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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER**

JASON GEORGE, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

PALISADES TAHOE RESORT, LLC, a
Delaware Limited Liability Company;
SQUAW VALLEY RESORT, LLC, a
business organization, form unknown; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. S-CV-0049766

**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: October 31, 2024
Time: 8:30 A.M.
Dept.: 3

Action Filed: January 19, 2023
Trial Date: Not Set

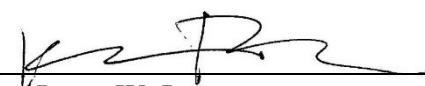
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 31, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Michael Jones, judge presiding, in Department
4 3 of the above referenced Court located at 10820 Justice Center Drive, Roseville, California
5 95678, Plaintiff Jason George (“Plaintiff”) will seek an Order approving the concurrently filed
6 PAGA Settlement Agreement (“Settlement Agreement”), pursuant to the procedures set forth in
7 Labor Code § 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”).

8 This motion will be based on this notice of motion, the attached memorandum of points
9 and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, Mai
10 Tulyathan, William L. Marder, and Plaintiff Jason George, the records and file herein, and on
11 such other evidence as may be presented at the hearing of the motion.

12
13 DATED: October 9, 2024

DIVERSITY LAW GROUP, P.C.

14
15 By: 

Larry W. Lee

Max W. Gavron

Mai Tulyathan

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17 Attorneys for Plaintiff and the Aggrieved
18 Employees
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I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, Plaintiff Jason George (“Plaintiff”) hereby moves the Court for an order approving the non-reversionary PAGA settlement as set forth in the concurrently filed PAGA Settlement Agreement (the “Settlement Agreement” or “Settlement”).¹

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as called for under the PAGA on behalf of the State of California and other similarly situated aggrieved employees, without seeking class certification or meeting the requirements of class certification (*i.e.*, numerosity, typicality, commonality, and adequacy). As such, while the PAGA settlement reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor Code § 2699(1), all that is required is an approval by this Court of any settlement of the PAGA claims by the Parties.

The Parties have reached such a PAGA settlement, and now seek this Court’s approval of their settlement which provides for the payment of civil penalties under the PAGA. As demonstrated below, the proposed settlement warrants the Court’s approval. Significantly, the

6

1 settlement was reached after the exchange of significant information regarding Defendant's
2 payroll practices and exchange of informal discovery pertaining to the PAGA group, including
3 the size of the PAGA group and the number of pay periods and wage statements at issue. The
4 Parties also engaged in months of arm's length negotiations (since August 2023).

5 Pursuant to the terms of the Parties' proposed Settlement Agreement, Defendant will pay
6 the total amount of \$125,000.00 (the "Gross Settlement Amount"). This amount encompasses a
7 settlement of PAGA claims asserted in this lawsuit, an enhancement award to Plaintiff in the
8 amount of \$5,000.00, attorneys' fees to Plaintiff's counsel ("PAGA Counsel") in the amount of
9 \$41,666.67, PAGA Counsel's actual litigation costs of \$2,433.05, and settlement administration
10 costs in an amount not to exceed \$11,500.00.

11 Assuming the Court grants the foregoing amounts in full, the Net Settlement Amount is
12 estimated to be approximately \$64,400.28. (Declaration of Mai Tulyathan ("Tulyathan Decl.")
13 at ¶ 17.) Pursuant to the PAGA, 75% of the Net Settlement Amount, or \$48,300.21, will be paid
14 to the Labor & Workforce Development Agency ("LWDA") as civil penalties ("LWDA
15 Payment"), and 25% of the Net Settlement Amount, or \$16,100.07, will be paid to aggrieved
16 employees who are part of the "PAGA Group."² (*Id.* at ¶ 18.) The proposed settlement also has
17 a limited release for PAGA Group Members. The settlement does not release any substantive
18 claims of PAGA Group Members, merely their rights to bring PAGA actions predicated on
19 violations of Labor Code § 226(a)(2) alleged in the Action.

20 In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable
21 settlement on behalf of the State of California and PAGA Group Members and accomplishes the
22 goals of PAGA. Thus, the Court should grant approval of the settlement.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 On January 18, 2023, Plaintiff provided written notice to the LWDA and Defendant
25 asserting claims for civil penalties pursuant to PAGA predicated on violation of Labor Code §
26

27 ² As further discussed below, the terms "PAGA Group" or "PAGA Group Members" mean all
28 current and former employees of Defendant in the State of California who were paid overtime
wages via a paper check and wage statement at any time during the period of January 17, 2022,
through September 23, 2022.

226(a). (Tulyathan Decl. at ¶ 2.) Specifically, Plaintiff alleged that the wage statements issued by Defendant failed to identify accurate total hours worked whenever overtime wages were paid and the legal name of the employer, in violation of Labor Code §§ 226(a)(2) and (8). (*Id.*)

On or about February 17, 2023, Defendant submitted a letter to the LWDA purporting to have cured the defect of Labor Code § 226(a)(8). (*Id.* at ¶ 3.) After further responses from Plaintiff and Defendant to the LWDA, on March 20, 2023, the LWDA issued a decision concluding that Defendant had cured the wage statement violation under Labor Code § 226(a)(8), but not the alleged violation of Labor Code § 226(a)(2). (*Id.*)

On January 19, 2023, Plaintiff filed his class action complaint in the Superior Court of California, County of Placer, asserting a single cause of action for violation of Labor Code § 226 (the “Action”). (*Id.* at ¶ 4.) Specifically, Plaintiff alleges that whenever overtime wages were paid to Plaintiff and aggrieved employees, Defendant issued inaccurate wage statements that failed to identify the correct total hours worked during the pay period. Plaintiff also alleges that the wage statements failed to identify the legal name of the employer. Thereafter, on August 11, 2023, Plaintiff amended his complaint to add a cause of action of violation of the PAGA, Labor Code § 2698, *et seq.*, predicated on the underlying violation of Labor Code § 226(a)(2). The first amended complaint is the operative complaint (“Complaint”). (*Id.* at ¶ 5.)

After commencement of the lawsuit, the Parties met and conferred regarding the existence of an arbitration agreement with a class action waiver signed by Plaintiff. (Tulyathan Decl. at ¶ 6.) The Parties then agreed to engage in informal settlement negotiations. (*Id.*) In connection with their settlement discussions, Defendant provided Plaintiff with informal discovery, including the size of the PAGA group, the number of wage statements and pay periods at issue, as well as Defendant’s policies pertaining to the issuance of wage statements. (*Id.* at ¶ 7.) The data provided allowed Plaintiff’s counsel to analyze Defendant’s potential liability and exposure. (*Id.*) Plaintiff also issued written discovery requests to Defendant, including requests for production of documents and special interrogatories. (*Id.* at ¶ 8.)

The Parties then began discussing Defendant’s potential liability and possible settlement. The Parties conferred at length about the strengths and weaknesses of each side’s claims and

1 defenses. After arm’s length negotiations between the Parties conducted over the course of
2 several months, the Parties reached the current settlement of Plaintiff’s PAGA claims.
3 (Tulyathan Decl. at ¶ 9.) In resolution of Plaintiff’s PAGA claims, the Parties entered into the
4 PAGA Settlement Agreement, a true and correct copy of which is attached as **Exhibit B** to the
5 Declaration of Mai Tulyathan.

6 In connection with the settlement and in light of the arbitration agreement and class
7 action waiver, Plaintiff will dismiss his class claims without prejudice. (*Id.* at ¶ 10.) On October
8 9, 2024, Plaintiff filed his stipulation to dismiss Plaintiff’s first cause of action for violation of
9 Labor Code § 226. (*Id.*) Once the stipulation to dismiss is approved by the Court, no class
10 claims shall remain in the Action. (*Id.*)

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

12 The material terms of the Settlement are described below and set forth in detail in the
13 Settlement Agreement.

14 **A. The Aggrieved Employees or “PAGA Group”**

15 The aggrieved employees affected by this Settlement include “all current and former
16 employees of Defendant in the State of California who were paid overtime wages via a paper
17 check and wage statement at any time during the period of January 17, 2022, through September
18 23, 2022” (“PAGA Group” or “PAGA Group Members”). (Settlement Agreement ¶ I.2.) The
19 PAGA Period is defined as the period of January 17, 2022, through September 23, 2022³. (*Id.* ¶
20 I.14.)

21 Based upon Defendant’s records, the number of pay periods during which overtime
22 wages were paid to PAGA Group Members during the PAGA Period is approximately 2,470 pay
23 periods. (Settlement Agreement ¶ III.2.)

24 **B. Settlement Sum and Allocation**

25 The Settlement Agreement requires Defendant to pay the Gross Settlement Amount of
26

27 ³ Defendant moved to a new payroll vendor as of September 24, 2022, and has amended its wage
28 statement practices since the transition to correct issues under section 226(a)(2). (Tulyathan
Decl. at ¶ 15.)

1 One Hundred Twenty-Five Thousand Dollars (\$125,000.00). (Settlement Agreement ¶ III.2.)
2 The terms of the Settlement Agreement provide for an award of attorneys' fees not to exceed
3 one-third of the Gross Settlement Amount, or \$41,666.67, and reimbursement of litigation costs
4 of up to \$10,000.00 to PAGA Counsel;⁴ enhancement payment to Plaintiff in the amount of
5 \$5,000.00 for serving as the PAGA representative and for executing a general release of all
6 claims; and settlement administration costs of up to \$11,500.00. (*Id.* ¶¶ III.4.a, III.4.b, III.4.c.)

7 The balance of the Gross Settlement Amount remaining after deduction of the amounts
8 above will be available for distribution to the LWDA and PAGA Group (the balance of the Gross
9 Settlement Amount remaining after the above deductions shall be referred to as the "Net
10 Settlement Amount"). (*Id.* ¶¶ I.10, I.11, III.5.) Pursuant to the PAGA, seventy-five percent
11 (75%) of the Net Settlement Amount, or approximately \$48,300.21, will be distributed to the
12 LWDA for PAGA penalties. (*Id.* ¶ III.5; Tulyathan Decl. at ¶ 18.) The remaining twenty-five
13 percent (25%) of the Net Settlement Amount, or approximately \$16,100.07, will be distributed to
14 the PAGA Group. (Settlement Agreement ¶ III.5; Tulyathan Decl. at ¶ 18.)

15 The portion of the Net Settlement Amount distributed to the PAGA Group will be
16 distributed on a *pro rata* basis, based on the number of pay periods in which PAGA Group
17 Members were paid overtime wages via a paper check and wage statement during the PAGA
18 Period. (Settlement Agreement ¶ III.5.a; Tulyathan Decl. at ¶ 19.)

19 Defendant has represented that there are 1,804 PAGA Group Members. (Tulyathan Decl.
20 at ¶ 20.) Based thereon, on a raw average, each PAGA Group Member may potentially recover
21 approximately \$8.93 from the portion of the Net Settlement Amount attributable to the PAGA
22 Group. (*Id.* at ¶ 21.) The amount any particular PAGA Group Member will be entitled to
23 recover will fluctuate depending on the number of pay periods he or she was paid overtime
24 wages via a paper check and wage statement during the PAGA Period. This is fair, as it directly
25 allocates greater penalties to individual PAGA Group Members who have allegedly suffered
26 greater harm. (*Id.*)

27
28 ⁴ As explained below, PAGA Counsel seeks reimbursement of actual litigation costs in the
amount of \$2,433.05.

1 As part of the Settlement Agreement, Defendant does not object to PAGA Counsel's
2 request for attorneys' fees of approximately one-third (1/3) of the Gross Settlement Amount,
3 *i.e.*, Forty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$41,666.67),
4 plus reimbursement of litigation costs not to exceed Ten Thousand Dollars (\$10,000.00),
5 subject to the Court approving this Settlement. (Settlement Agreement ¶ III.4.a.) Any portion
6 of the attorneys' fees and costs not approved by the Court will be added to the Net Settlement
7 Amount. (*Id.*) Also, as part of the Settlement Agreement, Defendant does not object to
8 Plaintiff's request for an Enhancement Payment of Five Thousand Dollars (\$5,000.00). (*Id.* ¶
9 III.4.b.)

10 Finally, the Settlement Agreement provides for the payment of the fees and expenses
11 reasonably incurred by the Settlement Administrator. (*Id.* ¶ III.4.c.) The Parties have agreed to
12 retain Phoenix Settlement Administrators to administer the Settlement, with the administration
13 costs estimated not to exceed \$11,500.00. (*Id.* ¶¶ I.19, III.4.c; Tulyathan Decl. at ¶ 22.)

14 **C. Scope of the Released Claims**

15 In exchange for the payments described above, Plaintiff and the PAGA Group will
16 release the Released Parties from the following limited release:

17 [A]ll claims for civil penalties under California Labor Code § 2698,
18 *et seq.* (the Private Attorneys General Act), that were set forth, or
19 could have been set forth based on the facts and theories alleged in
20 the operative Complaint, for penalties pursuant to the PAGA for
violations of Labor Code § 226(a)(2), that accrued during the PAGA
Period.

21 (*Id.* ¶¶ I.17, III.7.) The Settlement does not release Defendant from violations of any predicate
22 statutes other than PAGA and will not affect a waiver of individual claims by PAGA Group
23 Members against Defendant for any of the underlying Labor Code claims. (*Id.*) The release is
24 expressly limited to claims for civil penalties and attorneys' fees and costs under the PAGA
25 pertaining to the violation of Labor Code § 226(a)(2) that accrued during the PAGA Period. (*Id.*)
26 The release applicable to PAGA Group Members expressly excludes claims outside of the
27 PAGA Period, and excludes non-PAGA claims or any individual claims. (*Id.*)

28 //

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

2 **A. PAGA Overview**

3 Prior to the enactment of PAGA, many of the penalties provided against employers for
4 violations of certain Labor Code provisions were solely within the province of the California
5 Department of Labor to seek, enforce, and assess. *Arias v. Superior Court* (2009) 46 Cal. 4th
6 969, 980. However, due to the lack of financing to California's agencies and the potential
7 number of Labor Code violations by California employers, the California Legislature found that
8 it was in the public interest to allow aggrieved employees to act as private attorneys general and
9 to enforce and recover penalties on behalf of other similarly situated aggrieved employees for
10 Labor Code violations committed by their employers. *Id.* As such, PAGA was enacted to allow
11 such enforcement and recovery by private individuals who have been aggrieved by their
12 employers. Under the PAGA, 75% of any penalties recovered under PAGA by an aggrieved
13 employee is to be paid to the state agency, the LWDA, and the remaining 25% is to be shared
14 amongst the aggrieved employees. Cal. Lab. Code § 2699, subd. (i).

15 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
16 employee must first provide written notice to the LWDA and the employer of the particular
17 Labor Code violation(s) alleged to have been violated by the employer. *See* Cal. Labor Code §
18 2699.3, subd. (a)(1). Once the LWDA notifies the aggrieved employee that it does not intend to
19 investigate the alleged violations or the time for the LWDA to investigate the violations passes,
20 the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of
21 all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3, subd. (a)(2)(A).

22 In 2009, the California Supreme Court considered the issue of whether an aggrieved
23 employee who brings a PAGA claim needs to meet class certification requirements. *Arias*, 46
24 Cal. 4th at p. 976. After a substantial review of the legislative history of PAGA, the California
25 Supreme Court held that an aggrieved employee's representative action brought on behalf of
26 other similarly aggrieved employees against an employer for PAGA violations do not need to
27 meet the requirements for class certification. *Id.* at pp. 975, 980-88. As held by the California
28 Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent of

1 California’s labor law enforcement agencies. *Id.* at p. 986. Because an employee’s PAGA action
2 functions as a substitute for an action brought by the government itself, a judgment in the PAGA
3 action binds all those who would be bound by a judgment in an action brought by the
4 government. *Id.*

5 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the
6 Superior Court must “review and approve any settlement of any civil action filed pursuant to”
7 PAGA. Cal. Lab. Code § 2699, subd. (l)(2). As the Parties to this current PAGA action have
8 reached such an agreement, the Parties now seek this Court’s approval as to the settlement of the
9 penalties amount.

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

12 In class action cases, the purpose of the Court’s preliminary evaluation of the settlement
13 is to determine whether it is within the “range of reasonableness,” and thus whether notice to the
14 class of the terms and conditions of the settlement, and the scheduling of a formal fairness
15 hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg (4th ed. 2002 and Supp. 2004) 4
16 *Newberg on Class Actions* § 11.25 *et seq.* and § 13.64 (“*Newberg*”). The “judge must make a
17 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms
18 and must direct the preparation of notice of the certification, proposed settlement, and date of the
19 final fairness hearing.” (*Manual for Complex Litigation, Fourth* (Fed. Jud. Ctr., 4th ed. 2004) §
20 21.632.) To make the preliminary fairness determination, courts may consider several relevant
21 factors, including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely
22 duration of further litigation; the risk of maintaining class action status through trial; the amount
23 offered in settlement; the extent of discovery completed and the stage of the proceedings; [and]
24 the experience and views of counsel....” *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
25 1011, 1026.)

26 By contrast, court approval of PAGA settlements is governed by Section 2699(1) of the
27 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties
28 sought as part of a proposed settlement agreement pursuant to this part.” The parties are not

1 obligated to “satisfy class action requirements,” including the standards for class action
2 settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court’s holding that
3 “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

4 Notably, unlike the class action settlement approval process, there is also no statutory
5 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
6 2699, subd. (1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim,
7 nor do they have the ability to opt-out of the representative PAGA claim” or “contest a
8 settlement, if any, reached between the parties.” *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D.
9 Cal. 2010) 2010 WL 1340777, p. *13.)

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

11 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
12 ultimately receive as a result of a settlement, but instead, on whether the total settlement amount
13 achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement
14 agency funding for purposes of education of employers and employees and enforcement of labor
15 laws and rights. *See* Cal. Lab. Code § 2699, subd. (i). Here, the settlement provides monetary
16 recovery for the aggrieved employees and the State and accomplishes PAGA’s primary objective
17 to enforce the Labor Code, and thus the Settlement certainly effectuates PAGA’s purpose. *See*
18 *O’Connor v. Uber Techs, Inc.* (N.D. Cal. August 18, 2016) 2016 WL 4398271, at p. *18 (noting
19 that deterring noncompliance with the Labor Code is one of PAGA’s objectives).

20 The Settlement is also consistent with the State’s public policy favoring resolution of
21 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
22 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
23 parties are best positioned to understand their interests and resolve a dispute in a mutually
24 beneficial manner without court intervention into the settlement.” *Consumer Advocacy Group,*
25 *Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal.*
26 (1992) 3 Cal. 4th 273, 277- 278).

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

28 The limited scope of the release supports approval of this PAGA settlement. If approved,

1 the Settlement would release the Released Parties from PAGA claims predicated on the
2 underlying violations of Labor Code § 226(a)(2) only, that accrued during the PAGA Period, and
3 nothing more. (Settlement Agreement ¶¶ I.17, III.7.) The Settlement would *not* impact any
4 other aggrieved employees' ability to pursue PAGA claims predicated on other allegations aside
5 from those raised in this lawsuit or any Labor Code claims not predicated on the PAGA.

6 Because an aggrieved employee's PAGA action is a substitute for an action brought by
7 the government, "judgment in [a PAGA] action is binding not only on the named employee
8 plaintiff but also on government agencies and any aggrieved employee not a party to the
9 proceeding." *Arias*, 46 Cal. 4th at p. 986. However, "the nonparty employees, because they were
10 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
11 judgment as to remedies other than civil penalties." *Id.* at p. 987; *see also*, Cal. Lab. Code §
12 2699(g)(1) (non-party aggrieved employees retain all rights "to pursue or recover other remedies
13 available under state or federal law, either separately or concurrently with an action taken under
14 this part").

15 Accordingly, the aggrieved employees (or PAGA Group) will be subject to only a limited
16 release strictly confined to the civil penalties available under PAGA for violation of Labor Code
17 § 226(a)(2) that accrued during the PAGA Period. (Settlement Agreement ¶¶ I.17, III.7.) The
18 release is therefore appropriately tailored and the settlement should be approved.

19 **E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
20 **Litigation**

21 Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in
22 litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the
23 still-developing law under PAGA. (Tulyathan Decl. at ¶ 26.)

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

25 Plaintiff asserts that his representative PAGA claims are based on the allegations that
26 Defendant failed to provide accurate itemized wage statements whenever overtime wages are
27 paid. (Tulyathan Decl. at ¶ 25.)

28 Defendant has denied violations of any applicable laws and denied liability for any

1 claims asserted in the Action. (*Id.* at ¶ 27.) In this regard, Defendant argued that the relevant
2 wage statements complied with California Law. *See Morgan v. United Retail Inc.*, 186 Cal. App.
3 4th 1136 (2010). Defendant also argued that the alleged violation is a technical one and the
4 Court has discretion under PAGA to reduce the maximum allowable PAGA penalties, or to
5 decide not to award PAGA penalties at all. Should Defendant have prevailed on its arguments or
6 defenses above, the State of California and aggrieved employees would have been left with
7 minimal or zero recovery. (*Id.*) Moreover, Defendant has represented that it has revised its
8 wage statement practices when it transitioned to a new payroll vendor as of September 24, 2022,
9 and thus this limits any potentially recoverable PAGA penalties to the State of California and
10 aggrieved employees. (*Id.*)

11 **2. Recovery of Penalties After Trial**

12 Defendant represents that there was a total of approximately 2,470 pay periods where
13 physical wage statements were issued with payment for overtime wages between January 17,
14 2022, and September 23, 2022. Therefore, pursuant to the PAGA, Plaintiff calculated total
15 exposure to be as high as \$617,500 (2,470 pay periods x \$250 per pay period, pursuant to Labor
16 Code § 226.3). (Tulyathan Decl. at ¶ 24; *see Raines v. Coastal Pac. Food Dist.* (2018) 23 Cal.
17 App. 5th 667.

18 However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential
19 recovery is uncertain. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the
20 full amount of PAGA penalties where “if, based on the facts and circumstances of the particular
21 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
22 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
23 *Corp.* (2018) 30 Cal. App. 5th 504, 517, while the plaintiff prevailed on his PAGA claim upon
24 trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s
25 good faith attempt at complying with the law. Upon review, the Court of Appeal found such a
26 reduction to be proper. *Id.* at p. 539; *see O’Connor*, 2016 WL 4398271, at p. *17 (noting that
27 even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court
28 may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary

1 and oppressive, or confiscatory”).

2 Here, Plaintiff maintains that there does not exist any reason for reducing PAGA
3 penalties. However, Plaintiff is aware that Defendant could (and would) make a compelling
4 argument to the contrary.

5 The Court’s assessment of the proposed Settlement must take into account that any
6 penalties awarded may be subject to substantial reduction. When this is considered, in
7 conjunction with the history of PAGA case law and settlements, and the fact that Plaintiff may
8 recover nothing, the proposed settlement is patently reasonable. Settlement for a reduced value
9 allows for the distribution of penalties in an amount which accounts for the risk of continued
10 litigation, and Defendant’s likely arguments that higher penalties would have been confiscatory.
11 It also sufficiently deters Defendant from engaging in similar conduct in the future, which is one
12 of the primary goals of PAGA.

13 The proposed settlement for \$125,000.00 exceeds PAGA settlements that courts have
14 approved in other cases, when considered as a percentage of the overall settlement value of the
15 case. Here, the proposed settlement amounts to approximately **20.24%** of the total possible
16 liability in this matter, which exceeds other PAGA settlements approved by courts. (Tulyathan
17 Decl. at ¶ 29; *see, e.g., Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133,
18 *9 (approving total PAGA allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v.*
19 *PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, *8 (approving total PAGA
20 allocation that was 0.5% of \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.* (N.D. Cal.
21 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of \$750,000 gross
22 settlement).

23 A PAGA allocation need not represent any particular percentage of the overall settlement
24 value in order to secure court approval, and courts routinely approve PAGA settlements
25 representing only a tiny fraction of the overall settlement value. The proposed settlement sum in
26 this case significantly exceeds the percentage of overall settlement value of other PAGA
27 settlements and should be approved by the Court.

28 //

1 **F. The Attorneys' Fees are Reasonable**

2 PAGA Counsel seeks a fee award of one-third (1/3) of the Gross Settlement Amount, or
3 \$41,666.67, for the successful prosecution and resolution of this action. PAGA allows a
4 prevailing plaintiff to obtain attorneys' fees and costs. (Cal. Lab. Code § 2699, subd. (g).)
5 Similar to awarding fees in a class action, California state and federal courts have recognized that
6 an appropriate method for determining award of attorneys' fees for representative actions is to
7 use a percentage of the total value of benefits to class members by the settlement. (*Wershba v.*
8 *Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25,
9 34 ("*Serrano III*"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
10 *West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose of this equitable doctrine is to avoid
11 unjust enrichment of counsel and to "spread litigation costs proportionally among all the
12 beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, 557
13 F. 2d at p. 769.)

14 Under California law, the award of attorneys' fees in common fund wage and hour class
15 action settlements is under the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1
16 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that
17 when class action litigation establishes a monetary fund for the benefit of the class members, and
18 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
19 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
20 created").) Under the percentage of the fund method, the Court's objective remains to "mimic
21 the market" in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363
22 ("When a fee is set by a court rather than by contract, the object is to set it at a level that will
23 approximate what the market will set...The judge, in other words, is trying to mimic the market
24 in legal services").) Both California state and federal courts have embraced this doctrine.
25 (*Serrano III*, 20 Cal. 3d at p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of*
26 *San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized
27 that the common fund doctrine has been applied "consistently in California when an action
28

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

9 Here, the fee award representing one-third (1/3) of the Gross Settlement Amount falls
10 within that range and is consistent with other rulings of other courts and comprehensive surveys
11 of class action settlements and fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. June 9,
12 2011) (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour
13 class actions that result in recovery of a common fund under \$10 million”); *see also* Eisenberg &
14 Miller (2010) *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of
15 Empirical Leg. Stud. 248, 262, fn.16 (independent studies of class action litigation nationwide
16 conclude that fees in that range sought here are consistent with market rates).) The results
17 delivered by PAGA Counsel also support the requested percentage of the fund. Here, PAGA
18 Counsel secured a \$125,000.00 non-reversionary common fund settlement.

19
20 In addition, it is recognized that one of the primary factors justifying an enhanced
21 attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of*
22 *Detroit v. Grinnell Corp.*:

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

(*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) For PAGA Counsel, the
fees here were wholly contingent in nature and the case presented far more risk than the usual

1 contingent fee case, which included the developing law under the PAGA, costs inherent in class
2 and PAGA litigation, as well as a potentially drawn-out battle with a corporate defendant.

3 As such, the requested fee award in the amount of \$41,666.67 is fair and reasonable, and
4 should be awarded in its entirety.

5 **G. The Costs are Reasonable**

6 Additionally, PAGA Counsel's request for reimbursement of actual litigation costs in the
7 amount of \$2,433.05 is also reasonable, given that the Settlement Agreement allows for
8 reimbursement of litigation costs of up to \$10,000.00. As set forth in PAGA Counsel's
9 declaration, PAGA Counsel incurred actual litigation costs in the amount of \$2,433.05, which
10 are costs that were directly incurred in the prosecution of this action, including filing fees,
11 service of process costs, and postage. (Tulyathan Decl. at ¶ 37, Ex. E.) As such, the requested
12 costs should be awarded as fair and reasonable.

13 **H. The Settlement Administrator's Fees Should be Approved**

14 The Parties have agreed to pay actual costs of administration from the Gross Settlement
15 Amount, which will not exceed \$11,500.00, to the Settlement Administrator – Phoenix
16 Settlement Administrators, to administer this Settlement. (Settlement Agreement ¶¶ III.4.c.;
17 Tulyathan Decl. at ¶ 22, Ex. D.) The Parties believe that the settlement administration costs is
18 reasonable and should be approved.

19 **I. Plaintiff's Enhancement Payment Should be Approved**

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

26 Here, Plaintiff seeks \$5,000.00 for the Enhancement Payment, which is intended to
27 compensate Plaintiff for the efforts in prosecuting the case and his time spent on this case,
28 including reviewing the various pleadings and documents in connection with this lawsuit.

(Declaration of Jason George (“George Decl.”) at ¶¶ 5.) Additionally, by serving as the PAGA representative and filing the lawsuit, which is public record, Plaintiff also faced significant risk in not being able to find prospective employment and/or face retaliation from prospective employers. In this regard, future employers are less likely to hire and/or continue employment with individuals who have filed employment-related lawsuits, particularly cases of this nature.

Furthermore, the requested service award is consistent with awards approved in other common fund cases. (*See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D. Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068 (N.D. Cal. Jan. 27, 2007) 2007 U.S. Dist. LEXIS 8476, *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 Incentive award to class representative in ERISA case).)

Lastly, in connection with the settlement, Plaintiff also executed a general release of any and all claims, including a waiver of Civil Code section 1542, which was not required of PAGA Group Members. (George Decl. at ¶ 9.)

As Plaintiff’s requested service award is a modest amount, the Court should approve this service award as requested.

J. Notice to the LWDA Has Been Provided

Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion, the Settlement Agreement, and Proposed Order to the LWDA’s website. (Tulyathan Decl. at ¶ 38, Ex. F.)

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1 **V. CONCLUSION**

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

4
5 DATED: October 9, 2024

DIVERSITY LAW GROUP, P.C.

6
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