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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

ANGELICA LOPEZ, as a proxy for the State of
California and on behalf of all similarly
aggrieved employees,

Plaintiff,

vs.

PILOT TRAVEL CENTERS L.L.C., a Delaware
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0011959 (Lead)
Case No. STK-CV-UOE-2023-0003902

[Assigned to Hon. Barbara Kronlund, Dept. 10D]

**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: 12/11/2024, 2/12/2024,
12/13/2024, 12/20/2024, 12/23/2024

Time: 9:00 a.m.

Dept.: 10D

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

PLEASE TAKE NOTICE that on December ____, 2024 (to be determined by the Court) at 9:00 a.m., or as soon thereafter as the matter be heard in Department 10D of the Superior Court of the State of California for the County of San Joaquin, before the Honorable Barbara Kronlund, located at 180 E. Weber Avenue, Stockton, CA 95202. Plaintiff ANGELICA LOPEZ (“Plaintiff”) will and hereby does move the Court for entry of an order approving the Private Attorneys General Act Amended Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) entered into in the above-captioned civil action between Plaintiff and Defendant PILOT TRAVEL CENTERS L.L.C. (“Defendant”) (Plaintiff and Defendant shall collectively be referred to as the “Parties”) under the Labor Code Private Attorneys General Act of 2004 (the “PAGA”).

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

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

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1 Dated: November 15, 2024

DIVERSITY LAW GROUP, P.C.

2
3 By:



Larry W. Lee

Attorneys for Plaintiff Angelica Lopez and
the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff ANGELICA LOPEZ (“Plaintiff”) respectfully requests the
4 Court’s approval of the Private Attorneys General Act Amended Settlement Agreement and
5 Release ¹ (the “Settlement Agreement” or “Settlement”) with Defendant PILOT TRAVEL
6 CENTERS L.L.C. (“Defendant”). The settlement was reached after an informal exchange of
7 discovery, including Aggrieved Employee data, and a full-day mediation with Mediator Gig
8 Kyriacou, Esq. As part of the privileged settlement negotiations, Defendant produced data
9 regarding the Aggrieved Employees and the number of pay periods at issue for each of Plaintiff’s
10 claims from which Plaintiff’s counsel calculated the maximum PAGA penalty exposure.
11 Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 8. Based on this information, the Parties have
12 settled this case on a representative PAGA basis for \$195,000.00. *Id.* at ¶¶8-9, Ex. B.

13 The Settlement Agreement allocates one-third of the Gross Settlement Amount for
14 attorneys’ fees, or \$65,000.00, up to \$20,000.00 in litigation costs incurred by Plaintiff’s
15 Counsel, \$5,000.00 for the Named Plaintiff’s Enhancement, and up to \$12,500.00 for settlement
16 administration costs. Settlement Agreement ¶¶ II.B.2.a-c. For the remainder, the “PAGA
17 Payment” is allocated to the payment of civil penalties under PAGA, of which 75% is to be
18 distributed to the Labor and Workforce Development Agency (the “LWDA”) and 25% of which
19 is to be distributed to the “Aggrieved Employees” on whose behalf Plaintiff filed this action as
20 required by PAGA. *Id.* ¶ II.B.d.

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

25 **II. PROCEDURAL BACKGROUND**

26 On December 21, 2022, Plaintiff exhausted her administrative remedies by sending
27 _____

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

1 written notice to the LWDA and Defendant via certified mail providing notice of her claims that
2 she intended to assert on behalf of the LWDA and all similarly aggrieved employees (the
3 “PAGA Notice”). Lee Decl. ¶ 2, Ex. A.

4 On December 22, 2022, Plaintiff filed a Class Action Complaint against Defendant in the
5 Superior Court of California, County of San Joaquin, asserting claims for: (1) Violation of Labor
6 Code §§226.7 and 512; (2) Violation of Labor Code § 226.7; (3) Violation of Labor Code § 226;
7 and (4) Violation of Business & Professions Code §17200, *et seq.*, Case No. STK-CV-UOE-
8 2022-11959 (“Class Action”). *Id.* ¶ 3.

9 On March 9, 2023, Defendant filed a motion to compel arbitration of the Class Action,
10 which sought to dismiss the class claims and compel arbitration of Plaintiff’s claims on an
11 individual basis only. *Id.* ¶ 4. On May 4, 2023 the Court issued a minute order granting Pilot’s
12 motion to compel arbitration of Plaintiff’s claims in the Class Case on an individual basis and
13 stayed the case pending arbitration. *Id.* A formal order regarding this ruling was signed and
14 entered on June 5, 2023, and set a follow up conference with the Court on December 7, 2023. *Id.*

15 On April 18, 2023, Plaintiff filed a Representative Action Complaint under the PAGA
16 against Defendant in the Superior Court of California, County of San Joaquin, seeking penalties
17 pursuant to the PAGA for violations of Labor Code §§ 201-203, 226, 226.7, 512 and 2698, *et*
18 *seq.*, Case No. STK-CV-UOE-2023-0003902 (the “PAGA Action”). *Id.* ¶ 5.

19 On October 5, 2023, the Parties submitted a stipulation to consolidate the Class Action
20 (of which only Plaintiff’s individual claims remained) and the PAGA Action, staying Plaintiff’s
21 individual claims pending arbitration which this Court approved on October 6, 2023. *Id.* ¶ 6.

22 After conducting formal and informal discovery, the Parties agreed to a global mediation
23 for Plaintiff’s individual claims and representative PAGA claims. *Id.* ¶ 7.

24 On August 14, 2024, the Parties participated in a private mediation with mediator Gig
25 Kyriacou, Esq., with respect to Plaintiff’s individual claims and the PAGA claims after
26 undertaking an investigation and exchange of information and documents pertaining to Plaintiff
27 and the Aggrieved Employees. *Id.* ¶7. At the conclusion of the mediation, the Parties ultimately
28 agreed to fully and finally resolve the Action and the Released Claims as to Plaintiff, the State of

California, and the Aggrieved Employees. *Id.*

III. FACTUAL BACKGROUND

In connection with the mediation, Defendant's Counsel provided Plaintiff's Counsel with information regarding the number of pay periods where meal and rest break premium wages and non-discretionary remuneration were paid during the same pay period and wage statements that included the foregoing payments. Lee Decl. ¶ 8. Based on this information, the Parties conducted settlement negotiations. *Id.* The Parties subsequently executed the Settlement Agreement. *Id.*, Ex. B.

The Gross Settlement Amount is \$195,000.00. Settlement Agreement ¶ II.A.6. Settlement Agreement allocates one-third of the Gross Settlement Amount for attorneys' fees, or \$65,000.00, up to \$20,000.00 in litigation costs incurred by Plaintiff's Counsel, \$5,000.00 to the Named Plaintiff, and up to \$12,500.00 for Settlement Administration Costs. *Id.* ¶ II.B.a-c. The remainder, or the Net PAGA Settlement Amount, is allocated to the payment of civil penalties under PAGA, of which 75% (\$69,375.00) is to be distributed to the LWDA and 25% (\$23,125.00) of which is to be distributed to the Aggrieved Employees on whose behalf Plaintiff filed this action as required by PAGA. *Id.* at ¶ II.B.d.

The Settlement Agreement provides the following PAGA Released Claims:

“all claims for civil penalties under PAGA that were actually alleged or that could have been alleged based on the facts alleged in the Complaint in the Action filed by Plaintiff, on behalf of the State of California, herself and the PAGA Employees, including but not limited to: (a) penalties pursuant to Labor Code sections 201, 202, 203, 226, 226.7, and 512, and applicable wage order as it relates to the claims raised Plaintiff's PAGA lawsuit; (b) claims for the attorney's fees and costs incurred in the prosecution of this Action on behalf of the PAGA Employees; (c) any other remedies, penalties, or interest based on the facts alleged in the PAGA Complaint; and (d) all claims that Plaintiff and/or the PAGA Employees may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney's fees and costs to Plaintiff's Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and allocation of PAGA Representative Payment pursuant to this Settlement Agreement. The release of the Released Claims shall be effective as to the Settlement Period [“Settlement Period” means the period from September 23, 2022 through August 14, 2024]”

Id. ¶ II.A.12. The Released Claims are limited to those accruing only during the Settlement

1 Period (September 23, 2022 through August 14, 2024). *Id.* ¶¶ II.C.12. The Released Claims only
2 cover those civil penalties which are recoverable under PAGA, and do not otherwise cover
3 individual, underlying claims or causes of action that Aggrieved Employees may have under the
4 law against Released Parties for violations of the California Labor Code. *Id.* ¶II.A.13.

5 Each Aggrieved Employee will receive an Individual Settlement Payment proportionate to
6 the number of pay periods worked in which one of the alleged issues in this matter occurred. *See Id.*
7 ¶¶ II.C.12-13. Each Individual Settlement Payment will be treated as nonwage income with no tax
8 withholdings to be made, and will be reported by the Settlement Administrator on IRS Form 1099s.
9 *Id.* ¶ II.C.14.

10 **IV. STANDARD OF REVIEW**

11 In *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76-77 (2021), the Court of Appeal
12 noted that in approving PAGA settlements, “the trial court conducts an ‘independent assessment
13 of the adequacy of the settlement terms,’ which requires that the court have before it a record
14 from which it can discern sufficient information about the amount in controversy and the realistic
15 range of outcomes.” *Id.* In so noting, the Court of Appeal cited *Kullar v. Foot Locker Retail,*
16 *Inc.*, 168 Cal. App. 4th 116, 130, 133 (2008). Although *Kullar* is a class action case, to the
17 extent that it applies, the *Kullar* Court noted that a class action settlement should be approved
18 when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of
19 the strengths of the plaintiff’s claims. Here, Plaintiff addresses both *Kullar* factors.

20 **A. Plaintiff’s Discovery and Investigation Prior to Settlement**

21 Here, Defendant produced data for each of Plaintiff’s claims, which permitted Plaintiff to
22 analyze Defendant’s potential exposure and liability. Lee Decl. ¶ 8. Defendant’s potential
23 exposure could be as high as \$3,683,150.00 if the Court were to award a \$100 penalty for each
24 pay period encompassed by the proposed settlement for violations based on failure to pay meal
25 and rest break premiums at the regular rate (10,365 X \$100 = \$1,036,500), \$100 per pay period
26 for waiting time penalties (554 X \$100 = \$55,400), and \$100 penalty for each pay period a wage
27 statement that included a meal or rest break premiums that were not paid at the regular rate
28 (10,365 X \$100 = \$1,036,500). *Id.* Defendant argued that the actual number of pay periods at

1 issue was only 2,572, based on their theory of liability. If the Court accepted Defendant’s
2 theory, the potential maximum exposure would have been \$1,504,539.62. Thus, the settlement
3 was reached after sufficient discovery and investigation, which permitted Plaintiff’s counsel to
4 conduct an exposure analysis and engage in informed settlement discussions.

5 As set forth herein, the settlement is reasonable in light of Defendant’s defenses.

6 **B. The Settlement Is Reasonable In Light of the Strength of Plaintiff’s Claims**

7 Plaintiff believes that the claims have merit, but Defendant could have various defenses.
8 First, Plaintiff had to settle only on a PAGA basis because she executed an arbitration agreement
9 containing a class action waiver. Judge Kronlund granted Defendant’s motion to compel
10 arbitration and dismissed Plaintiff’s class claims. Thus, Plaintiff was limited to settling only on a
11 representative PAGA basis.

12 The PAGA is a *qui tam* action which seeks recovery of penalties on behalf of the State.
13 As explained by the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles,*
14 *LLC*, 59 Cal. 4th 348, 387 (2014):

15 75 percent of [the penalties] will go to the state’s coffers. We emphasized in *Arias*
16 that “an action to recover civil penalties ‘is fundamentally a law enforcement
17 action designed to protect the public and not to benefit private parties’”; that “[i]n
18 a lawsuit brought under the [PAGA], the employee plaintiff represents the same
19 legal right and interest as state labor law enforcement agencies”; and that “an
20 aggrieved employee’s action under the [PAGA] functions as a substitute for an
21 action brought by the government itself.

22 *Id.* at 387; *see also Provost v. YourMechanic, Inc.*, 55 Cal. App. 5th 982, 991 (2020), review
23 denied (Jan. 20, 2021) (“The Legislature provided two financial incentives for aggrieved
24 employees to pursue the recovery of civil penalties under PAGA. First, when a civil penalty is
25 recovered under PAGA, 75 percent goes to LWDA and the remaining 25 percent goes to the
26 aggrieved employees. [Citation]. Second, any employee who prevails in an action is entitled to
27 his or her reasonable attorney fees and costs.”) (Citing Labor Code § 2699(g) & (l)).

28 The PAGA does not permit employees to seek unpaid wages, or damages; rather, the only
remedy available to employees is the civil penalty, which again, 75% of which must be paid to
the State. *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 193 (2019) (“If it were in the ambit of the
Legislature’s purpose for PAGA plaintiffs to recover unpaid wages as civil penalties, it

1 presumably would have addressed this apparent conflict directly. But our holding today makes
2 clear the conflict is illusory, because unpaid wages are not recoverable as civil penalties under
3 the PAGA in the first place.”).

4 Accordingly, Plaintiff settled this action under the PAGA only, which requires 75% of
5 the net recovery of penalties to go to the State of California and 25% to be divided amongst the
6 aggrieved employees.

7 More importantly, for Plaintiff to assert a representative PAGA claim, Plaintiff would
8 have had to prevail in her individual arbitration and show that she was an aggrieved employee
9 pursuant to *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023). As this Court knows,
10 arbitration is uncertain and the right to review an arbitrator’s award is extremely limited.
11 Therefore, Plaintiff could have lost in arbitration.

12 Additionally, this is a regular rate case in which Plaintiff asserts that Defendant should
13 have included various items of remuneration into the rate of pay calculation for meal and rest
14 period premiums. Lee Decl. ¶ 9. Defendant argued that the bonuses were discretionary, such
15 that they need not be factored into the regular rate of pay. *Id.* Additionally, Defendant would
16 have argued that the actual amount of unpaid wages was minimal amounting to a few dollars per
17 employee, such that a reduction in the PAGA penalties were warranted. *Id.* This is because in
18 every regular rate of pay action, the actual unpaid wages are generally minimal. *Id.* To
19 illustrate, say for example that a worker earned a monthly bonus of \$100 and worked 160 regular
20 hours that month at the base rate of \$10 per hour and 10 hours of overtime. *Id.* This employee’s
21 overtime rate taking the bonus into account would be calculated as follows: $\$100 \div 160 = \0.625
22 $\times 1.5 = \$0.9375$. *Id.* The employee would ordinarily be paid \$15 per hour in overtime, but the
23 additional overtime in this instance would be \$9.375 (10 hours of overtime $\times$ \$0.9375). (*Id.*)
24 Defendant could have argued that even assuming that Plaintiff’s claims have merit, the actual
25 loss in wages is minimal, such that awarding 100% of the PAGA penalties would be “unjust,
26 arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code § 2699(e)(2); Lee Decl. ¶ 9.

27 Moreover, as recently shown in the Court of Appeal’s decision in *Carrington v.*
28 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim

1 upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
2 employer's good faith attempt at complying with the law. *Id.* at 517; Lee Decl. ¶ 10. Upon
3 review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

4 With respect to the wage statement claim, Defendant argued that derivative penalties
5 would should not be awarded as it would result in stacking of penalties. Moreover, Defendant
6 argued that wage statement penalties are not available for regular rate violations based on the
7 same "good faith" argument that was recently ruled on by the Supreme Court in *Naranjo v.*
8 *Spectrum Security Services, Inc.* *Naranjo v. Spectrum Security Services, Inc.* 15 Cal. 5th 1056,
9 1069-1070 (2024); Lee Decl. ¶ 11. Based on the *Naranjo* ruling, the court could have awarded
10 nothing for the derivative wage statement claim. *Id.*

11 Finally, PAGA penalties for waiting time penalties also are subject to "good faith"
12 defenses. *See Naranjo v. Spectrum Security Services, Inc.* 15 Cal. 5th at 1065; Lee Decl. ¶ 12. In
13 *Naranjo*, based on Defendant's good faith defense, nothing was awarded for derivative waiting
14 time penalties. *Id.*

15 Further, courts have discretion to reduce PAGA penalties. *See Carrington v. Starbucks*
16 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
17 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th
18 809 (2018); Lee Decl. ¶ 13. If the Court in this case were to reduce penalties to \$5 a pay
19 period, as was approved in *Carrington*, the potential exposure amounts to approximately
20 \$184,157.50 (5% of \$3,683,150). *Id.*

21 Defendant also argued that its failure to pay meal breaks at the regular rate of pay were
22 in "good faith" given that the law prior to the Supreme Court's reversal of the court of appeal
23 in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021), provided that meal and rest
24 break premium wages could be paid at the base rate of pay, instead of the regular rate of pay.
25 Lee Decl. ¶ 14. Moreover, Defendant argued that it acted in good faith by taking immediate
26 action to change its pay practices after *Ferra* was issued by the Supreme Court. *Id.* Thus,
27 Defendant argued that the Court would likely not impose any PAGA penalties for its failure to
28 pay meal and rest break premium wages at the regular rate of pay. *Id.* While Plaintiff

disagrees with this position, there is a 50% chance that Defendant’s “good faith” arguments would have been persuasive and that the Court could have awarded nothing for the *Ferra* claims and derivative Labor Code §203 penalties. *Id.* Based on the 50% potential reduction of the total potential soaking wet exposure of \$3,683,150, the realistic value of these claims amounts to \$1,841,575.00. *Id.* As such, the \$195,000 settlement is fair, adequate and reasonable, in that it amounts to 11% of the total realistic exposure. *Id.*

Under the circumstances of this case, the payment of \$195,000.00 in civil penalties is fair, adequate, and reasonable. The payment of \$195,000.00 in exchange for a release of only those claims for civil penalties that are pleaded in the Action or that could have been pleaded based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the Action will have a substantial deterrent effect on Defendant and other California employers and will confer benefits on the Aggrieved Employees, who will each receive a portion of the settlement.

V. NOTICE OF THE SETTLEMENT AGREEMENT HAS BEEN GIVEN TO THE LWDA PURSUANT TO LABOR CODE § 2699(L)(2)

When enacting PAGA, the Legislature intended to ensure that the LWDA retained “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA online “at the same time that it is submitted to the court,” to give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement Agreement and this motion to the LWDA through the LWDA’s online filing system in conjunction with filing this motion. *See* Lee Decl. ¶ 22, Ex. D.

VI. THE SETTLEMENT AGREEMENT APPORTIONS CIVIL PENALTIES BETWEEN THE LWDA AND THE AGGRIEVED EMPLOYEES AS REQUIRED BY PAGA

Except when civil penalties are recovered from a defendant who did not have any employees at the time of an alleged violation, civil penalties recovered under PAGA must be

distributed so that 75% of the civil penalties are paid to the LWDA and 25% are paid to the “aggrieved employees” on whose behalf the PAGA action was brought. *See* Cal. Lab. Code § 2699(i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net Settlement Amount to be paid to the LWDA and 25% of the PAGA Payment to be paid to the Aggrieved Employees. Settlement Agreement ¶¶ II.C.12-13. The Aggrieved Employees will receive penalties based on the number of pay periods they worked during the applicable period using a pro rata distribution formula. *Id.*

VII. THE SETTLEMENT AGREEMENT ALLOCATES A FAIR, ADEQUATE, AND REASONABLE AMOUNT TO THE PAYMENT OF ATTORNEYS’ FEES

PAGA allows a prevailing plaintiff to recover reasonable attorneys’ fees. *See* Cal. Lab. Code § 2699 (g). In recognition of this, the Settlement Agreement allows Plaintiff’s Counsel to request up to 33 and 1/3 percent (\$65,000.00) in attorneys’ fees. *See* Settlement Agreement ¶ II.B.2.a. This amount is fair, adequate, and reasonable for two reasons.

Although this is not a class action, in representative 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 Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant’s efforts create or preserve a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has

1 been applied “consistently in California when an action brought by one party creates a fund in
2 which other persons are entitled to share.” The reasons for applying the common fund doctrine
3 include: “...fairness to the successful litigant, who might otherwise receive no benefit because
4 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage
5 to the others who are entitled to share in the fund and who should bear their share of the burden
6 of its recovery; encouragement of the attorney for the successful litigant who will be more
7 willing to undertake and diligently prosecute proper litigation for the protection or recovery of
8 the fund if he is assured that he will be properly and directly compensated should his efforts be
9 successful.” *Id.*

10 Indeed, most recently, the California Supreme Court has also held that the award of
11 attorneys’ fees in common fund wage and hour class action settlements should start with the
12 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
13 overwhelming majority of federal and state courts in holding that when class action litigation
14 establishes a monetary fund for the benefit of the class members, and the trial court in its
15 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
16 of a reasonable fee by choosing an appropriate percentage of the fund created.”).

17 The \$65,000.00 requested by Plaintiff’s Counsel represents one-third of the Gross
18 Settlement Fund, which is consistent with the California Supreme Court’s holding regarding
19 Common Fund cases in *Laffitte*, 1 Cal. 5th at 503. (Hyun Decl. ¶ 10; Lee Decl. ¶ 17; Choi Decl.
20 ¶ 6).

21 **VIII. THE SETTLEMENT AGREEMENT ALLOCATES A FAIR, ADEQUATE, AND**
22 **REASONABLE AMOUNT TO THE PAYMENT OF LITIGATION COSTS**

23 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code §
24 2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s Counsel to request up to
25 \$20,000.00 in litigation costs. Settlement Agreement ¶ II.B.b.

26 Plaintiff’s Counsel request \$15,388.51 for the reimbursement of actual litigation costs. As
27 set forth in accompanying declarations of Plaintiff’s Counsel, these costs were all directly
28 incurred in the prosecution of this action, including, but not limited to, filing fees, service fees,

1 and mediation fees. Lee Decl. ¶ 18, Ex. C; Choi Decl. ¶ 7, Ex. B; Hyun Decl. ¶ 9. As such,
2 Plaintiff's Counsel's request for costs in the amount of \$15,388.51 is fair, adequate, reasonable,
3 and consistent with PAGA's policies.

4 **IX. THE PAYMENTS TO PLAINTIFF SHOULD BE APPROVED**

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

11 Here, Plaintiff respectfully requests \$5,000.00, which is intended to compensate Plaintiff
12 for the time spent on this case. Declaration of Angelica Lopez ("Lopez Decl.") ¶ 13. Plaintiff
13 estimates she spent over 40 hours litigating this action. *Id.* ¶7. In particular, Plaintiff spoke with
14 her attorneys on several occasions to discuss the facts supporting the theories of liability in this
15 action, and continually apprised her attorneys of her understanding of Defendant's policies and
16 practices as it related to the payment of meal/rest period premium wages. *Id.* Plaintiff also
17 provided documents to her attorneys to evaluate the claims in the case, including, but not limited
18 to, wage statements she received throughout her employment with Defendant. *Id.* Plaintiff also
19 conferred with her attorneys regarding the terms of the proposed settlement, reviewed the
20 proposed settlement agreement, and assisted in reviewing, drafting, and revising her declaration
21 in support of the PAGA Approval. *Id.* This requested enhancement is consistent with awards
22 approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp.
23 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit*
24 *Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000,
25 and three incentive awards of \$35,000).

26 Plaintiff also took the risk of bringing the lawsuit, which was a matter of public record.
27 Lopez Decl. ¶¶ 8-10. Given that future employers are less likely to hire individuals who have
28 filed suit against their prior employer, particularly cases of this nature, Plaintiff may face

1 prejudice in the future from other potential employers. *Id.* Plaintiff took this risk upon herself
2 and the Aggrieved Employees benefited from these risks taken by Plaintiff. *Id.* Aggrieved
3 Employees did not have to file individual lawsuits and bear the risks of payment of costs if they
4 did not prevail, nor did they have to face the potential retaliation and not getting future
5 employment had they filed a public lawsuit. *Id.* In light of Plaintiff's efforts, the service award
6 should be awarded to Plaintiff for her commitment, dedication, and risks taken for this litigation.

7 **X. THE SETTLEMENT AGREEMENT ALLOCATES A FAIR, ADEQUATE, AND**
8 **REASONABLE AMOUNT TO THE PAYMENT OF SETTLEMENT**
9 **ADMINISTRATION 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 Settlement Payment; issue appropriate tax forms to all parties who receive payments
15 under the Settlement Agreement; mail payments to Plaintiff, Plaintiff's Counsel, the LWDA, and
16 each Aggrieved Employee; and void any checks not cashed by Aggrieved Employees so that the
17 unclaimed amount can be forwarded to the Legal Aid at Work. See Settlement Agreement ¶
18 II.C.11.

19 In contemplation of these expenses, the parties will engage Phoenix Settlement
20 Administrators to act as a third-party settlement administrator and have allocated up to
21 \$12,500.00 to cover the cost of settlement administration. Settlement Agreement ¶ III.6.

22 **XI. LEGAL AID SHOULD BE APPROVED AS THE CY PRES RECIPIENT**

23 The Parties have selected Legal Aid at Work as the *Cy Pres* recipient to receive the
24 uncashed funds. Settlement Agreement ¶ II.C.12. Legal Aid at Work is a nonprofit legal
25 services organization that has been assisting low-income individuals with workplace
26 issues/litigation for more than 100 years. Lee Decl. ¶ 16. Although this is not a class action, the
27 Parties believe that Legal Aid at Work will further the aims of this lawsuit by protecting
28 workers' rights. Plaintiff and her counsel do not have any type of relationship with Legal Aid at

1 Work. Lee Decl. ¶ 16; Choi Decl. ¶ 8; Hyun Decl. ¶ 11.

2 **XII. CONCLUSION**

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

5
6 Dated: November 15, 2024

DIVERSITY LAW GROUP, P.C.

7
8 By: 

Larry W. Lee

9 Attorneys for Plaintiff Angelica Lopez and
10 the Aggrieved Employees