released by the Aggrieved Employees. (*See* Choi Decl., Ex. D).

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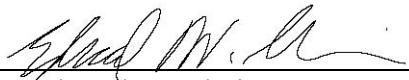
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1 **V. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
3 Agreement pursuant to Labor Code § 2699 (1)(2).
4

5 Dated: December 1, 2023

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

6
7 By: 
8 Edward W. Choi

9 Attorneys for Plaintiff Aman Rosendo Osorio and
10 the Aggrieved Employees
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Court Reservation Receipt

Reservation	
Reservation ID: 794664482266	Status: RESERVED
Reservation Type: Motion re: (Motion for Approval of PAGA Settlement)	Number of Motions: 1
Case Number: 22STCV13154	Case Title: AMAN ROSENDO OSORIO vs VEFO, INC., A CALIFORNIA CORPORATION
Filing Party: Aman Rosendo Osorio (Plaintiff)	Location: Stanley Mosk Courthouse - Department 37
Date/Time: January 2nd 2024, 8:30AM	Confirmation Code: CR-9CU6NYEHZMXDR4FES

Fees			
Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	20.00
Credit Card Percentage Fee (2.75%)	0.55	1	0.55
TOTAL			\$20.55

Payment	
Amount: \$20.55	Type: Visa
Account Number: XXXX6929	Authorization: 02116G
Payment Date: 2023-09-25	

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