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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

NATALIA G. CRUZ, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

VASVISION BERRY FARMS, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV001734

**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: November 3, 2023

Time: 8:30 a.m.

Dept: 15

Complaint Filed: June 17, 2022

Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on November 3, 2023, at 8:30 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Thomas W. Wills, Judge presiding
4 in Department 15 of the above-referenced Court located at 1200 Aguajito Road, Monterey,
5 California 93940, Plaintiff Natalia Cruz ("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
8 Code § 2698, *et seq.*

9 This motion will be based on this notice of motion, the attached memorandum of
10 points and authorities, the accompanying declarations of Kristen M. Agnew, B. James
11 Fitzpatrick, Alison L. Baker, and Plaintiff Natalia Cruz, the records and file herein, and on
12 such other evidence as may be presented at the hearing of the motion.

13 Dated: October 12, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

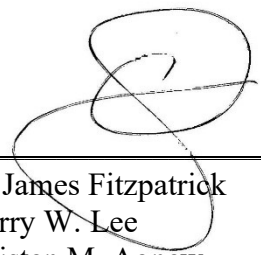
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16 By: 
17 B. James Fitzpatrick
18 Larry W. Lee
19 Kristen M. Agnew
Attorneys for Plaintiff

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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 Natalia Cruz (“Plaintiff”) hereby moves the Court for an order approving
4 the non-reversionary settlement with Defendant Vasvision Berry Farms, LLC (“Defendant” or
5 “Vasvision Berry Farms”), as set forth in the concurrently filed Joint Stipulation of Settlement
6 and Release Under the Private Attorneys General Act (“Agreement” or “Settlement”).

7 As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the
8 proposed settlement warrants the Court’s approval. This settlement was reached after extensive
9 investigation and both formal and informal discovery, including Defendant’s production of
10 payroll data, as well as information pertaining to Defendant’s payroll policies and procedures.
11 Furthermore, pursuant to the terms of the Settlement, Defendant will pay the gross amount of
12 \$387,500.00 (the “Gross PAGA Settlement Amount”), which includes an estimated payment of
13 approximately \$181,129.11 in civil penalties to 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 April 12, 2022, Plaintiff submitted written notice under Labor Code section 2699.3
22 to the California Labor and Workforce Development Agency (“LWDA”) and Defendant,
23 alleging that Defendant violated Labor Code sections 201-204, 208, 216, 218, 218.5, 218.6,
24 225.5, 226, 226.2, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699 (the “PAGA
25 Notice”). *See* Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 3, Exhibit A.

26 **B. The Operative Complaint**

27 On June 17, 2022, Plaintiff filed a Class, Representative, and Individual Action
28 Complaint in the Action. *See* Agnew Decl. at ¶ 4. Due to the existence of an arbitration

1 agreement with a class action waiver, Plaintiff dismissed the class claims and opted to proceed
2 on a representative basis only. *See id.* at ¶ 5.¹ As set forth in the Complaint, Plaintiff asserts a
3 cause of action for violation of PAGA predicated on the alleged Labor Code violations set forth
4 in the PAGA Notice. *See id.* at ¶ 6. Plaintiff seeks civil penalties under PAGA, as well as
5 attorneys' fees, and costs. *See id.*² Defendant disputes and denies Plaintiff's allegations and
6 claims asserted in the operative Complaint. *See id.* at ¶ 7.

7 **C. The Parties Engage in Formal and Informal Discovery**

8 On November 1, 2022, Plaintiff propounded Special Interrogatories (Set One),
9 Requests for Production of Documents (Set One), and Form Interrogatories – Employment
10 Law (Set One). *See Agnew Decl.* ¶ 8. The discovery required Defendant to produce the time
11 and payroll records for Plaintiff and other alleged aggrieved employees, as well as Defendant's
12 policies regarding meal and rest periods, the calculation of hours worked (including whether
13 time spent attend pre-shift meetings is compensable), the calculation of the regular rate of pay
14 for purposes of computing overtime wages, meal/rest period premiums and sick pay, the
15 payment of final wages to separating employees, and the format of wage statements provided
16 to Plaintiff and other alleged aggrieved employees (including the display of all hourly rates
17 and hours worked). *See id.* The discovery further required Defendant to provide information
18 relevant to the number of alleged aggrieved employees (including the subset of employees
19 who earned piece-rate wages), the aggregate number of pay periods worked by alleged
20 aggrieved employees, the number of pay periods in which alleged aggrieved employees worked
21 at least one workweek in which he or she earned both non-discretionary incentive pay and
22 overtime wages, sick pay and/or meal/rest period premiums, and the number of pay periods in
23 which alleged aggrieved employees worked at least one meal and/or rest period eligible shift.
24 *See id.* at ¶ 9.

25 ¹ On August 17, 2023, the Court dismissed the class claims without prejudice. *See Agnew*
26 *Decl.* ¶ 5.

27 ² Plaintiff also alleged individual claims for discrimination based on national origin, hostile
28 work environment based on national origin, retaliation based on national origin, discrimination
based on religious creed, and failure to investigate and prevent harassment and discrimination
in the workplace. *See Agnew Decl.* at ¶ 6.

1 **D. The Parties Participate in Private Mediation**

2 Shortly after Plaintiff served initial round of written discovery, the Parties agreed to
3 redirect their efforts towards an early resolution of the Action and agreed to participate in
4 private mediation. *See* Agnew Decl. ¶ 10. In lieu of formal discovery responses, Defendant
5 produced data points relating to: (1) the number of aggrieved employees; (2) the number of
6 aggrieved employees who earned piece-rate wages; (3) the number of pay periods worked by
7 aggrieved employees; (4) the number of pay periods in which aggrieved employees earned
8 both piece-rate wages and meal/rest period premiums, overtime, and/or sick pay wages during
9 the same workweek; (5) the number of pay periods in which aggrieved employees worked at
10 least one meal/rest period eligible shift; and (6) the number of aggrieved employees who
11 separated employment. *See id.*

12 Based on the information provided by Defendant, Plaintiff's Counsel conducted a full
13 penalties analysis as to the value of the PAGA claims. *See* Agnew Decl. ¶ 11. Plaintiff's
14 Counsel also investigated the applicable law as applied to the facts discovered regarding
15 Plaintiff's alleged claims and potential defenses thereto. *See id.* Thus, Plaintiff's Counsel
16 entered mediation with a clear understanding of Defendant's maximum exposure. *See id.*

17 On June 22, 2023, the Parties engaged in a full-day mediation with Christopher E.
18 Panetta. *See* Agnew Decl. ¶ 12. As a result of the mediation, Plaintiff and Defendant reached
19 the present settlement, memorialized by a written Memorandum of Understanding ("MOU").
20 *See id.* The Parties subsequently negotiated the terms of the Joint Stipulation of Settlement and
21 Release Under the Private Attorneys General Act. *See id.* at ¶ 13. The settlement discussions
22 were conducted at arm's length. *See id.*

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

24 The material terms of the Settlement are described below and set forth in detail in the
25 concurrently filed PAGA Settlement Agreement, a true and correct copy of which is attached as
26 **Exhibit B** to the Declaration of Kristen M. Agnew.

27 **A. The Aggrieved Employees**

28 The current Action is being settled on behalf of the following employees: all current and

1 former California piece-rate, non-exempt employees who worked for Defendant at any time
2 from April 12, 2021, through June 22, 2023 (“PAGA Period”) (“Aggrieved Employees”). *See*
3 Settlement Agreement (“SA”) §§ B-2, B-14. Based on Defendant’s records, there are
4 approximately 683 Aggrieved Employees. *See* Agnew Decl. ¶14. These individuals worked in
5 approximately 16,107 pay periods during the PAGA Period. *See* SA § C-2.

6 **B. The Gross PAGA Settlement Amount**

7 The Settlement Agreement requires Defendant to pay the gross amount of Three
8 Hundred Eighty-Seven Thousand Five Hundred Dollars (\$387,500.00) (the “Gross PAGA
9 Settlement Amount”). *See* SA § B-10. The Gross PAGA Settlement Amount will be funded in
10 installments, with the first payment of Twenty-Five Thousand Dollars being due within thirty
11 (30) calendar days of the Effective Date. *See* SA § C-3. The final installment pay will be due,
12 on or before August 15, 2026. *See id.*

13 Based on the Gross PAGA Settlement Amount, Defendant will pay approximately
14 \$24.05 per pay period to resolve the claims in this case. *See* Agnew Decl. ¶ 16.

15 **C. The PAGA Penalties Fund**

16 The balance of the Gross PAGA Settlement Amount remaining after deduction of the
17 approved attorneys’ fees and litigation costs, Settlement Administration Costs, and Plaintiff’s
18 Enhancement Payment (the “PAGA Penalties Fund”), will be available for distribution to the
19 LWDA and Aggrieved Employees. *See* SA §§ B-13, C-5. The PAGA Penalties Fund will total
20 approximately \$241,505.48. *See* Agnew Decl. ¶ 22. Seventy-five percent (75%) of the PAGA
21 Penalties Fund, or approximately \$181,129.11, will be paid to the LWDA for PAGA penalties
22 (“LWDA Payment”). *See* SA § C-5; Agnew Decl. ¶ 22. The remaining twenty-five percent
23 (25%), or approximately \$60,376.37, will be distributed to Aggrieved Employees. *See* SA § C-
24 5; Agnew Decl. ¶ 22.

25 The amount any particular Aggrieved Employee will be entitled to recover will depend
26 on the number of pay periods in which he or she worked during the PAGA Period, with some
27 entitled to receive more and others less. *See* SA § C-6; Agnew Decl. ¶ 23. This is fair, as it
28 directly allocates greater penalties to individuals who have allegedly suffered greater harm. *See*

1 Agnew Decl. ¶ 23. Any uncashed checks will be paid out pursuant to California Code of Civil
2 Procedure section 384 to the *cy pres* recipient, Legal Aid at Work. *See* SA § C-11. Legal Aid At
3 Work is a 501(c)(3) non-profit organization that provides legal services to low-income families.
4 *See* Agnew Decl. ¶ 24. The Parties warrant and represent that they do not have a relationship,
5 financial or otherwise, with the *cy pres* recipient. *See id.*

6 **D. Attorneys' Fees and Litigation Costs**

7 As part of the Settlement, Defendant does not object to Plaintiff's Counsel's request for
8 attorneys' fees of approximately one-third of the Gross PAGA Settlement Amount, *i.e.*, One
9 Hundred Twenty-Nine Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents
10 (\$129,166.66), and reimbursement for litigation costs in an amount up to Fifteen Thousand
11 Dollars (\$15,000.00), subject to the Court finally approving this Settlement. *See* SA § C-13.³
12 Any partition of the requested attorneys' fees and/or costs not approved by the Court shall be
13 added to the PAGA Penalties Fund. *See id.*

14 **E. The Enhancement Payment**

15 Also, as part of the Settlement, Defendant does not object to Plaintiff's request for an
16 Enhancement Payment to Plaintiff in an amount not to exceed Five Thousand Dollars
17 (\$5,000.00). *See* SA §§ B-9, C-12. Any portion of the Enhancement Payment to Plaintiff that is
18 not approved by the Court shall become part of the PAGA Penalties Fund. *See* SA § C-12.

19 **F. Settlement Administration Costs**

20 Finally, the Settlement provides for the payment of the fees and expenses reasonably
21 incurred by the Settlement Administrator. *See* SA § C-15. The Parties have agreed to utilize
22 Phoenix Settlement Administrators to administer the settlement, with the administration costs
23 estimated to be Six Thousand Nine Hundred Fifty Dollars (\$6,950.00). *See* SA §§ B-20, C-15.

24
25
26 ³ At the time the Parties negotiated the Settlement Agreement, Plaintiff's Counsel did not have
27 a final tally of the litigation costs incurred to date. As such, the Parties included a maximum
28 amount that could be attributed to costs under the settlement. Plaintiff's Counsel requests
reimbursement of \$4,877.86 for litigation related expenses. *See* Fitzpatrick Decl. ¶ 11, Exhibit
B; Agnew Decl. ¶ 54, Exhibit D.

1 **G. Scope of the Released Claims**

2 In exchange for the payments described above, Plaintiff and Aggrieved Employees will
3 release Defendant and Released Parties from all Released Claims that that arose during the
4 PAGA Period. *See* SA § E-1. As defined in the Agreement, the term “Released Claims” means:

5 all claims for penalties under the California Private Attorneys’
6 General Act, including costs and attorneys' fees related thereto,
7 predicated upon violation of Labor Code sections 201, 202, 203,
8 204, 207, 208, 209, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226,
9 226.2, 226.7, 246, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197,
 1197.1, -1198, 1199, 2698 et seq., and 2699 et seq., based on the
 facts as alleged in the Complaint, that accrued during the PAGA
 Period.

10 *See* SA § B-18. The Settlement is not intended to release does not extend to violations of any
11 predicate statutes other than PAGA. *See* SA § E-1. The Settlement also does not affect a waiver
12 of claims by Aggrieved Employees against the Released Parties for any individual wage and
13 hour claims. *See* SA § E-1.

14 **IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

15 **A. PAGA Overview**

16 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of
17 the LWDA and other aggrieved employees, to bring suit against their employers for alleged
18 violations of the California labor laws and to obtain penalties that previously could only be
19 obtained by the State. The PAGA was enacted because the Legislature determined that it was
20 “in the public interest to allow Aggrieved Employees, acting as private attorneys general, to
21 recover civil penalties for Labor Code violations,” since the State had not been able to fully or
22 adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009);
23 *Ochoa- Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010)
24 (“The act’s declared purpose is to supplement enforcement actions by public agencies, which
25 lack adequate resources to bring all such actions themselves. Unlike class actions, these civil
26 penalties are not meant to compensate unnamed employees because the action is
27 fundamentally a law enforcement action.” [citations omitted].)

28 Labor Code § 2699(a) states that any Labor Code provision “that provides for a civil

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

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

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

22 In class action cases, the purpose of the Court’s preliminary evaluation of the
23 settlement is to determine whether it is within the “range of reasonableness,” and thus whether
24 notice to the class of the terms and conditions of the settlement, and the scheduling of a formal
25 fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, *4 Newberg on Class*
26 *Actions* § 11.25, *et seq.* and § 13.64 (4th ed. 2002 and Supp. 2004) (“*Newberg*”). The “judge
27 must make a preliminary determination on the fairness, reasonableness, and adequacy of the
28 settlement terms and must direct the preparation of notice of the certification, proposed

1 settlement, and date of the final fairness hearing.” *Manual for Complex Litigation, Fourth* §
2 21.632 (Fed. Jud. Ctr., 4th ed. 2004). To make the preliminary fairness determination, courts
3 may consider several relevant factors, including “the strength of the plaintiff’s case; the risk,
4 expense, complexity, and likely duration of further litigation; the risk of maintaining class
5 action status through trial; the amount offered in settlement; the extent of discovery completed
6 and the stage of the proceedings; [and] the experience and views of counsel....” *See Hanlon v.*
7 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

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

14 Notably, unlike the class action settlement approval process, there is also no statutory
15 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
16 2699(i). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor
17 do they have the ability to opt-out of the representative PAGA claim” or “contest a settlement,
18 if any, reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

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

20 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
21 ultimately receive as a result of a settlement, but instead, on whether the Gross PAGA
22 Settlement Amount achieves PAGA’s objectives. Under PAGA, the penalties recovered are
23 meant to supplement agency funding for education and enforcement purposes. *See* Lab. Code
24 § 2699(i). Here, the Settlement represents an extraordinary recovery for the Aggrieved
25 Employees and the State, and thus the Settlement certainly effectuates PAGA’s purpose.

26 The Settlement is also consistent with the State’s public policy favoring resolution of
27 disputes. “California law favors the settlement of disputes as our high court clarified in
28 *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court

1 congestion. [] The parties are best positioned to understand their interests and resolve a dispute
2 in a mutually beneficial manner without court intervention into the settlement.” *Consumer*
3 *Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents*
4 *of Univ. of Cal.*, 3 Cal. 4th 273, 277- 278 (1992)).

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

6 Because an aggrieved employee’s PAGA action is a substitute for an action brought by
7 the government, “judgment in [a PAGA] action is binding not only on the named employee
8 plaintiff but also on government agencies and any aggrieved employee not a party to the
9 proceeding.” *Arias*, 46 Cal. 4th at 986. However, “the nonparty employees, because they were
10 not given notice of the action or afforded any opportunity to be heard, would not be bound by
11 the judgment as to remedies other than civil penalties.” *Id.* at 987; *see also*, Lab. Code §
12 2699(g)(l) (non-party aggrieved employees retain all rights “to pursue or recover other
13 remedies available under state or federal law, either separately or concurrently with an action
14 taken under this part”).

15 Here, if approved, the Settlement would release Defendant and Released Parties from
16 all claims for civil PAGA penalties predicated on the Labor Code violations alleged in the
17 Complaint—and nothing more. *See* SA §§ B-18; E-1. The Settlement would not impact any
18 Aggrieved Employee’s ability to pursue PAGA claims predicated on other Labor Code
19 violations. *See* SA § E-1. Nor does the Settlement release individual wage and hour claims that
20 Aggrieved Employees may have against Defendant. *See id.* Therefore, the limited scope of the
21 release also supports approval.

22 **E. The Settlement Recognizes the Inherent Risk of Litigation**

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

26 //

27 //

28 //

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

2 **a. Unpaid Minimum and Overtime Wages Associated**
3 **With Off-the-Clock Work**

4 Plaintiff alleges that Defendant failed to pay Aggrieved Employees for all hours
5 worked. *See* Agnew Decl. ¶ 28. Defendant's timekeeping system does not permit employees to
6 individually record their time. *See id.* Instead, a foreman manually records the time for an
7 entire crew on a worksheet. *See id.* Plaintiff contends that Defendant's method of tracking the
8 start/end of the shifts fails to capture all hours worked. *See id.* By way of example, Plaintiff
9 maintains that Aggrieved Employees do not receive compensation for "pre-shift" activities,
10 including waiting in line to wash their hands, exercising and reviewing safety requirements as
11 required by Cal/OSHA for agricultural field operations. *See id.* These activities occur on
12 Defendant's premises and are imposed primarily for Defendant's benefits. *See Frlekin v. Apple*
13 *Inc.*, 8 Cal.5th 1038, 1056 (2020) (mandatory exit searches constitute hours worked and must
14 be paid).

15 Defendant argues that the minimum wage and overtime claims are not suitable to be
16 adjudicated on a representative basis because its policies and training materials required
17 accurate recording of time and prohibited off-the-clock work. *See* Agnew Decl. ¶ 29.
18 Defendant's written policy strictly prohibits non-exempt employees from working off the
19 clock for any reason. *See id.* Furthermore, all time spent working must be reported, including
20 any work activity performed pre-shift and post-shift. *See id.* Citing to *Brinker Restaurant*
21 *Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) and its progeny, Defendant argues that its
22 liability is contingent on proof that Defendant knew or should have known that off-the-clock
23 work was occurring. *See id.* In the absence of a uniform policy, Defendant contends that
24 Plaintiff will not be able to establish the requisite knowledge through common proof. *See id.*

25 **b. Failure to Provide Meal and Rest Periods**

26 Plaintiff alleges that Defendant failed to provide proper duty-free meal and rest
27 periods. *See* Agnew Decl. ¶ 30. Labor Code section 226.7 states, "no employer shall require
28 any employee to work during any meal or rest period mandated by an applicable order of the

1 Industrial Welfare Commission.” Courts have consistently held that an employee must be
2 completely unencumbered during their breaks, meaning they cannot be required to remain on
3 the work site. *See, e.g., Lubin v. The Wackenhut Corp.*, 5 Cal. App. 5th 926, 954 (2016)
4 (holding that class certification of off-duty rest break claim was warranted where employees
5 were required to remain on premises or be reachable by phone or radio); *Luckett v. Kohl’s*
6 *Department Stores, Inc.*, 2020 WL 4341779 at*6 (C.D. Cal. June 18, 2020) (In granting
7 summary judgment in favor of plaintiff for failure to provide rest breaks, the Court found that
8 “[b]y requiring Plaintiff to remain on-site, Defendant retained control over how she spent her
9 time”); *Le v. Walgreen Co.*, 2020 WL 3213684 at *6 (C.D. Cal. April 27, 2020) (“If an
10 employer requires an employee to remain on-premises and ‘remain at the ready and capable of
11 being summoned into action,’ the employer is infringing on the employee’s right to use a rest
12 period for his or her own purposes”). Here, Plaintiff contends that Aggrieved Employees were
13 required to remain on the premises during their meal and rest periods, which resulted in
14 consistent violations because Defendant did not relinquish control of the employees during
15 breaks. *See* Agnew Decl. ¶ 30.

16 Defendant maintains that it complied with the law, had lawful and compliant practices,
17 and provided Aggrieved Employees with duty-free meal and rest periods. *See* Agnew Decl. ¶
18 31. According to Defendant, an adjudication of the alleged meal and rest period violation
19 would require individualized assessments as to the circumstances of each missed, delayed or
20 interrupted break. *See id.* Defendant argues that, even if Plaintiff was able to establish that
21 some Aggrieved Employees experienced a meal and/or rest period violation, such a claim
22 would not be manageable. *See id.*

23 **c. Underpayment of Rest and Recovery Wages**

24 Plaintiff alleges that Defendant failed to properly compensate employees for rest and
25 recovery periods. *See* Agnew Decl. ¶ 32. Piece-rate employees must be paid rest and recovery
26 compensation at their average hourly rate for the workweek. By statute, each rest and recovery
27 period shall be compensated “at a regular hourly rate that is no less than the higher of” the
28 applicable minimum wage or “an average hourly rate determined by dividing the total

1 *compensation for the workweek*, exclusive of compensation for rest and recovery periods and
2 any premium compensation for overtime, by the total hours worked during the workweek,
3 exclusive of rest and recovery periods.” Lab. Code § 226.2(a)(3). Here, Defendant utilized an
4 employee’s *daily hourly rate* to calculate their rest and recovery period compensation. *See*
5 Agnew Decl. ¶ 32.

6 Defendant denies Plaintiff’s allegations. *See* Agnew Decl. ¶ 33. Defendant contends
7 that its rest and recovery policy complies with California law. *See id.* In many instances, an
8 employee’s daily hourly rate is either equal to, or more than, the weighted weekly average. *See*
9 *id.* Thus, according to Defendant, the cumulative effect resulted in the overpayment of wages
10 to Aggrieved Employees. *See id.*

11 **d. Overtime Regular Rate Violation**

12 Plaintiff alleges that Defendant failed to pay overtime wages to employees at 1.5 times
13 the regular rate of pay. *See* Agnew Decl. ¶ 34. When, as here, multiple rates of pay are paid
14 during a workweek, an employer cannot simply use one fixed rate to pay overtime. Rather, the
15 regular rate of pay for calculating overtime in that workweek must be based upon the
16 “**weighted average of all hourly rates paid.**” Cal. DLSE Enforcement Policies and
17 Interpretation Manual at § 49.2.5, p. 49-10. *Alvarado v. Dart Container Corporation of*
18 *California* is controlling on this point. 4 Cal. 5th 542, 569 (2018). The Court in *Dart* addressed
19 the question of whether a flat sum, weekend attendance bonus must be factored into an
20 employee’s regular rate of pay so that the employee’s overtime pay rate reflects all the forms
21 of regular compensation that the employee earned. The Supreme Court held that the weekend
22 attendance bonus must be averaged across the entire pay period and reinforced the rule that the
23 “regular rate of pay is a **weighted average** reflecting work done at varying times, under
24 varying circumstances, and at varying rates.” *Id.* (emphasis added) (italics in original).

25 Here, rather than use a weighted average for the workweek, Plaintiff contends that
26 Defendant calculated *daily* overtime based on an employee’s *daily* piece-rate wages. *See*
27 Agnew Decl. ¶ 34. Defendant denies Plaintiff’s allegations. *See id.* at ¶ 35 Defendant argues
28 that, in many instances, the calculation of overtime on a daily basis does not result in the

underpayment of wages to Aggrieved Employees. *See id.*

e. Failure to Pay Sick Pay at the Regular Rate of Pay

Plaintiff alleges that Defendant did not pay sick pay wages at the regular rate of pay, as required by the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code section 245 *et seq.* (“HWHFA”). *See* Agnew Decl. ¶ 36. Pursuant to the HWHFA, “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.” Cal. Lab. Code § 226(l)(1) (emphasis added). Here, whenever Aggrieved Employees earn piece-rate compensation in workweeks that they take paid sick leave, Plaintiff contends that Defendant paid the sick pay wages at the employee’s base hourly rate. *See* Agnew Decl. ¶ 36. Defendant denies Plaintiff’s allegations. *See id.* at ¶ 37.

Defendant contests the sick pay claim on a number of grounds. Defendant maintains that there is no private right of action to bring a paid sick pay claim. *See* Agnew Decl. ¶ 37. This argument presents novel legal issues and there is substantial ground for difference of opinion as to the remedies, if any, available to employees who have experienced a violation of the HWHFA. *See Phoung v. Winco Holdings, Inc.*, 2022 WL 3636369, at *6 (E.D. Cal. Aug. 23, 2022) (dismissing stand-alone section 246 claim for unpaid wages); *Rudolph v. Herc Rentals, Inc.*, 2021 WL 5994514, at *2–3 (C.D. Cal. Aug. 27, 2021) (dismissing section 246 claim for failure to provide sick leave at all); *Titus v. McLane Foodservice, Inc.*, 2016 WL 4797497, at *4 (E.D. Cal. Sept. 14, 2016) (dismissing plaintiff’s claim for individual damages for “not provid[ing] him with written notice of the paid sick time he had available”). Even had Plaintiff ultimately prevailed on the merits, given the novelty of the legal questions it raised, Defendant may have sought immediate appellate review through a writ or appeal. *See* Agnew Decl. ¶ 37.

f. Failure to Pay Wages at Termination

Plaintiff alleges that Aggrieved Employees were not paid their final wages at the time they were owed. *See* Agnew Decl. ¶ 38. As seasonal workers, farm laborers are subject to

1 termination when they were no longer needed by Defendant. However, terminated employees
2 did not receive their final wages until the normal payroll cycle came around. *See* Agnew Decl.
3 38. Plaintiff, for example, separated employment on August 6, 2021, but was not paid until
4 August 12, 2021. *See id.*

5 **g. Failure to Provide Accurate Wage Statements**

6 Plaintiff alleges a derivative wage statement violation. *See* Agnew Decl. ¶ 39. As a
7 result of the alleged underpayment and/or non-payment of wages to Aggrieved Employees,
8 Plaintiff contends that the wage statements omit information required by Labor Code 226,
9 including all applicable hourly rates and the total hours worked. *See id.* As argued by
10 Defendant, Plaintiff's derivative wage statement violation is vulnerable to a motion for
11 summary judgment based on the weaknesses of the underlying primary claims. *See*
12 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees
13 did not suffer a violation under 226(a) where their wage statement cause of action was derived
14 from an underlying wage and hour violation for overtime).

15 **2. Recovery of Civil PAGA Penalties Is Uncertain**

16 However, even if Plaintiff were to prevail on the merits of the PAGA claim, the
17 potential recovery is uncertain. Defendant contends that it made a good faith effort to comply
18 with the law. *See* Agnew Decl. ¶¶ 29, 31, 33, 35, 37, 39, 41. As argued by Defendant, in
19 deciding whether to award the maximum penalty amount, courts may focus on whether the
20 employer made a good faith effort to follow the law. For example, in *Thurman v. Bayshore*
21 *Transit Management, Inc.*, the Court of Appeal upheld the trial court's significant reduction of
22 PAGA penalties by 30% because the employer was not initially on notice that it was in
23 violation of the law and because it would have been unfair to award penalties where the
24 employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When the
25 employer made aware of the violations, it timely took steps to come into compliance. *Id.* By
26 contrast, the imposition of full penalties was justified when an employer took a "cavalier
27 approach to fulfilling its contractual and statutory obligations" and demonstrated "reckless
28 disregard." *Id.* Furthermore, as the California Court of Appeal has affirmed, trial courts are

1 well within their discretion to reduce PAGA penalties “for technical violations that cause no
2 injury,” especially where the “violation was inadvertent.” *Raines v. Coastal Pac. Food*
3 *Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018).

4 In this case, Defendant asserted that a substantial reduction in potential PAGA
5 penalties was warranted because: (1) even assuming that Plaintiff could establish the predicate
6 violations, the alleged violations were inadvertent; and (2) Aggrieved Employees did not
7 suffer substantial economic harm as a result of the alleged violations of Labor Code. *See*
8 Agnew Decl. ¶ 41 Thus, Defendant contends that no PAGA penalties were needed to punish or
9 deter Defendant for its inadvertent behavior, much less to deter it from committing any future
10 violations that were completely foreclosed by its new payroll practices. *See id.*

11 **3. Maximum PAGA Civil Penalties Recoverable After Trial**

12 Defendant has indicated that Aggrieved Employees received the payment of wages in
13 approximately 16,107 pay periods during the PAGA Period. *See* SA § C-2; *see* Agnew Decl. ¶
14 25. Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the
15 standard penalty of \$100 per pay period yields \$1,610,700 in potential liability. *See* Agnew
16 Decl. ¶ 25. In the alternative, if the Court were to “stack” penalties, (*i.e.*, award multiple
17 PAGA penalties for different Labor Code violations in the same pay period), the potential
18 PAGA penalties could total as high as \$7,038,100. *See id.* at ¶ 26.

19 Even then, pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full
20 amount of PAGA penalties “if, based on the facts and circumstances of the particular case, to
21 do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
22 confiscatory.” Courts routinely award far less than the statutory maximum amount of civil
23 penalties, even where an underlying violation of the Labor Code is found. Indeed, as shown in
24 the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed
25 on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by
26 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th
27 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at
28 539; *see O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal., 2016).

1 Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA penalties
2 of approximately 10% of the total maximum, a more realistic estimate of the maximum PAGA
3 penalties at issue—even with “stacking”— is \$703,810. *See* Agnew Decl. ¶ 42.

4 **4. Settlement is Reasonable When Compared to the Realistic Amount**
5 **of PAGA Civil Penalties At Issue**

6 The Court’s assessment of the proposed settlement must take into account that any
7 penalties awarded may be subject to substantial reduction. When this is considered, in
8 conjunction with the history of PAGA settlements, and the fact that Plaintiff may recover
9 nothing, the proposed settlement is patently reasonable. Indeed, assuming that the Court
10 applies the standard penalty of \$100 per pay period, the Gross PAGA Settlement Amount is
11 approximately 24.05% of the amount of penalties at issue. *See* Agnew Decl. ¶ 43. Settlement
12 for this reduced value allows for the distribution of penalties in an amount which accounts for
13 the risk of continued litigation and Defendant’s likely arguments that higher penalties would
14 have been confiscatory. *See id.* It also sufficiently deters Defendant from engaging in similar
15 conduct in the future, which is one of the primary goals of PAGA.

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

1 proposed settlement in *Cotter*, the court noted that the PAGA allocation “might seem low
2 when compared to the maximum PAGA penalties,” but acknowledged that it was in fact “quite
3 high compared to the typical amount apportioned to claims for PAGA penalties in wage and
4 hour settlements.” *Id.* at *5.

5 Given Defendant’s potential defenses to the alleged violations at issue, the risks and
6 costs of continued litigation, Plaintiff and her attorneys believe that the Settlement is fair and
7 reasonable. *See* Agnew Decl. ¶ 44. The Settlement proposes a payment of approximately
8 \$181,129.11 in penalties to the LWDA and approximately \$60,376.37 penalties to the
9 Aggrieved Employees, which is an outstanding result in a PAGA-only case. *See* Agnew Decl.
10 ¶ 23. Plaintiff’s Counsel has significant experience litigating wage and hour claims including
11 claims for PAGA penalties, and the Settlement here is similar to or greater than similar
12 settlements that courts have approved. Furthermore, as set forth in the accompanying Kristen
13 M. Agnew Declaration, the LWDA has been provided notice of this motion and the PAGA
14 settlement. *See id.* at ¶ 55, Exhibit E. The decision of the LWDA to accept the Settlement and
15 not oppose the motion should be given considerable weight.

16 **F. The Request for Attorneys’ Fees Is Reasonable and Should Be Approved**

17 Labor Code § 2699(g)(1) provides for the recovery of attorneys’ fees and costs in any
18 successful action brought under PAGA. Although this is not a class action, in class actions
19 California state and federal courts have recognized that an appropriate method for determining
20 award of attorneys’ fees is based on a percentage of the total value of benefits to class
21 members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
22 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*,
23 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir.
24 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to
25 “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary
26 does not bear the entire burden alone.” *Vincent*, 557 F. 2d at 769. Under the percentage of the
27 fund method, the Court’s objective remains to “mimic the market” in fixing a reasonable fee.
28 *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a

1 court rather than by contract, the object is to set it at a level that will approximate what the
2 market will set.... The judge, in other words, is trying to mimic the market in legal services.”).

3 An award of 33.33% of the Gross PAGA Settlement Amount in attorneys’ fees mimics
4 the marketplace as it “is supported by the fact that typical contingency fee agreements provide
5 that class counsel will recover 33.33% if the case is resolved before trial and 40% if the case is
6 tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July
7 21, 2008); *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9,
8 2011) (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and
9 hour class actions that result in recovery of a common fund under \$10 million”). Indeed,
10 “empirical studies [that] show that...fee awards in class actions average around one-third of
11 the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

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

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

20 495 F.2d 448, 470 (2d Cir. 1974). For Plaintiff’s Counsel, the fees here were wholly
21 contingent in nature and the case presented far more risk than the usual contingent fee case.
22 Among the risks was the cost inherent in class action litigation, as well as a long battle with a
23 Defendant who had retained a premier and highly experienced defense firm. As such, the
24 requested fee should be awarded.

25 As a secondary support for the percentage of the fund method, when fees are allocated
26 by percentage method, courts have discretion to “cross-check” the fees awarded through the
27 lodestar method. However, the *Laffitte* Court “emphasize[d] [that] the lodestar calculation,
28 when used in this manner, does not override the trial court’s primary determination of the fee
as a percentage of the common fund and thus does not impose an absolute maximum or

1 minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite*
2 *Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does
3 not trump the primary reliance on the percentage of common fund method”). The Supreme
4 Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar cross-check is
5 extraordinarily high or low, the trial court should consider whether the percentage used should
6 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
7 necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at
8 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a
9 cross-check “undermines” one of the primary reasons for using the percentage method:
10 aligning counsel’s incentives with the benefits delivered to the class and discouraging
11 protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar
12 cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108
13 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30
14 (2000) (citing the recommendations of the Third Circuit Task Force with approval and
15 observing that “[t]he criticisms of the lodestar approach set forth in this Report are now
16 echoed by many authorities, who have been most vocal about the manner in which it
17 exacerbates the problem of ‘cheap settlements’ and burdens already overworked trial judge”).

18 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2
19 to 4 or even higher.” *Wershba*, 91 Cal. App. 4th at 255; *see also, e.g., Sutter Health Uninsured*
20 *Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check
21 in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a
22 lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988)
23 (affirming a 2.34 multiplier without remand).

24 With respect to Plaintiff’s Counsel’s lodestar, approximately 267.8 hours have been
25 expended by counsel this matter.⁴ *See* Agnew Decl. ¶ 52, Exhibit C; Rosenthal Decl. ¶ 6,
26 Exhibit A; Fitzpatrick Decl. ¶¶ 6, 8, Exhibit A. Plaintiff’s Counsel each request an hourly rate

27 ⁴ In addition to the time expended by the attorneys, there is approximately 58.55 hours of
28 paralegal time billed to the matter. Fitzpatrick Decl. ¶ 6, Exhibit A. The hourly rate for
paralegals is \$185.00 per hour. *Id.* at ¶ y.

1 of \$595 per hour. *See* Agnew Decl. ¶ 53; Rosenthal Decl. ¶ 7; Fitzpatrick Decl. ¶ 8. The courts
2 are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records
3 are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to
4 the number of hours worked on a particular case is sufficient evidence to support an award of
5 attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App.
6 3d 553, 559 (1986).

7 Reasonable hours include, in addition to time spent during litigation, the time spent
8 before the action is filed, including time spent interviewing the clients, investigating the facts
9 and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447
10 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend
11 the attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. A
12 reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
13 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
14 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*,
15 the attorney’s skill and experience, the nature of the work performed, the relevant area of
16 expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*,
17 61 Cal. App. 4th 629, 632-33 (1998).

18 Here’s Plaintiff’s Counsel’s skill and experience justify the requested rate. As shown in
19 the supporting declarations, counsel has significant experience in the area of employment and
20 wage and hour class actions. Specifically, Plaintiff’s Counsel’s practice focuses on
21 representing employees in employment matters, particularly wage and hour cases. *See* Agnew
22 Decl. ¶¶ 45-51; Rosenthal Decl. ¶¶ 4, 5; Fitzpatrick Decl. ¶ 12; Declaration of Alison Baker
23 (“Baker Decl.”) ¶¶ 3-7. As such, based on the hours and applicable rate, the total lodestar to be
24 expended by Plaintiff’s Counsel through finalizing this settlement will be approximately
25 \$159,341.00, which is more than the requested attorneys’ fee award. *See* Agnew Decl. ¶ 53;
26 Rosenthal Decl. ¶ 7; Fitzpatrick Decl. ¶ 8.

27 As such, the requested fee award is fair and reasonable, and should be awarded in its
28 entirety. Plaintiff’s Counsel risked not only a great deal of time, but also a great deal of

1 expense to ensure the successful litigation of this action on behalf of all Class Members. *See*
2 Fitzpatrick Decl. ¶ 10.

3 **G. The Court Should Approve the Request for Reimbursement of Costs**

4 The request for reimbursement of costs, in the amount of \$4,877.86 is fair and
5 reasonable. The costs are all litigation related costs, which have been detailed in the supporting
6 declarations of Class Counsel. *See* Fitzpatrick Decl. ¶ 11, Exhibit B; Agnew Decl. ¶ 54,
7 Exhibit D. The authority for the court to award this is the Parties' Settlement Agreement and
8 the California Labor Code. As such, this request should be approved.

9 **H. Plaintiff's Enhancement Payment Should be Approved**

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

16 Here, Plaintiff seeks \$5,000 for her service award, which is intended to compensate
17 Plaintiff for the time spent on this case, including reviewing pleadings, the potential for
18 hesitation from later prospective employers that might find out she brought this claim, and for
19 executing a general release, including for all known and unknown claims under Civil Code §
20 1542. *See* SA § E-2; Declaration of Natalia Cruz ¶ 7. This requested enhancement is consistent
21 with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*,
22 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun &*
23 *Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
24 incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v.*
25 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive
26 award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52
27 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*,
28 No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding

1 \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d
2 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in
3 ERISA case).

4 **I. The Settlement Administrator's Costs Should be Approved**

5 The Parties have agreed to pay actual costs of administration, or Six Thousand Nine
6 Hundred Fifty Dollars (\$6,950.00), to the Settlement Administrator, Phoenix Settlement
7 Administrators, to administer this Settlement. *See* SA §§ B-20, B-21, C-15. The Parties believe
8 that the administration fee is reasonable and should be approved.

9 **J. Notice to the LWDA Has Been Provided**

10 As discussed above, and concurrent with the filing of this Motion, Plaintiff uploaded
11 the instant motion to the LWDA's website. *See* Agnew Decl. ¶ 55, Exhibit E.

12 **V. CONCLUSION**

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

14
15 Dated: October 12, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

16
17
18 By: _____

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