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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RUBI VALDEZ, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

KOHL'S DEPARTMENT STORES, INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22STCV32401

[Assigned for all purposes to the Hon. David S. Cunningham III, Department SS11]

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: September 25, 2025
Time: 11:00 a.m.
Dept.: 11

Complaint Filed: October 4, 2022
Trial Date: None

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 25, 2025, at 11:00 a.m., or as soon thereafter as the matter may be heard, in Department 11 of the above-referenced Court located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Rubi Valdez ("Plaintiff") will seek an Order approving the concurrently filed PAGA Settlement Agreement and Release ("Agreement" or "Settlement"), pursuant to the procedures set forth in Labor Code § 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Kristen M. Agnew, Plaintiff Rubi Campos and Jodey Lawrence (Phoenix Settlement Administrators), the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: July 14, 2025

DIVERSITY LAW GROUP, P.C.

By:______________________________

Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Aggrieved Employees

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I. INTRODUCTION

This is a representative Private Attorneys General Act of 2004 ("PAGA") action arising from Defendant Kohl's Stores, Inc. (f/k/a Kohl's Department Stores, Inc.) (the "Company," "Defendant," or "KOHL'S") alleged underpayment of sick pay wages to Plaintiff Rubi Valdez ("Plaintiff") and other alleged aggrieved employees. Pursuant to Labor Code section 2698, *et seq*., Plaintiff hereby moves the Court for an order approving the non-reversionary settlement with Defendant as set forth in the concurrently filed PAGA Settlement Agreement ("Agreement" or "Settlement Agreement").[1] As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the proposed settlement warrants the Court's approval. This settlement was reached after extensive investigation and informal discovery concerning the merits of the alleged Labor Code violations, the details of Defendant's various non-discretionary incentive plans, the payroll records of the alleged aggrieved employees, and data points related to the number of pay periods in which the alleged aggrieved employees earned non-discretionary incentive compensation and sick pay wages. Furthermore, pursuant to the terms of the Settlement, Defendant will pay the gross amount of $289,000.00 (the "Gross Settlement Amount"), which includes an estimated payment of approximately $159,385.69 in civil penalties to aggrieved employees and the California Labor and Workforce Development Agency ("LWDA"). The proposed release is also narrowly tailored to release only claims for civil penalties under PAGA predicated on the specific Labor Code violations alleged in the PAGA Notice and operative Second Amended Representative Action Complaint.

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

II. PROCEDURAL HISTORY

A. Pre-Litigation Investigation

Prior to initiating the Action, counsel for Plaintiff thoroughly investigated the factual and legal bases for the claims alleged in this lawsuit. Declaration of Kristen M. Agnew ("Agnew Decl.") ¶ 3.

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[1] A true and correct copy of the Settlement Agreement is attached to the Declaration of Kristen M. Agnew as Exhibit 1.

Counsel reviewed Plaintiff's personnel file, time records, and wage statements provided by Defendant. *See id*. The records demonstrated that Plaintiff occasionally earned non-discretionary incentive pay and sick pay during the same workweek. *See id*. Counsel determined that Defendant paid sick pay wages at Plaintiff's base hourly rate of pay, and not at the regular rate of pay, as required by the Healthy Workplaces, Healthy Families Act of 2014, Labor Code section 246 *et seq*. *See id.*

B. The PAGA Notices

On September 29, 2022, Plaintiff submitted written notice under Labor Code section 2699.3 to the LWDA and Defendant alleging that Defendant violated Labor Code sections 201, 202, 203, 204, 226(a) and 246 (the "PAGA Notice"). *See* Agnew Decl. ¶ 4, Exhibit 2. As set forth in the PAGA Notice, Plaintiff alleges that Defendant failed to pay sick pay at the regular rate of pay to aggrieved employees. *See id.* at ¶ 5. More specifically, Plaintiff alleges that aggrieved employees earned non-discretionary incentives/bonuses, thus increasing the regular rate of pay. *See id.* However, when sick pay was paid, it was paid at the base rate of pay rather than the regular rate of pay. *See id.*

C. The Motion to Compel Arbitration

On October 4, 2022, Plaintiff filed the Class Action Complaint for Damages. *See* Agnew Decl. ¶ 6. However, Plaintiff and Defendant (the "Parties") are parties to an arbitration agreement that contains a class action waiver. *See id.* As such, Plaintiff dismissed the class claims (without prejudice) and filed a First Amended Representative Action Complaint for Violation of Labor Code § 2698, et. seq. *See id.* at ¶ 7.

Defendant subsequently filed a motion to compel individual arbitration of Plaintiff's claims. *See* Agnew Decl. ¶ 8. Following extensive briefing and multiple hearings, the Court ultimately granted motion, on July 7, 2023. *See id*. On November 3, 2023, Plaintiff submitted a demand for arbitration with JAMS. *See id.* at ¶ 9.

D. The Parties Engage in Informal Discovery and Investigation

Shortly after Plaintiff initiated arbitration, the Parties agreed to participate in private mediation with Kevin T. Barnes, an experienced wage and hour class action mediator. *See* Agnew Decl. ¶ 10. The Parties also agreed to the informal exchange of information leading up to mediation. *See id.* Defendant produced information concerning the various non-discretionary incentive plans, the payroll records of the alleged aggrieved employees, and data points related to the number of pay periods in which the alleged aggrieved employees earned non-discretionary incentive compensation and sick pay wages. *See id.* at ¶ 11. PAGA Counsel retained an expert to analyze the records and provide a summary of the frequency in which employees earned incentive wages and sick pay in the same pay period. *See id.* The payroll records confirmed that effective April 5, 2023, Defendant paid sick pay at the regular rate of pay. *See id.* Based on the information provided by Defendant, PAGA Counsel conducted a full penalties analysis as to the value of the PAGA claims. *See id*.

E. The Parties Reach a Settlement Through Arm's Length Negotiations at Mediation

On March 6, 2025, the Parties engaged in mediation with Mr. Barnes. *See* Agnew Decl. ¶ 13. As a result of the mediation, the Parties reached a settlement in principle of the Action. *See id.* The Parties subsequently negotiated the terms of Settlement Agreement. *See id.* The mediation and all settlement negotiations were conducted at arms' length. *See id.*

F. The Operative Second Amended Complaint

To effectuate the terms of the Settlement, Plaintiff agreed to file a Second Amended Representative Action Complaint (the "Operative Complaint") to cover the claims negotiated at mediation and covered by the Settlement. *See* Agnew Decl. ¶ 16.[2] On July 14, 2025, the Parties submitted a joint stipulation to allow the filing of the Operative Complaint. *See id.* at ¶ 17. As alleged in the Operative Complaint, Plaintiff asserts a single cause of action for violation of PAGA and seeks civil penalties predicated on Defendant's alleged violations of Labor Code sections 201, 202, 203, 204, 226 and 246 for the period of September 29, 2021, through April 4, 2023. *See id.* Defendant disputes and denies Plaintiff's allegations and claims asserted in the Operative Complaint and denies any and all liability for the causes of action alleged. *See id*.

[2] In the First Amended Complaint, Plaintiff also pursued PAGA penalties based on alleged meal and rest period violations. *See* Agnew Decl. ¶ 7. This claim was predicated on an alleged meal and rest period waiver that applied to employees who worked overnight shifts. *See id.* at ¶¶ 7, 12. After review of Plaintiff's time records, PAGA Counsel determined that Plaintiff did not work an overnight shift during the PAGA Period. *See id.* at ¶ 12.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the Settlement are described below and set forth in detail in the concurrently filed Settlement Agreement, a true and correct copy of which is attached as **Exhibit 1** to the Declaration of Kristen M. Agnew.

A. The Aggrieved Employees

The current Action is being settled on behalf of "Aggrieved Employees," which is defined to mean "all non-exempt, hourly retail employees employed by KOHL's during the PAGA Period who received sick pay and non-discretionary incentive wages in the same pay period." *See* Settlement Agreement ("SA") § 1.4. The PAGA Period means the period from September 29, 2021, to April 4, 2023. *See id.* at § 1.19. Defendant estimates that there are 4,831 Aggrieved Employees who collectively earned sick pay and non-discretionary incentive wages in approximately 11,206 pay periods during the PAGA Period. *See id.* at §§ 1.18, 4.1.

B. The Gross Settlement Amount

The Settlement Agreement requires Defendant to pay the gross amount of Two Hundred Eighty-Nine Thousand Dollars ($289,000.00) (the "Gross Settlement Amount"). *See* SA §§ 1.10, 3.1. Based on the number of pay periods released by the Settlement, Defendant will pay approximately $25.78 per pay period to resolve the claims in this case. *See* Agnew Decl. ¶ 19.

C. The Allocation of the Net Settlement Amount

The balance of the Gross Settlement Amount remaining after deduction of the approved PAGA Representative Service Payment ($5,000.00), PAGA Counsel Fees Payment ($93,333.33), PAGA Counsel Litigation Expenses Payment ($13,280.98), Administrator Expenses Payment ($18,000.00) will be available for distribution to the LWDA and Aggrieved Employees. *See* SA § 3.2. Assuming that the Court awards the requested amounts, $159,385.69 will be available for distribution to the LWDA and Aggrieved Employees. *See* Agnew Decl. ¶ 23. Consistent with the mandate of PAGA, seventy-five percent of this amount ($119,539.27) will be paid to the LWDA for PAGA penalties ("LWDA PAGA Payment"). *See* SA § 3.2.4; Agnew Decl. ¶ 23. The remaining twenty-five percent ($39,846.42) will be allocated to the Individual PAGA Payments. *See* SA §§ 1.18, 3.2.4; Agnew Decl. ¶ 23.

The amount of an Aggrieved Employee's Individual PAGA Payment will be based on the number of PAGA Pay Periods worked by the employee.[3] *See* SA §§ 1.18, 3.2.4. On raw average, Aggrieved Employees will be entitled to recover, on average, up to $8.24 each. *See* Agnew Decl. ¶ 24. However, the amount that any particular Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of PAGA Pay Periods in which the individual worked during the PAGA Period. *See* SA § 3.2.4.1. This is fair, as it directly allocates greater penalties to Aggrieved Employees who have allegedly suffered greater harm. *See* Agnew Decl. ¶ 24.

D. Attorneys' Fees, Litigation Costs and Representative Service Payment

As part of the Settlement, Defendant does not object to a request by PAGA Counsel for an award of attorneys' fees ("PAGA Counsel Fees Payment") of up to one-third (1/3) of the Gross Settlement Amount, *i.e.*, the sum of Ninety-Six Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($96,333.33), and reimbursement for actual litigation costs in an amount up to Fifteen Thousand Dollars ($15,000.00) ("PAGA Litigation Expenses Payment"), subject to Court approval. *See* SA § 3.2.2.[4] Any portion of the PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment that is not approved by the Court shall become part of the Net Settlement Amount. *See id*.

Defendant also does not object to Plaintiff's request for a PAGA Representative Service Payment of up to Five Thousand Dollars ($5,000.00) in recognition for the work Plaintiff has done on behalf of the State of California and the Aggrieved Employees. *See* SA § 3.2.1. Any portion of the PAGA Representative Service Payment that is not approved by the Court shall become part of the Net Settlement Amount. *See id*.

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[3] "PAGA Pay Period" means any pay period during the PAGA Period during which an Aggrieved Employee worked for KOHL'S and received sick pay when the regular rate of pay exceeded the base rate of pay period. *See* SA § 1.18.

[4] At the time the Parties negotiated the Settlement Agreement, PAGA Counsel did not have a final tally of the litigation costs incurred to date. As such, the Parties included a maximum amount that could be attributed to costs under the settlement. PAGA Counsel requests reimbursement of $13,280.98 for litigation related expenses. *See* Agnew Decl. ¶ 45.

E. Settlement Administration Costs

The Settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *See* SA § 3.2.3. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the Settlement Administration Costs estimated to be Eighteen Thousand Dollars ($18,000.00). *See id.*; Declaration of Jodey Lawrence ("Admin. Decl.") ¶ 15, Exhibit B. Any portion of the requested Settlement Administration Costs not approved by the Court shall be added to the Net Settlement Amount. *See* SA § 3.2.3.

F. Uncashed Individual PAGA Payment Checks

Any uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund. *See* SA § 4.4.3.

G. The Scope of the Released Claims

Upon the payment of the Gross Settlement Amount, Plaintiff and Aggrieved Employees will release Defendant and Released Parties from all Released PAGA Claims. *See* SA § 5.2. As defined in the Agreement, the term "Released PAGA Claims" means:

> all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or September 29, 2022 PAGA Notice, including Labor Code sections 201, 202, 203, 204, 226, 246, 2698-2699 and all applicable California regulations and IWC Wage Orders, that accrued at any time during the PAGA Period.

See id. at § 1.26. The Settlement is not intended to release does not extend to violations of any predicate statutes other than PAGA. The Settlement also does not affect a waiver of claims by Aggrieved Employees against the Released Parties for any individual wage and hour claims. *See* Agnew Decl. ¶ 33.

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was "in the public interest to allow

Aggrieved Employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Kim v. Reins International California, Inc*., 9 Cal.5th 73, 81 (2020) ("The Labor Commissioner and other agencies were likewise hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. [] To facilitate broader enforcement, the Legislature enacted PAGA, authorizing "aggrieved employees" to pursue civil penalties on the state's behalf"); *Ochoa- Hernandez v. Cjaders Foods, Inc*., 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." [citations omitted].)

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

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

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

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

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

C. The Settlement is Reasonable and Effectuates PAGA's Objectives

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

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

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

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

1. Plaintiff's PAGA Claim Is Contested

Plaintiff seeks civil PAGA penalties based on Defendant's alleged underpayment of sick pay wages. It is well-settled California law that employers must pay sick pay wages at an employee's regular rate of pay. Under the Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code section 245 *et seq*. ("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); *see Powell v. Walmart Inc*., 2021 WL 369550, at *2 (S.D. Cal., 2021)

("The rate of sick pay is calculated by dividing the employee's total wages (not including overtime premium pay) by the employee's total hours worked in the full pay periods of the prior 90 days of employment").

Here, Plaintiff alleges that Aggrieved Employees earned non-discretionary incentive compensation. Agnew Decl. ¶ 28. However, during workweeks when employees earned non-discretionary wages and sick pay, Defendant failed to include the incentive pay in the calculation of the regular rate used to compute sick pay wages. *See id.* Instead, Defendant paid the sick pay at the employee's base hourly rate. *See id*. Defendant denies any and all liability for the underpayment of sick pay wages. *See id.*

Plaintiff also seeks civil PAGA penalties based on Defendant's violations of Labor Code section 226(a). As a result of the alleged underpayment and/or non-payment of sick pay wages to Aggrieved Employees, Plaintiff contends that the wage statements omit information required by Labor Code 226, including all applicable hourly rates and the total hours worked. *See* Agnew Decl. ¶ 29. As argued by Defendant, Plaintiff's derivative wage statement violation is vulnerable to a motion for summary judgment based on the weaknesses of the underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage statement cause of action was derived from an underlying wage and hour violation for overtime). Furthermore, citing to *Naranjo v. Spectrum Security Services, Inc*. 15 Cal.5th 1056 (2024), Defendant argues that it made a good faith effort to comply with the HWHFA, which it contends constitutes a valid defense to PAGA liability.

2. Recovery of Civil PAGA Penalties Is Uncertain

However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Defendant contends that it made a good faith effort to comply with the law. As agued by Defendant, in deciding whether to award the maximum penalty amount, courts may focus on whether the employer made a good faith effort to follow the law. For example, in *Thurman v. Bayshore Transit Management, Inc*., the Court of Appeal upheld the trial court's significant reduction of PAGA penalties by 30% because the employer was not initially on notice that it was in violation of the law and because it would have been unfair to award penalties where the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When the employer made aware of the violations, it timely took steps to come into compliance. *Id.* By contrast, the imposition of full penalties was justified when an employer took a "'cavalier approach to fulfilling its contractual and statutory obligations'" and demonstrated "reckless disregard." *Id*. Furthermore, as the California Court of Appeal has affirmed, trial courts are well within their discretion to reduce PAGA penalties "for technical violations that cause no injury," especially where the "violation was inadvertent." *Raines v. Coastal Pac. Food Distributors, Inc*., 23 Cal. App. 5th 667, 681 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al*., while the trial court imposed substantial PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100.

In this case, Defendant asserted that a substantial reduction in potential PAGA penalties was warranted because: (1) even assuming that Plaintiff could establish the predicate violations, the alleged violations were inadvertent; (2) Aggrieved Employees did not suffer substantial economic harm as a result of the alleged rounding; and (3) Defendants voluntarily modified its sick pay calculation policy after receiving Plaintiff's PAGA Notice. *See* Agnew Decl. ¶ 32. Thus, Defendant contends that no PAGA penalties are needed to punish or deter Defendant for its inadvertent behavior, much less to deter it from committing any future violations that were completely foreclosed by its new payroll practices. *See id.*

3. The Settlement Is Reasonable When Compared to the Realistic Amount of PAGA Civil Penalties At Issue

In evaluating the fairness of a PAGA settlement, "there is no express or even baseline percentage of recovery required." *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022 WL 4586236, at *6 (E.D. Cal., 2022). Trial courts routinely approve PAGA settlements representing only a tiny fraction of the potential verdict value of the claim. *See* id. (approving PAGA allocation that "is less than one percent (1%) of the verdict value" of the claim"); *Hartley v. On My Own, Inc.*, 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of $61); *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017) (considering early stage of litigation, defendant's weak financial condition, and injunctive relief provided by settlement, approving PAGA settlement of 4.57% of verdict value).

Here, the Gross Settlement Amount exceeds both in terms of the total dollar amount and as a percentage of overall settlement value, the typical PAGA settlement. Defendant estimates that Aggrieved Employees worked approximately 11,206 PAGA Pay Periods. *See* SA § 4.1. Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the standard penalty of $100 per pay period yields $1,120,600 in potential liability. *See* Agnew Decl. ¶ 27. Thus, without stacking, the Gross Settlement Amount is approximately 25.78% of the maximum amount of penalties at issue. *See id.* In the alternative, if the Court were to "stack" penalties, (*ie*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA penalties could total as high as $2,241,200. *See id.* Thus, with stacking, the Gross Settlement is approximately 12.89% of the maximum penalties. *See id.*

E. The Attorneys' Fees are Reasonable

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

The award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding 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 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set….The judge, in other words, is trying to mimic the market in legal services").

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

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

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

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

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

495 F.2d 448, 470 (2d Cir. 1974). For PAGA Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out battle with corporate Defendants.

As secondary support for the percentage of the fund method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar calculation, 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 minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at p. 505; *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." *Id*. Thus, a lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at p. 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial*

California, Inc., 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge").

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

With respect to PAGA Counsel's lodestar, to date, at least approximately 97.30 hours have been expended by counsel in this matter. *See* Agnew Decl. ¶ 43, Exhibit 3. PAGA Counsel anticipates spending an additional three hours on this matter through its final resolution, including preparing for the approval hearing, conferring with Settlement Administrator regarding distribution of payment to Aggrieved Employees, and fielding phone calls regarding inquiries about the Settlement. *See id.* PAGA Counsel requests an hourly rate of $800.00 per hour. *See id.* at ¶ 44. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim.

Serrano v. Unruh, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, PAGA Counsel requests that the court find that these hours were reasonable in this litigation. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Here, PAGA Counsel's skill and experience justify the requested rate. As shown in the supporting declaration, PAGA Counsel has significant experience in the area of employment and wage and hour class actions. *See* Agnew Decl. ¶¶ 35-42. Specifically, PAGA Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. *See id.* at ¶ 35, 40-42. As such, based on the hours and applicable rate, the total lodestar to be expended by PAGA Counsel through finalizing this settlement will be approximately $80,240.00 (100.30 hours x $800). *See id.* at ¶ 44.

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

Lealao contains several factors justifying an enhancement based on the percentage-of-the-benefit, namely, no objections by Class Members, commendable conduct by counsel, and significant recoveries by Class Members, all of which were previously detailed above. *Lealao*, 82 Cal.App.4th at 51-53. As in *Lealao*, the Class Members were notified of the Settlement and attorneys' fees with no objections. The extreme effort undertaken by counsel, as shown by their hours and the significantly high amount of claims being paid out, shows commendable conduct.

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

The multiplier should be enhanced by the contingent nature of counsel's fee recovery. The risks in taking on a representative action case are enormous, not the least of which is time and effort. Not only was there significant risk taken upon by PAGA Counsel, but their ability to obtain the current settlement should be seen as quite commendable.

Here based upon PAGA Counsel's lodestar of $80,240.00, the requested fees result in a modest multiplier of approximately 1.20 [$96,333.33 (requested fees) ÷ 80,240.00 (lodestar amount)]. This demonstrates that the requested fees are reasonable and fair, particularly based on the factors described above. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct. App. 2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp*., 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp*., 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. PAGA Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For such reasons, PAGA Counsel's request for attorneys' fees in the amount of $96,333.33 is fair and reasonable. Additionally, PAGA Counsel's cost reimbursement request in the amount of $13,280.98 is also reasonable. *See* Agnew Decl. ¶ 45, Exhibit 4. The costs were all directly incurred in the prosecution of this action, including filing fees, mediation costs, postage and copying. *See id*. As such, the requested costs should be awarded as fair and reasonable.

F. The Settlement Administrator's Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or Eighteen Thousand Dollars ($18,000.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this

Settlement. *See* SA §§ 3.2.3, 7.1. The Parties believe that the administration fee is reasonable and should be approved.

G. Plaintiff's Representative Service Payment Should be Approved

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

Here, Plaintiff seeks $5,000 as a PAGA Representative Service Payment, which is intended to compensate Plaintiff for the time spent on this case, including reviewing pleadings, and the potential for hesitation from later prospective employers that might find out she brought this claim. *See* SA § 1.23; Declaration of Rubi Valdez ¶¶ 6-8. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $ 55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs*., No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 Incentive award to class representative in ERISA case).

H. Notice to the LWDA Has Been Provided

Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion, proposed order and Settlement Agreement to the LWDA's website. *See* Agnew Decl. ¶ 46, Exhibit 5.

V. CONCLUSION

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

DATED: July 14, 2025

DIVERSITY LAW GROUP, P.C.

By:______________________________

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