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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

SARAH MALAGA, as an individual and on behalf of other similarly aggrieved employees, Plaintiff, vs. COMMUNITY BANKER SERVICES CORPORATION, a California corporation; WESTAMERICA BANCORPORATION, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: CIV2300292 (Assigned to the Hon. Mark A. Talamantes, Courtroom L) **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT** Date: June 26, 2026 Time: 1:30 p.m. Dept.: L Action Filed: February 6, 2023 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 26, 2026, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Mark A. Talamantes, judge presiding, in Courtroom L of the above referenced Court, located at 3501 Civic Center Drive, San Rafael, California 94913, Plaintiff Sarah Malaga ("Plaintiff") will seek an Order approving the concurrently filed Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement" or "Agreement"), pursuant to the procedures set forth in Labor Code section 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Mai Tulyathan and Plaintiff Sarah Malaga, the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: May 14, 2026

DIVERSITY LAW GROUP, P.C.

By:________________________________

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sarah Malaga ("Plaintiff") filed this representative Private Attorneys General Act of 2004 ("PAGA") action on behalf of all aggrieved employees from November 30, 2021, through the present, for Defendants' violations of Labor Code §§ 201-204, 221-225.5, 226, 510, 558, 1194, 1197, and 1197.1, arising from the following alleged violations: (a) failing to pay all minimum, regular, and overtime wages owed, in violation of Labor Code §§ 201-204, 221-225.5, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay all wages owed upon separation of employment, in violation of Labor Code §§ 201-203; and (c) failing to provide accurate itemized wage statements, in violation of Labor Code § 226(a). Based on these alleged violations, Plaintiff seeks civil penalties under PAGA, Labor Code § 2698, *et seq*.

Plaintiff now respectfully requests that the Court approve this non-reversionary representative PAGA settlement,[1] in which Defendants Community Banker Services Corporation and WestAmerica Bancorporation (together, "Defendants") have agreed to pay $167,500.00 (the "Gross Settlement Amount"). After deducting administration costs and requested attorneys' fees and costs[2], approximately $88,592.02 will be available for distribution to Aggrieved Employees and the LWDA. Consistent with PAGA, twenty-five percent (25%) of this amount will be allocated to Aggrieved Employees and the remaining seventy-five percent (75%) will be paid to the LWDA.

As demonstrated below and in the accompanying declaration of Mai Tulyathan, the proposed settlement warrants the Court's approval. The settlement was reached with the assistance of a private mediator and after appropriate investigation and discovery. Furthermore,

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[1] The Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement" or "Agreement") is attached to the Declaration of Mai Tulyathan ("Tulyathan Decl.") as **Exhibit B**. All defined terms in this motion have the same definition as that in the Settlement Agreement.

[2] The Settlement Agreement provides that Plaintiff can seek up to $18,000.00 for reimbursement of litigation costs. As explained herein, Plaintiff's Counsel seeks actual costs in the amount of $16,324.62.

the proposed release is narrowly tailored to release only claims for civil penalties under PAGA predicated on the Labor Code violations alleged in Plaintiff's LWDA Notice and the operative Complaint.

II. PROCEDURAL HISTORY

A. The Procedural History of the Instant Action

On November 30, 2022, Plaintiff submitted written notice under Labor Code § 2699.3 to the LWDA alleging that Defendants violated Labor Code section §§ 201-204, 221-225.5, 226, 510, 558, 1194, 1197, and 1197.1 ("LWDA Notice"). *See* Tulyathan Decl. ¶ 3, Ex. A. On February 6, 2023, Plaintiff filed the instant representative PAGA action predicated on the Labor Code violations set forth in the LWDA Notice. *Id*. ¶ 4.

On February 13, 2024, the Court compelled Plaintiff's individual PAGA claims to arbitration and stayed the representative PAGA claims pending arbitration. *Id*. ¶ 5. On March 19, 2024, Plaintiff filed a demand for arbitration of her individual claims before the American Arbitration Association. *Id*. ¶ 6. While in arbitration, the Parties exchanged written discovery, including requests for production of documents and interrogatories. The Parties also produced relevant documents, including Plaintiff's personnel file and payroll records, and applicable wage and hour policies. *Id*. ¶ 7.

B. The Parties Agree to Mediation

In connection with discovery meet and confer discussions, the Parties agreed to participate in mediation with the Honorable Peter H. Kirwan (Ret.). *See* Tulyathan Decl. ¶ 8. In preparation for mediation, Defendants produced time and payroll data for the aggrieved employee group as well as data points relevant to the potential value of the representative PAGA claims, including the number of aggrieved employees and the aggregate number of pay periods at issue during the PAGA Period. *Id*. ¶ 9. Plaintiff's Counsel retained an expert to analyze the time and payroll records produced by Defendants. *Id*. ¶ 10.

On August 7, 2025, the Parties participated in an all-day mediation with Hon. Peter H. Kirwan (Ret.). *Id*. ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions and the legal bases for the claims and defenses. After a full day of arm's-length negotiations and subsequent discussions facilitated by Judge Kirwan, the Parties were able to reach an agreement for settlement and the key terms. *Id*. The Parties thereafter worked to memorialize the terms of the settlement in a Memorandum of Understanding and subsequently executed a long-form settlement agreement now before the Court. *Id*. ¶ 12.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

Based on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiff and the Aggrieved Employees, in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the various defenses asserted by Defendants, and the potential appellate issues. *See* Tulyathan Decl. ¶ 40. The material terms of the settlement are described below and set forth in detail in the concurrently filed Settlement Agreement.

A. The Aggrieved Employees

The settlement covers all persons who were employed by Defendants in the State of California as a non-exempt salaried employee at any time from November 30, 2021 to July 1, 2022 ("Aggrieved Employees"). *See* Settlement Agreement ("SA") § I.2. The PAGA Period is the time period of November 30, 2021 to July 1, 2022. *See id.* § I.13. Defendants represent that there are approximately 224 Aggrieved Employees who worked 2,494 pay periods during the PAGA Period. Tulyathan Decl. ¶ 15; SA § I.2.

B. The Gross Settlement Amount and Estimated Distributions to the LWDA and Aggrieved Employees

The Settlement Agreement requires Defendants to pay the gross amount of One Hundred Sixty-Seven Thousand Five Hundred Dollars ($167,500.00) ("Gross Settlement Amount"). *See* SA §§ I.6. The Gross Settlement Amount was calculated with, and is premised on, Defendants' representation that Aggrieved Employees worked approximately 2,494 periods during the PAGA Period of November 30, 2021 to July 1, 2022. *See id.* §§ I.2, I.13. Thus, on raw average, Defendants will pay approximately $67.16 per period to resolve the claims alleged in the operative Complaint. Tulyathan Decl. ¶ 17.

The Net Settlement Amount of $88,592.05 will be available for distribution to the LWDA and Aggrieved Employees. *Id*. ¶ 18. This represents the balance of the Gross Settlement Amount remaining after deductions for approved attorneys' fees and costs, Service Award to Plaintiff, and settlement administration costs to the Settlement Administrator. *See* SA §§ III.2, III.2.a-III.2.d. Seventy-five percent (75%) of this amount – *i.e.*, $66,444.04, will be paid to the LWDA (the "LWDA Payment"). *See id.* § III.2.a.(1); Tulyathan Decl. ¶ 19. The remaining twenty-five percent of the Net Settlement Amount, or $22,148.01, will be paid to Aggrieved Employees. *See* SA § III.2.a.(2); Tulyathan Decl. ¶ 19.

Based on the number of Aggrieved Employees of 224 and the estimated Net Settlement Amount, employees will be entitled to recover, on average, up to approximately $98.88 each. *See* Tulyathan Decl. ¶ 26. The amount that any particular Aggrieved Employee will be entitled to recover will be greater or lower than this average depending on the number of pay periods the employee worked, with some entitled to receive more, and others less. *See* SA § IV.2.f.(2). This is fair, as it directly allocates greater penalties to individual Aggrieved Employees who have allegedly suffered greater harm. *See* Tulyathan Decl. ¶ 26. The Individual PAGA Payments to Aggrieved Employees shall be categorized as 100% penalties for tax purposes. *See* SA § IV.3.[3]

C. Attorneys' Fees and Litigation Costs

As part of the settlement, Defendants do not object to Plaintiff's Counsel's request for attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*, currently the sum of Fifty-Five Thousand Eight Hundred Thirty-Three Dollars and Thirty-Three Cents ($55,833.33), and reimbursement of litigation costs incurred, up to the amount of Eighteen Thousand Dollars ($18,000.00), subject to the Court finally approving this settlement. *See* SA III.2.b. Plaintiff's Counsel only seeks approval of anticipated actual litigation costs totaling

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[3] If any checks from the settlement remain uncashed after 180 days, the Settlement Administrator will distribute the funds represented by the uncashed checks to the State Controller's Office, Unclaimed Property Division in the name of the Aggrieved Employee whose check went uncashed. *See* SA § IV.2.g.

Sixteen Thousand Three Hundred Twenty-Four Dollars and Sixty-Two Cents ($16,324.62). *See*. Any portion of the requested attorneys' fees and/or costs not approved by the Court shall be added to the amount available for distribution to the LWDA and Aggrieved Employees. *See* SA III.2.b.

D. Plaintiff's Service Award

As part of the settlement, Defendants do not object to Plaintiff's request for a service award in the amount of Two Thousand Five Hundred Dollars ($2,500.00), subject to the Court finally approving this settlement. *See* SA III.2.d. Any portion of the requested service award not approved by the Court shall be added to the amount available for distribution to the LWDA and Aggrieved Employees. *See id.*

E. Settlement Administration Costs

Finally, the settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *See* SA § III.2.c. The Parties have agreed to utilize Phoenix Settlement Administrators to oversee the settlement. *See id.* § I.20. The administration costs are estimated to be Four Thousand Two Hundred Fifty Dollars ($4,250.00). *See id*. § III.2.c; Tulyathan Decl. ¶ 23, Ex. C.

F. Scope of the Released Claims

Upon payment of the Gross Settlement Amount, Plaintiff, the State of California, and Aggrieved Employees will release Defendants and the Released Parties from:

> [A]ny and all claims for civil penalties under the PAGA (Labor Code § 2698 *et seq.*) that are based on the factual allegations in the PAGA Action, including for alleged violations of Labor Code §§ 201-204, 221-225.5, 226, 510, 558, 1194, 1197, 1197.1, and 2698 *et seq*., and applicable IWC Wage Orders, that accrued during PAGA Period.

See SA §§ I.18, III.5.

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IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. The Public Policy Objectives of the PAGA Statute

In 2004, California enacted PAGA,[4] 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. PAGA was enacted because the Legislature determined that it was "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-Hernandez v. Cjaders Foods, Inc*., 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate 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

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[4] While the legislature recently amended the PAGA, the new provisions do not apply to this action because the PAGA Notice predates the date of applicability in the revised statute. *See* Cal. Labor Code § 2699.3(g)(1).

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, seventy-five percent goes to the LWDA, and the remaining twenty-five 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 a trial court to conduct a two-step settlement approval review. Cal. Lab. Code § 2699(1). 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 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 Gross Settlement Amount acts as a deterrent to other California employers.

D. The Settlement Recognizes the Inherent Risks of Litigation

As a preliminary matter, to prevail on the merits a plaintiff must show "proof of a Labor Code violation." *See Arias*, 46 Cal. 4th at 986-87; *see also* Lab. Code, § 2699(a),(f)). Here, the settlement is fair and reasonable in light of the strengths and weaknesses of Plaintiff's claims, the risks and uncertainty involved in further litigation, and the substantial recovery. *See Moniz*, 72 Cal. App. 5th at 77 (finding that factors including "the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount" may be "useful in evaluating the fairness of a PAGA settlement").

1. The Claims Are Contested.

Here, Plaintiff contends that Defendants failed to pay Aggrieved Employees for all hours worked. More specifically, Plaintiff's claims arise from Defendants' alleged policy of deeming the non-exempt employees as "non-exempt salaried" and paying them under a "Salary Pay" pay code. Although classified as non-exempt, these employees were allegedly paid a fixed semi-monthly salary installment amount under a salaried structure, but without any regular itemization of their actual hours worked or hourly rates on wage statements. Based on this practice, Plaintiff contends that Defendants routinely deducted wages from Plaintiff and other non-exempt employees under various pay codes, including "Dock Pay," to conform to a set amount. Plaintiff contends that these are unlawful wage deductions that violation the Labor Code, including Section 221. *See* Tulyathan Decl. ¶ 35; Cal. Lab. Code § 221 ("It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."); *see also Hudgins v. Neiman Marcus Group*, 34 Cal. App. 4th 1109, 1121 (1995) (the policy behind Section 221 is to "prohibit employers from using self-help to take back any part of 'wages theretofore paid' to the employee, except in very narrowly defined circumstances provided by statute.").

In addition to the unpaid wages allegations, Plaintiff also contends that Defendants' alleged practice results in derivative wage statement violations in violation of Labor Code § 226. As a result of the alleged underpayment and/or non-payment of wages to Aggrieved Employees, Plaintiff contends that the wage statements routinely failed to list the applicable hourly rate and the number of hours worked. Instead, the wage statements included a lump-sum line item labeled "Salary Pay" with no breakdown of hours worked and the hourly rate. Tulyathan Decl. ¶ 36.

Defendants presented multiple legal and factual defenses to the merits of Plaintiff's claims. First, Defendants point to their compliant written policies governing wage and hour practices and contend that these policies complied with California law. Second, Defendants contend that "Dock Pay" deductions were infrequent and limited in scope, accounted for time not worked, and were approved by employees as part of their regular timecard approval process. Defendants further assert that the "Dock Pay" pay code was decommissioned as of July 2022, thereby cutting off any potential ongoing liability. Defendants also dispute that Aggrieved Employees suffered any unpaid minimum wages or overtime wages, and contend that employees were fully compensated for all hours worked and issued itemized, accurate wage statements that complied with Labor Code Section 226. In addition, Defendants contend that Plaintiff would face substantial hurdles in recovering the full amount of civil penalties sought under PAGA. Defendants assert that any alleged violations were not sufficiently frequent or systemic to justify significant penalties and that the Court would likely exercise its discretion under Labor Code section 2699(e)(2) to reduce any penalties that otherwise may be assessed. Tulyathan Decl. ¶ 37.

2. The Recovery of Civil PAGA Penalties is Uncertain.

Defendants have indicated that Aggrieved Employees worked approximately 2,494 pay periods during the PAGA Period. *See* SA § I.2. Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the standard penalty of $100 per pay period yields at least $748,200 in potential liability based on the alleged unpaid wages violation, unlawful deductions under Section 221, and wage statement violations. *See id.*; Tulyathan Decl. ¶ 29. Defendants contend that the imposition of multiple penalties for separate violations during the same pay period is not permitted under the PAGA, and that only a single $100 penalty per pay period may be awarded. While Plaintiff disputes this interpretation, some courts have exercised discretion under Labor Code § 2699(e)(2) to avoid stacking penalties for multiple violations within the same pay period. Plaintiff's analysis is also based on the initial violation penalty amount, which does not account for the imposition of the increased subsequent violation penalty amount given recent authority indicating this increased penalty is only available where there is a prior citation for a Labor Code violation. *See Bernstein v. Virgin Am., Inc*. (9th Cir. 2021) 3 F.4th 1127, 1144 (holding no heightened penalty because the Labor Commissioner nor any court warned the defendant that it was subject to the Labor Code until the court handling the case at issue). Courts are also hesitant to award the subsequent amount where there has not been a prior violation of the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430, at *9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”). Defendants argued that no such prior violation occurred here, warranting only the initial penalty, if any penalty at all. Moreover, in this case there is no indication that Defendants had received a prior notice or citation from the Labor Commissioner regarding the alleged violations at issue. Tulyathan Decl. ¶ 31. Based on these considerations, assuming no stacking of penalties and application of only the initial violation amount, the PAGA penalties would be approximately $249,400. *Id.* ¶ 32.

This analysis does not account for the possibility that the Court would reduce the PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. *Id*. at p. 517. Upon review, the Court of Appeal found such reduction to be proper. *Id*. at p. 539.

Although Plaintiff believes in the merits of the alleged claims and maintain that there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendants have raised defenses to the claims and further with respect to the reduction of PAGA penalties and that those defenses could persuade the Court. Thus, even if Plaintiff was to successfully prove the claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing PAGA penalties.

3. The Settlement Represents a Fair Percentage of Defendants’ Potential Liability.

The Gross Settlement Amount is approximately **22.39%** of the maximum estimated exposure ($167,500.00 Gross Settlement Amount ÷ $748,200.00 PAGA penalties), which is well within the range of reasonableness. *See* Tulyathan Decl. ¶ 39. Indeed, the amount of a PAGA settlement need not represent any particular percentage of the potential penalty amount that may be recovered after trial. *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022 WL 4586236, at *6 (E.D. Cal., 2022) ("There is no express or even baseline percentage of recovery required"). Consequently, 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 4.5% of verdict value). Here, the Gross Settlement Amount significantly exceeds the percentage of overall settlement value of the typical PAGA settlement.[5]

E. The Scope of the Release is Appropriately Limited.[6]

The limited scope of the release also supports approval. *See* Section III-F, *supra*. The settlement only releases Defendants from civil PAGA penalties predicated on violations alleged or which could have been alleged based on the facts and allegations in Plaintiff's LWDA Notice

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[5] 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)).

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

and the operative Complaint. The settlement would not impact any other Aggrieved Employees' ability to pursue PAGA claims predicated on other Labor Code violations or any Labor Claims not predicated on PAGA.

F. The Attorneys' Fees are Reasonable

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").

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.

An award of one-third of the fund 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); *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"). 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).

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 Plaintiff's Counsel, the fees here were wholly contingent in nature and the case presented more risks than the usual contingent fee case. Among the risks were the costs 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 Plaintiff's Counsel's lodestar, to date, at least approximately 168.7 hours have been expended by Class Counsel in this matter. *See* Tulyathan Decl. ¶ 47, Ex. D. Plaintiff's Counsel also anticipates spending an additional 10 hours through the approval of this settlement. *Id.* ¶ 48. Plaintiff's Counsel requests an hourly rate of $650 per hour. *Id.* ¶ 50. 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, Plaintiff's 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, Plaintiff's Counsel's skill and experience justify the requested rate. As shown in the supporting declaration, Plaintiff's Counsel has significant experience in the area of employment and wage and hour class actions. Specifically, Plaintiff's Counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. *See* Tulyathan Decl. ¶¶ 42-46. As such, based on the hours and applicable rate, the total lodestar to be expended by Plaintiff's Counsel through finalizing this settlement will be approximately

$116,155.00, which significantly exceeds the amount of the requested fees and results in a ***negative*** multiplier of 2.08. *See* Tulyathan Decl. ¶ 49. Thus, the requested fee amount of $55,833.33 is fair and reasonable.

Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of $16,324.62 is also reasonable. *See* Tulyathan Decl. ¶ 55, Ex. E. The costs were all directly incurred in the prosecution of this action, including filing fees, service of process fees, mediation costs, expert costs, postage, and other litigation related costs. As such, the requested costs should be awarded as fair and reasonable.

G. The Settlement Administration Costs Should be Approved.

The Parties have agreed to pay the actual costs of administration of Four Thousand Two Hundred Fifty Dollars ($4,250.00) to the Settlement Administrator Phoenix Settlement Administrators, to administer this settlement. *See* SA § III.2.c. The Parties believe that the administration fee is reasonable and should be approved. *See* Tulyathan Decl. ¶ 23.

H. Notice to the LWDA Has Been Provided.

Concurrently with the filing of this Motion, Plaintiff uploaded the instant motion and Settlement Agreement to the LWDA's website. *See* Tulyathan Decl. ¶ 56, Exhibit F.

V. CONCLUSION

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

DATED: May 14, 2026

DIVERSITY LAW GROUP, P.C.

By:______________________________
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