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

JAMES GUIFFRE, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BI-RITE RESTAURANT SUPPLY CO., INC.,
a California corporation; and DOES 1 through
50, inclusive,

Defendant.

Case No. 22CV402169

[Assigned for all purposes to the Hon. Charles F.
Adams in Department 7]

**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: April 17, 2025
Time: 1:30 pm
Dept.: 7

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Attorneys for Plaintiff and the Aggrieved Employees

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

2 **PLEASE TAKE NOTICE** that on April 17, 2025, at 1:30 p.m., or as soon thereafter as the
3 matter be heard in Department 7 of the Superior Court of the State of California for the County of
4 Santa Clara, located at 191 N. First Street, San Jose, CA 95113-1090, Plaintiff James Guiffre
5 (“Plaintiff”) will, and hereby does, move the Court for entry of an order approving the Private
6 Attorneys General Act Settlement Agreement and Release (“Settlement Agreement” or
7 “Settlement”) entered into in the above-captioned civil action between Plaintiff and Defendant Bi-
8 Rite Restaurant Supply Co., Inc. (“Defendant”) (Plaintiff and Defendant shall collectively be
9 referred to as the “Parties”) under the Labor Code Private Attorneys General Act of 2004 (the
10 “PAGA”).

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

19 This motion is based on this notice of motion and motion for approval of the Parties’
20 Settlement Agreement concurrently filed herewith; the attached memorandum of points and
21 authorities in support of this motion; the concurrently filed declarations of Larry W. Lee, Edward
22 W. Choi, Dennis S. Hyun, and Plaintiff James Guiffre in support of this motion; all pleadings,
23 records, and files in this action; and upon such other matters as may be properly presented to, or
24 received by, the Court at or before the hearing on this motion.

25 ///

26 ///

27 ///

28 ///

1 Dated: March 25, 2025

DIVERSITY LAW GROUP, P.C.
LAW OFFICES OF CHOI & ASSOCIATES

3 By: 
4 _____

Larry W. Lee

Edward W. Choi

Attorneys for Plaintiff James Guiffre and the
Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion Plaintiff James Guiffre (“Plaintiff”) respectfully requests the Court’s
4 approval of the Private Attorneys General Act Settlement Agreement and Release¹ (the
5 “Settlement Agreement” or “Settlement”) with Defendant Bi-Rite Restaurant Supply Co., Inc.
6 (“Defendant”). The settlement was reached after propounding written discovery and then
7 agreeing to mediation and production of documents and data on an informal basis. As part of the
8 privileged settlement negotiations, Defendant produced data regarding the Aggrieved Employees
9 and the number of pay periods at issue for each of Plaintiff’s claims from which Plaintiff’s
10 counsel calculated the maximum PAGA penalty exposure. Declaration of Larry W. Lee (“Lee
11 Decl.”) ¶¶ 10-11. After three full days of mediation, the Parties have settled this case on a
12 representative PAGA basis for \$100,000.00. *Id.* at ¶¶ 5-9, Ex. B.

13 The Settlement Agreement allocates one-third of the Gross Settlement Amount for
14 attorneys’ fees, or \$33,333.33, up to \$25,000.00 in litigation costs incurred by Plaintiff’s
15 Counsel, \$5,000.00 to Plaintiff in exchange for a general release, and up to \$2,250.00 for
16 settlement administration costs. Settlement Agreement ¶ II.B.2. The remainder, or the “PAGA
17 Settlement Fund,” is allocated to the payment of civil penalties under PAGA, of which 75% is to
18 be distributed to the Labor and Workforce Development Agency (the “LWDA”) and 25% of
19 which is to be distributed to the “Aggrieved Employees” on whose behalf Plaintiff filed this
20 action as required by PAGA. *Id.* ¶ II.B.2.e.

21 Under PAGA, the Court must review and approve the proposed settlement. *See* Cal. Lab.
22 Code § 2699 (l)(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 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 On August 18, 2022, Plaintiff James Guiffre (“Guiffre”) sent notice to the LWDA giving
27 _____

28 ¹ A true and correct copy of the fully executed Settlement Agreement is attached as Exhibit B to the Lee Decl.

1 notice of his intent to pursue a representative PAGA action, on behalf of himself and the State of
2 California as well as on behalf of other aggrieved employees (the “PAGA Notice”). Lee Decl. ¶
3 2, Ex. A. On July 20, 2023, Plaintiff filed an amended PAGA notice to the LWDA adding Labor
4 Code §§ 201-203, 226(a), 510, 515, 1174, 1194, and 2802. *Id.*

5 On August 19, 2022, Plaintiff filed a Class Action Complaint against Defendant in the
6 Superior Court of California, County of Santa Clara, asserting violation of violation of Labor
7 Code §§ 201-204, 226.2, 226.7, 227.3, 510, 558, 1194, 1197, and 1197.1 and Bus. & Prof. Code
8 § 17200, et seq. Lee Decl. ¶ 3.

9 On October 23, 2024, with leave of Court, Plaintiff filed a First Amended Representative
10 Action Complaint under the Private Attorneys General Act of 2004 for violation of Labor Code
11 §§ 2698, et seq. (the “Action”). Lee Decl. ¶ 4.

12 Plaintiff propounded interrogatories and request for production of documents on
13 Defendant. *Id.* ¶ 5. After service of written discovery, the Parties agreed to engage in mediation
14 before neutral the Hon. Kevin Murphy (ret.) on February 14, 2023. *Id.* After a full day of
15 mediation, the case settled only on an individual basis for Plaintiff’s wrongful termination
16 claims. *Id.* The Parties conducted a second mediation for the representative PAGA claims with
17 Judge Murphy on July 20, 2023. *Id.* ¶6. The case did not settle. *Id.* After another year of
18 litigation, including Plaintiff filed a motion for leave to amend and Defendant filing a motion to
19 stay, the Parties agreed to a third mediation with Michael Loeb, Esq. on October 17, 2024. *Id.* ¶7.
20 In connection with the mediation, Defendant’s Counsel provided Plaintiff’s Counsel with
21 information regarding the number of pay periods at issue. *Id.* ¶ 8. Based on this information, the
22 Parties conducted settlement negotiations. *Id.*

23 After a third mediation and second full day of arm’s-length negotiations regarding the
24 PAGA claims, the Parties were able to reach a settlement. Lee Decl. ¶ 8. The Parties
25 subsequently executed the Settlement Agreement. *Id.* ¶ 10, Ex. B.

26 The Gross Settlement Amount is \$100,000.00. Settlement Agreement ¶ II.A.8.
27 Settlement Agreement allocates one-third of the Gross Settlement Amount for attorneys’ fees, or
28 \$33,333.33, up to \$25,000.00 in litigation costs incurred by Plaintiff’s Counsel, \$5,000.00 to

1 Plaintiff in exchange for a general release, and up to \$2,250.00 for settlement administration
2 costs. *Id.* ¶ II.B.2. The remainder, or the PAGA Settlement Fund, is allocated to the payment of
3 civil penalties under PAGA, of which 75% is to be distributed to the LWDA and 25% of which
4 is to be distributed to the Aggrieved Employees on whose behalf Plaintiff filed this action as
5 required by PAGA. *Id.* at ¶ II.B.2.e.

6 The Settlement Agreement provides the following PAGA Released Claims:

7 “a release from the State of California and Aggrieved Employees of
8 claims under PAGA that were alleged, or reasonably could have
9 been alleged, based factual allegations stated in the Operative
10 Complaint and/or the LWDA Notice which occurred during the
11 PAGA Period, including but not limited to claims for the failure to
12 timely pay owed minimum, regular, and overtime wages, claims for
13 failing to provide timely, duty free meal periods and rest periods and
14 claims for owed meal and rest period premiums, claims for failure
15 to pay all owed wages at termination, claims for unpaid vacation
16 wages, claims for failing to accurately maintain and provide
accurate time, payroll and wage statement records, and claims for
related penalties and including claims for alleged violations of
California Labor Code §§ 201-204, 226, 226.2, 227.3, 1194, 1197
and 1197.1, 510, 512, 558, 1174, 1194, 1197, 1197.1 and 2699 et
seq. and claims for violation of relevant Industrial Welfare
Commission Wage Orders.”

17
18 *Id.* ¶II.A.13. Plaintiff also executed a general release as part of the Settlement Agreement,
19 including a waiver of Civil Code § 1542. *Id.* ¶ II.D.1.

20 Each PAGA Settlement Employee will receive an Individual PAGA Settlement Fund
21 proportionate to the number of pay periods worked. *See id.* ¶ II.C.13. Each Individual PAGA
22 Settlement Fund will be treated as nonwage income with no tax withholdings to be made, and
23 will be reported, if required, by applicable tax laws, by the Settlement Administrator on IRS
24 Form 1099s. *Id.* ¶ II.C.14.

25 **III. STANDARD OF REVIEW**

26 Although PAGA requires courts to “review and approve” the settlement of any civil
27 action filed under PAGA, *see* Cal. Lab. Code § 2699 (l)(2), neither the Legislature, the California
28 Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard

1 PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d
2 959, 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a
3 PAGA settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL
4 1899912, at *2 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating
5 PAGA settlements.”). The LWDA itself has acknowledged the lack of a “specific benchmark”
6 and stated only that the relief provided under PAGA must be “genuine and meaningful,”
7 “consistent with the underlying purpose of the statute to benefit the public” and, in the context of
8 a class action, “meet[] the standards of being ‘fundamentally fair, reasonable, and adequate’
9 with reference to the public policies underlying the PAGA.” *See California Labor and Workforce*
10 *Development Agency’s Comments on Proposed PAGA Settlement at 2-3, O’Connor v. Uber*
11 *Techs. Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

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

22 **IV. ARGUMENT**

23 **A. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant** 24 **to Labor Code § 2699(l)(2)**

25 When enacting PAGA, the Legislature intended to ensure that the LWDA retained
26 “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end,
27 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the
28 proposed settlement to the LWDA online “at the same time that it is submitted to the court,” to

1 give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§
2 2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the
3 Settlement Agreement and this motion to the LWDA through the LWDA’s online filing system
4 in conjunction with filing this motion. *See* Lee Decl. ¶ 20, Ex. E.

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

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

7 In class actions, judicial review of a settlement’s fairness is designed to protect class
8 members who had no say in the negotiation of the settlement by ensuring that the settlement is
9 not the product of “fraud,” “overreaching,” or “collusion” by the negotiating parties and that
10 “due regard” was given to the rights and interests of absent class members subject to the
11 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Although
12 PAGA actions and class action have certain “fundamental” differences (*see Sakkab v. Luxottica*
13 *Retail North America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)), PAGA settlements are also
14 subject to Court approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing
15 the scope of a judgment in a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d
16 1110, 1134 (N.D. Cal. 2016).

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

23 All of the factors that would give rise to a presumption of fairness in the context of a
24 class action settlement are present in this PAGA action. After this lawsuit was commenced, the
25 Parties agreed to engage in arm’s length negotiations between highly experienced counsel. As
26 part of their privileged settlement negotiations, Defendant produced data regarding the number
27 of pay periods at issue for each of the claims, from which Plaintiff’s Counsel calculated the
28 maximum PAGA penalties and analyzed Defendant’s potential liability. Lee Decl. ¶¶ 10-11.

Both Plaintiff's and Defendant's counsel have significant experience in litigating wage and hour class and PAGA actions, which further supports the reasonableness of the settlement. Lee Decl. ¶¶ 17-19; Declaration of Edward W. Choi ("Choi Decl.") ¶ 3; Declaration of Dennis S. Hyun ("Hyun Decl.") ¶¶ 3-6. Therefore, the Settlement Agreement is entitled to a presumption of fairness.

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

Citing a decline in "[s]taffing levels for state labor law enforcement" and finding the "vigorous assessment and collection of civil penalties as provided in the Labor Code" to sometimes be "the only meaningful deterrent to unlawful conduct," the Legislature enacted PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement capability of the LWDA with private enforcement actions by "aggrieved employees" acting as private attorneys general. *See* 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA to collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see also Iskanian*, 59 Cal. 4th at 381-82. In that role, the named plaintiff "take[s] on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment." *See O'Connor*, 201 F. Supp. 3d at 1134.

Plaintiff's claims in this action are based on alleged violations of Labor Code §§ 201-204, 226.2, 226.7, 227.3, 510, 558, 1194, 1197, and 1197.1, 2698, *et seq.* *See generally* Plaintiff's First Amended Complaint and PAGA notices. When reviewing a settlement agreement, "the test is not the maximum amount plaintiffs might have obtained at trial on the complaint," *see Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), nor is it "whether the settlement agreement is perfect in the estimation the reviewing court." *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is "whether the settlement is reasonable under all of the circumstances." *See Wershba*, 91 Cal. App. 4th at 250. Relevant considerations include the strength of a plaintiff's case and the risk, expense, complexity, and likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,

1 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In PAGA settlements, courts also consider
2 their authority to award less than the maximum penalty authorized by PAGA. *See* Cal. Lab. Code
3 § 2699(e)(2); *see also Smith*, 2018 WL 1899912 at *3.

4 Here, Defendant produced data for each of Plaintiff's claims, which permitted Plaintiff to
5 analyze Defendant's potential exposure and liability. Lee Decl. ¶¶10-11. At the time of the third
6 mediation, there were approximately 56 aggrieved employees that worked a total of 3,278 pay
7 periods. Defendant's potential exposure could be as high as \$658,400.00 if the Court were to
8 award a \$100 penalty for each pay period encompassed by the proposed settlement for each of
9 the violations alleged. *Id.* ¶ 11. Specifically, there were approximately 3,278 pay periods
10 wherein commission wages were paid, but non-productive time such as rest period wages and
11 overtime wages were not paid during same pay period, which amounts to a maximum exposure
12 of \$327,800.00. *Id.* There were 3,278 wage statements issued to aggrieved employees that
13 contained one of the foregoing payments, which amounts to a maximum exposure of \$327,800.
14 *Id.* Finally, there were approximately 28 formerly employee aggrieved employees which
15 amounts to a maximum exposure of \$2,800.00 for PAGA penalties predicated on waiting time
16 penalties. *Id.*

17 Defendant also argued that even if Plaintiff prevailed, the recoverable penalties under
18 PAGA are minimal. *Id.* ¶ 12. Indeed, courts to consider the issue have refused to "stack"
19 PAGA penalties and often significantly reduce the penalties awarded. *Id.* If penalties were not
20 "stacked", the total amount of exposure would amount to \$327,800.00. *Id.* Further, courts
21 have discretion to reduce PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct.
22 App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty
23 reduction to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018). If
24 the Court in this case were to reduce penalties to \$5 a pay period, as was approved in
25 *Carrington*, the potential exposure amounts to approximately \$32,920.00 (5% of \$658,400). *Id.*

26 Under the circumstances of this case, the payment of \$100,000.00 in civil penalties in
27 fair, adequate, and reasonable. The payment of \$100,000.00 in exchange for a release of only
28 those claims for civil penalties that are pleaded in the Action or that could have been pleaded

1 based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the
2 Action will have a substantial deterrent effect on Defendant and other California employers and
3 will confer benefits on the Aggrieved Employees, who will each receive a portion of the
4 settlement.

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

23 In the present case, the Gross Settlement Amount is approximately 15% of the total
24 maximum "stacked" exposure, which is a very reasonable settlement amount. In sum, this
25 settlement is fair, reasonable, and consistent with PAGA's policies and purposes under these
26 circumstances.

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

3 Except when civil penalties are recovered from a defendant who did not have any
4 employees at the time of an alleged violation, civil penalties recovered under PAGA must be
5 distributed so that 75% of the civil penalties are paid to the to LWDA and 25% are paid to the
6 “aggrieved employees” on whose behalf the PAGA action was brought. *See* Cal. Lab. Code §
7 2699(i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net
8 PAGA Settlement Fund to be paid to the LWDA and 25% of the PAGA Settlement Fund to be
9 paid to the Aggrieved Employees. Settlement Agreement ¶ II.B.2.e. The Aggrieved Employees
10 will receive penalties based on the number of pay periods they worked during the applicable
11 period using a pro rata distribution formula. *Id.* ¶ II.C.13

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

14 **a. Percentage of the Fund**

15 PAGA allows a prevailing plaintiff to recover reasonable attorneys’ fees. *See* Cal. Lab.
16 Code § 2699 (g). In recognition of this, the Settlement Agreement allows Plaintiff’s Counsel to
17 request up to 33 and 1/3 percent (\$33,333.33) in attorneys’ fees. *See* Settlement Agreement ¶
18 II.B.2.a. This amount is fair, adequate, and reasonable for two reasons.

19 First, in class actions, state and federal courts have held that when a class action
20 establishes a monetary fund for the benefit of the class members out of which attorneys’ fees
21 may be paid, courts may determine the amount of a reasonable fee by “choosing an appropriate
22 percentage of the fund created.” *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016)
23 (affirming a fee award representing 33 1/3 percent of the fund and joining “the overwhelming
24 majority of federal and state courts” in approving the “percentage method” as a reasonable
25 means for determining attorney fee awards in class actions). While different from class action
26 settlements in important ways, PAGA settlements also involve the establishment of a common
27 fund for the benefit of persons other the named plaintiff, so the reasons for utilizing the
28 percentage method are the same. *See id.* (noting that the percentage method provides “ease of

1 calculation,” “alignment of incentives between counsel and the class,” “a better approximation of
2 market conditions in a contingency case,” and the “encouragement...to seek an early
3 settlement”). The \$33,333.33 requested by Plaintiff’s Counsel represents one-third of the Gross
4 Settlement Amount, which is consistent with awards usually approved in class actions. *See*
5 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008) (“[F]ee awards in class actions
6 average around one-third of the recovery”); *see also Laffitte*, 1 Cal. 5th at 506 (upholding the
7 approval of a fee award equal to one-third of the total settlement amount).

8 **b. Lodestar Cross-Check**

9 When the primary method employed to determine fees is the percentage method, courts
10 have discretion to use the lodestar method to “cross-check” the amount of fees calculated by way
11 of percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when used
12 in this manner, does not override the trial court’s primary determination of the fee as a
13 percentage of the common fund and thus does not impose an absolute maximum or minimum on
14 the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs.*
15 *Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the
16 primary reliance on the percentage of common fund method”).

17 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means
18 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
19 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
20 range, but the court is not necessarily required to make such an adjustment.” *Id.* (emphasis
21 added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-
22 checks are not required; in many cases, performing a cross-check “undermines” one of the
23 primary reasons for using the percentage method: aligning counsel’s incentives with the benefits
24 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain
25 the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court*
26 *Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29-30 (citing
27 the recommendations of the Third Circuit Task Force with approval and observing that “[t]he
28 criticisms of the lodestar approach set forth in this Report are now echoed by many authorities,

1 who have been most vocal about the manner in which it exacerbates the problem of ‘cheap
2 settlements’ and burdens already overworked trial judge.”).

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

13 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
14 awarded by the percentage method showing that the majority of multipliers awarded are “in the
15 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming
16 a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
17 over 30 cases). Federal district courts applying California law have likewise routinely approved
18 cross-check multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower*
19 *Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a
20 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
21 *N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar
22 multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
23 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
24 violations). Other courts have found even higher multipliers to be reasonable by comparison to
25 other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal.
26 2008) (approving a 5.2 multiplier on a cross-check after surveying a large body of cases
27 affirming a higher multiplier).

28 With respect to Plaintiff’s Counsel’s lodestar, Plaintiff’s Counsel will have expended

1 approximately 117.10 litigating this case, which includes approximately 25 hours of anticipated
2 time spent after approval responding to correspondence and phone calls from Aggrieved
3 Employees, the Settlement Administrator, and Defendant's Counsel. Lee Decl. ¶ 14; Choi Decl.
4 ¶ 7; Hyun Decl. ¶¶ 9-11, Exh. A. Plaintiff's Counsel request hourly rate of \$900.00 per hour.
5 Lee Decl. ¶ 15; Choi Decl. ¶ 6; Hyun Decl. ¶ 11. The courts are quite liberal in the evidence
6 required to prove an attorney's hours. Detailed time records are not required. An attorney's
7 testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a
8 particular case is sufficient evidence to support an award of attorney fees, even in the absence of
9 detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

10 Reasonable hours include, in addition to time spent during litigation, the time spent
11 before the action is filed, including time spent interviewing the clients, investigating the facts and
12 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
13 62 (1980). The fee award should also include fees incurred to establish and defend the attorneys'
14 fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel
15 seek compensation involve only these types of tasks. Thus, the number of hours for which fees
16 are sought is reasonable.

17 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
18 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
19 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
20 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
21 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
22 4th 629, 632-33 (1998).

23 Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the
24 supporting declarations, Plaintiff's Counsel have significant experience in the area of
25 employment and wage and hour class and representative actions. Their practices focus on
26 representing employees in employment matters, particularly wage and hour cases on a
27 contingency basis. Lee Decl. ¶ 18; Choi Decl. ¶ 5; Hyun Decl. ¶¶ 3-6. As such, based on the
28 hours and applicable rate, Plaintiff's Counsel's lodestar amount through the finalization of this

1 settlement – without a multiplier – will be approximately \$127,890.00, which **exceeds the fee**
2 **requested** by Plaintiff here and results in a negative lodestar multiplier. Lee Decl. ¶ 15; Choi
3 Decl. ¶ 7; Hyun Decl. ¶ 11. Accordingly, the cross-check supports the fee requested.

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

6 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code §
7 2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s Counsel to request up to
8 \$25,000.00 in litigation costs. Settlement Agreement ¶ II.B.2.b.

9 Plaintiff’s Counsel request \$17,351.08 for the reimbursement of litigation costs. As set
10 forth in accompanying declarations of Plaintiff’s Counsel, these costs were all directly incurred in
11 the prosecution of this action, including, but not limited to, filing fees, service fees, and
12 mediation fees. Lee Decl. ¶ 16, Ex. D; Choi Decl. ¶ 8, Ex. B. As such, Plaintiff’s Counsel’s
13 request for costs in the amount of \$17,351.08 is fair, adequate, reasonable, and consistent with
14 PAGA’s policies. Because this amount is less than the \$25,000.00 that was provided in the
15 Settlement Agreement, the difference will be distributed to the LWDA and Aggrieved
16 Employees.

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

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

24 Here, Plaintiff respectfully requests \$5,000.00, which is intended to compensate Plaintiff
25 for the time spent on this case and for executing a general release, including of Civil Code §
26 1542, which was not required by Aggrieved Employees. Declaration of James Guiffre (“Guiffre
27 Decl.”) ¶¶ 6-7. This requested enhancement is consistent with awards approved in other common
28 fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal.

1 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130
2 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards
3 of \$35,000). Plaintiff also took the risk of bringing the lawsuit, which was a matter of public
4 record. Future employers may be less likely to hire an employee who has previously filed an
5 action against an employer. This in conjunction with Plaintiff's agreement to provide a general
6 release supports the requested award.

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

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

20 In contemplation of these expenses, the parties will engage Phoenix Settlement
21 Administrator to act as a third-party settlement administrator and have allocated up to \$2,250.00
22 to cover the cost of settlement administration. Settlement Agreement ¶ II.A.15; Declaration of
23 Jodey Lawrence ¶8, Ex. B.

24 **V. CONCLUSION**

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

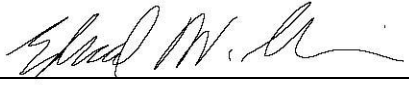
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1 Dated: March 12, 2025

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