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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DALIA DELGADO, on behalf of herself, and
all aggrieved employees,

Plaintiff,

v.

AVALON VILLA HEALTH CARE, LLC; and
DOES 1 through 100, inclusive,

Defendants.

Case No: 23STCV15615

*Assigned For All Purposes to
Judge Virginia Keeny*

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR AN ORDER APPROVING
ATTORNEYS' FEES, COSTS,
ENHANCEMENT PAYMENT, AND
SETTLEMENT ADMINISTRATION FEES**

Date: March 26, 2025

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Dept. 45

Trial Date: TBD

Complaint Filed: July 5, 2023

TABLE OF CONTENTS

	Page
I. INTRODUCTION	7
II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY	7
A. Plaintiff’s Counsel’s work in litigating and settling this action.	8
B. The Proposed Settlement.....	9
1) Settlement administration.	9
2) Attorneys’ fees and costs.	10
3) Enhancement award for the representative Plaintiff.	10
III. LEGAL ARGUMENT	10
A. Standards for approval of a PAGA settlement.	10
B. Plaintiff’s Counsel is entitled to recover their reasonable fees and costs.	10
1) Plaintiff is entitled statutorily to an award of attorneys’ fees and costs.....	10
2) Plaintiff’s Counsel is entitled to an award of reasonable attorneys’ fees and costs under the percentage of the common fund doctrine.....	12
3) The requested fee amount is within the range of reasonable fee awards under the “percentage of the fund” method.	13
4) The requested fees are justified under the lodestar method.	14
C. The enhancement payment sought by Plaintiff is reasonable.	16
D. The Settlement Administrator’s fee is reasonable and should be paid.	19
IV. CONCLUSION	19

TABLE OF AUTHORITIES

State Cases	Page(s)
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	11
<i>Cellphone Termination Fee Cases</i> (2010) 186 Cal.App.4th 1380	17
<i>Clark v. Am. Residential Services LLC</i> (2009) 175 Cal.App.4th 785	17
<i>Estrada v. FedEx Ground Package System, Inc.</i> (2007) 154 Cal.App.4th 1	11
<i>Glendale City Employees' Assoc. v. City of Glendale</i> (1975) 15 Cal.3d 328	12
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	14
<i>Hernandez v. Restoration Hardware, Inc.</i> (2018) 4 Cal. 5th 260	12
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	12
<i>Iskanian v. CSL Transportation Los Angeles, LLC,</i> (2014) 59 Cal.4th 348	17
<i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5th 480	11, 12
<i>Roos v. Honeywell International, Inc.</i> (2015) 2015 Cal. App. LEXIS 1004	12
<i>Serrano v. Priest ("Serrano III")</i> (1977) 20 Cal.3d 25	12
<i>Serrano v. Unruh ("Serrano IV")</i> (1982) 32 Cal. 3d 621	15, 16
<i>Troester v. Starbucks Corp.</i> (2018) 5 Cal.5th 829	18
<i>Ward v. United Airlines, Inc.</i> (2020) 9 Cal.5th 732	18

Federal Cases

<i>Aguilar v. Wawona Frozen Foods</i> (E.D. Cal. May 18, 2017) 2017 U.S. Dist. LEXIS 76751	12
<i>Alvarez v. Farmers Ins. Exch.</i> (N.D. Cal. Jan. 17, 2017) 2017 U.S. Dist. LEXIS 119128	13, 14
<i>Barbosa v. Cargill Meat Solutions Corp.</i> (E.D. Cal. July 2) 297 F.R.D. 431	12
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	12
<i>Bolton v. U.S. Nursing Corp.</i> (N.D. Cal. Oct. 18, 2013) 2013 U.S. Dist. LEXIS 150299	15
<i>Borelli v. Black Diamond Aggregates, Inc.</i> (E.D. Cal. June 8, 2022) 2022 U.S. Dist. LEXIS 103734	12
<i>Burden v. SelectQuote Ins. Servs.</i> (N.D. Cal. Aug. 2, 2013) 2013 U.S. Dist. LEXIS 109110	12
<i>Cicero v. DirecTV, Inc.</i> (CD. Cal. 2010) 2010 U.S. Dist. LEXIS 86920	13, 14
<i>Cresci v. Cox Auto. Corporate Servs.</i> (C.D. Cal. May 5, 2021) 2021 U.S. Dist. LEXIS 134293	11, 15
<i>Deaver v. Compass Bank</i> (N.D. Cal. Dec. 11, 2015) 2015 U.S. Dist. LEXIS 166484	12
<i>Glass v. UBS Fin. Servs.</i> (9th Cir. 2009) 331 F.App'x 452	14
<i>Gonzalez v. S. Wine & Spirits of Am., Inc.</i> (9th Cir. 2014) 555 F. App'x 704	15
<i>Hawkins v. Kroger Co.</i> (S.D. Cal. Feb. 4, 2022) 2022 U.S. Dist. LEXIS 20956	13, 14
<i>Hefler v. Wells Fargo & Co.</i> (N.D. Cal. Dec. 18, 2018) 2018 U.S. Dist. LEXIS 213045	15
<i>In re GNC Shareholder Litig.</i> (W.D. Pa. 1987) 668 F. Supp. 450	16
<i>In re United Energy Corp. Sec. Litig.</i> (C.D. Cal. 1989) 1989 WL 7321 1	16
<i>In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.</i> (N.D. Cal. Mar. 17, 2017) 2017 U.S. Dist. LEXIS 39115	15

1	<i>Johnson v. United States Bank Nat'l Ass'n</i>	
2	(S.D. Cal. Aug. 20, 2020) 2020 U.S. Dist. LEXIS 151168	12
3	<i>Martin v. AmeriPride Servs.</i>	
4	(S.D. Cal. June 9, 2011) 2011 U.S. Dist. LEXIS 61796.....	13, 14
5	<i>Mills v. Electric Auto-Lite Co.</i>	
6	(1970) 396 U.S. 375	12
7	<i>Moreno v. Capital Bldg. Maint. & Cleaning Servs.</i>	
8	(N.D. Cal. Sep. 10, 2021) 2021 U.S. Dist. LEXIS 172633.....	13, 14
9	<i>O'Bannon v. NCAA,</i>	
10	(N.D. Cal. 2015) 114 F. Supp. 3d 819	15
11	<i>Parker v. Cherne Contr. Corp.</i>	
12	(N.D. Cal. Dec. 9, 2021) 2021 U.S. Dist. LEXIS 236229	15
13	<i>Ramirez v. Benito Valley Farms, LLC</i>	
14	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137272.....	11
15	<i>Rodriguez v. West Publishing Corp.</i>	
16	(9th Cir. 2009) 563 F.3d 948	17
17	<i>Steinfeld v. Discover Fin. Servs.</i>	
18	(N.D. Cal. Mar. 31, 2014) 2014 U.S. Dist. LEXIS 48540.....	15
19	<i>United Steel Workers v. Phelps Dodge Corp.</i>	
20	(9th Cir. 1990) 896 F.2d 403	15
21	<i>Vasquez v. Coast Valley Roofing, Inc.</i>	
22	(E.D. Ca. 2010) 266 F.R.D. 482	12, 13
23	<i>Vedachalam v. Tata Consulting Serv. Ltd.</i>	
24	(N.D. Cal. July 18, 2013) 2013 U.S. Dist. LEXIS 100796	15
25	<i>Vizcaino v. Microsoft Corp.</i>	
26	(9th Cir. 2002) 290 F.3d 1043	11, 14
27	<i>Williams v. SuperShuttle Int'l, Inc.</i>	
28	(N.D. Cal. Feb. 12, 2015) 2015 U.S. Dist. LEXIS 19341.....	15

State Statutes

California Code of Civil Procedure

§ 1021.5 11

California Labor Code

§ 2698..... 7

§ 2699 9, 11, 10, 18

§ 2699.3 8

Treatises

Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study

(2006) 53 UCLA L. Rev. 1303 17

Newberg, Attorney Fee Awards (1987)

§ 2.19 16

4 Newberg on Class Actions (4th ed. 2002)

§ 11:38..... 17

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Dalia Delgado (“Plaintiff”), moves this Court for an order awarding attorney’ fees and costs to Plaintiff’s Counsel, an enhancement payment for the representative Plaintiff, and settlement administration costs to Simpluris, Inc., the Parties’ selected settlement administrator for this action.

Plaintiff and Avalon Villa Health Care, LLC (“Defendant”) reached a proposed \$300,000 settlement of Plaintiff’s representative action brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, (“PAGA”).¹ Plaintiff concurrently has filed a Motion for Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice (“Motion for Approval of PAGA Settlement”), which addresses the details of the settlement terms, including the distribution of the \$174,337.01 estimated Net Settlement Amount to the California Labor and Workforce Development Agency (“LWDA”) and the PAGA Group.²

Through this motion, Plaintiff requests that the Court approve the Settlement Agreement’s terms allocating \$100,000³ for the payment of Plaintiff’s Counsel’s fees and costs, \$7,500 for the representative Plaintiff’s enhancement payment, and settlement administration costs of up to \$4,000.⁴

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Plaintiff has set forth the details of the case and procedural history in the memorandum supporting the Motion for Approval of PAGA Settlement filed concurrently with this motion. For

¹ See Declaration of Robert W. Spencer submitted in support of this motion and Plaintiff’s Motion for Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice (“Spencer Decl.”), Ex. 1 (the Parties’ Labor Code Private Attorneys General Act Settlement Agreement (the “Settlement Agreement”)) generally, and at §§ I.P, VIII. All “Ex.” references are to Spencer Declaration exhibits unless stated otherwise. Also, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement unless noted otherwise.

² See Ex. 1 at § I.J, *see also*, §§ I.G, I.I, I.K, I.L, I.P, VI, X, XI.

³ The Settlement Agreement provides that Plaintiff’s Counsel may request \$100,000 in fees and actual litigation costs, which are \$14,162.99 Ex. 1 at § X; Spencer Decl. at ¶¶ 46-48, Declaration of Raul Perez in Support of Motion for Court Approval of the Parties’ PAGA Settlement (“Perez Decl.”) at ¶ 20.

⁴ See Ex. 1 at §§ VI, X, XI.

brevity's sake, Plaintiff does not repeat those facts here.

A. Plaintiff's Counsel's work in litigating and settling this action.

Prior to the filing of this action, Plaintiff's Counsel expended time and effort in investigating and researching Plaintiff's potential Labor Code claims and preparing this case for litigation. Pursuant to Labor Code § 2699.3's exhaustion requirements, on Plaintiff's behalf, Plaintiff's Counsel drafted and provided written notice of each Plaintiff's PAGA claims to the LWDA and Defendant. After receiving no response from the LWDA in the statutory period, Plaintiff's Counsel drafted and filed the operative complaint.⁵

Plaintiff's Counsel drafted and served written discovery. Plaintiff's Counsel also drafted responses to Defendant's written discovery.⁶

After engaging in substantial written discovery, Plaintiff's Counsel engaged in discussions with Defense Counsel regarding potential settlement and the Parties agreed to mediate. In advance of the mediation, the Parties agreed to exchange relevant information and documents informally. Plaintiff's Counsel drafted and sent a detailed mediation information request to Defense Counsel. Plaintiff's Counsel reviewed and analyzed information and documents that Defendant provided, including documents and information relevant to the claims alleged in the operative complaint, such as timekeeping and payroll records and the number aggrieved employees and total pay periods at issue. The information and documents were sufficient to assess Defendant's meal period, rest break, termination pay, other relevant pay and wage statement practices and to tabulate the total number of pay periods at issue and identify the approximate total number of individuals falling within the definition of the PAGA Group during the PAGA Release Period.⁷

On November 21, 2024, the Parties participated in a formal mediation session with Kelly A. Knight, Esq., during which the Parties engaged in good faith, arm's-length negotiations. With the mediator's assistance, the Parties were able to resolve the PAGA claims, subject to the Court's approval.⁸

⁵ Spencer Decl. at ¶ 11.

⁶ Spencer Decl. at ¶ 12.

⁷ Ex. 1 at § II.B; Spencer Decl. at ¶ 13.

⁸ Ex. 1 at § II.B; Spencer Decl. at ¶¶ 14-16.

After the mediation, Plaintiff's Counsel has spent time communicating with Defense Counsel regarding the terms of the written settlement agreement. Plaintiff's Counsel expects to spend additional hours working with the Settlement Administrator, speaking with PAGA Group members, finalizing and filing this motion, and preparing for and attending the approval hearing.⁹

B. The Proposed Settlement

Plaintiff also refers to the Motion for Approval of PAGA Settlement and accompanying memorandum to avoid repeating the details of the proposed settlement's terms and benefits to the LWDA and the PAGA Group members. In brief summary, the Settlement Agreement provides that all PAGA Group members, defined as "All persons within the State of California who are or were employed by Defendant in the State of California as hourly or non-exempt employees at any time within the PAGA Release Period."¹⁰ The PAGA Release Period is defined as the period from and including April 28, 2022 through November 21, 2024, inclusive. PAGA Group members do not need to submit a claim form to receive a settlement payment.¹¹

If all requests are approved, the Net Settlement Amount to be distributed to the LWDA and PAGA Group members is estimated to be \$174,337.01.¹² The PAGA Group members will divide 25% of the Net Settlement Amount, a total of approximately \$43,584.25, based on the formula set forth in the Settlement Agreement.¹³ The LWDA will receive 75% of the Net Settlement Amount, which is approximately \$130,752.76.¹⁴

1) Settlement administration.

The Settlement Agreement provides for the payment of the costs of settlement administration not to exceed \$4,000 to Simpluris, Inc.¹⁵

⁹ Spencer Decl. at ¶ 16.

¹⁰ Ex. 1 at § I.K.

¹¹ Ex.1 at §§ I.G, VII, VIII.A.

¹² Spencer Decl. at ¶ 19; Ex. 1 at §§ I.J, I.P, VI, X, XI.

¹³ Spencer Decl. at ¶ 19; Ex. 1 at § VIII.A, *see also*, Ex. 1 at §§ I.G, I.J, I.P, VI, X, XI; Lab. Code § 2699(i) (requiring that the LWDA receive 75% and aggrieved employees receive 25% of PAGA penalties awarded).

¹⁴ Spencer Decl. at ¶ 12; Ex. 1 at §§ I.J, *see also*, I.J, I.P, VI, X, XI; Lab. Code § 2699(i).

¹⁵ Ex. 1 at § VI; *see* Spencer Decl. at ¶¶ 19-20, 24.

1 **2) Attorneys' fees and costs.**

2 The Settlement Agreement permits Plaintiff's Counsel to seek an award of attorneys' fees
3 of up to \$100,000 and actual litigation costs, which are \$14,162.99.¹⁶ The request is discussed in
4 Section III.B below.

5 **3) Enhancement award for the representative Plaintiff.**

6 The Settlement Agreement provides that Plaintiff Delgado may seek an enhancement
7 payment of \$7,500 for her work bringing this action on behalf of the LWDA and the PAGA
8 Group.¹⁷ The service award request is discussed in Section III.C below.

9 **III. LEGAL ARGUMENT**

10 **A. Standards for approval of a PAGA settlement.**

11 The reasons supporting approval of the main terms of the PAGA settlement are discussed
12 in the memorandum accompanying the Motion for Approval of PAGA Settlement. Here, Plaintiff
13 focuses on the request for an award of attorneys' fees and costs, Plaintiff's enhancement payment,
14 and payment of the settlement administrator's fees, all of which are requested in accordance with
15 the Settlement Agreement.

16 **B. Plaintiff's Counsel is entitled to recover their reasonable fees and costs.**

17 Pursuant to the Settlement Agreement, Plaintiff's Counsel seek \$100,000 attorneys' fees
18 and \$14,162.99 in litigation costs.¹⁸ Plaintiff's Counsel's entitlement to an award of fees and costs
19 is warranted on multiple independent grounds, which are discussed below

20 **1) Plaintiff is entitled statutorily to an award of attorneys' fees and costs.**

21 In a PAGA action, the plaintiff's counsel is entitled to recover attorney's fees and costs as
22 a matter of right under PAGA. Labor Code § 2699(g)(1) provides that "[a]ny employee who
23 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Given
24 that PAGA's purpose is to allow employees to enforce the Labor Code in order to further the
25

26
27 ¹⁶ Ex. 1 at § X; Spencer Decl. at ¶¶ 31, 46-48, Ex. 5.

28 ¹⁷ Ex. 1 at § XI.

¹⁸ Ex. 1 at § X; Spencer Decl. at ¶¶ 32, 46-48, Ex. 5.

State's law enforcement interest,¹⁹ the statute ensures that an individual who performs this law enforcement function is able to recover his or her attorneys' fees and costs.²⁰

"The PAGA does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims."²¹ The California Supreme Court has held the percentage of the common fund or the lodestar method may be used when determining attorneys' fees in class action settlements that produce a specific, identifiable common fund.²² "The choice of a fee calculation method is generally one within the discretion of the trial court," with the goal "being the award of a reasonable fee to compensate counsel for their efforts."²³

In addition, California Code of Civil Procedure § 1021.5 also entitles the Plaintiff to an award of attorneys' fees and costs. That statute provides for the award of:

attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

The instant PAGA representative action was, by definition, "for the public benefit" that secured monetary awards for the LWDA and the 300 aggrieved employees who make up the PAGA Group and was authorized due the State's lack of enforcement resources.²⁴

¹⁹ See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.

²⁰ Lab. Code § 2699(g)(1).

²¹ *Cresci v. Cox Auto. Corporate Servs.* (C.D. Cal. May 5, 2021) No. 2:20-cv-06832-VAP-SKx, 2021 U.S. Dist. LEXIS 134293, at *13-15, quoting *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, at *18.

²² *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503, 506 (affirming that trial court did not abuse its discretion in awarding 33.33% fees based on the percentage of the fund method). Ninth Circuit case law holds the same. See e.g., *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047 (where a settlement creates a common fund, the district court has discretion to apply the percentage-of-the-fund method to determine an award of attorneys' fees.).

²³ *Laffitte, supra*, 1 Cal.5th at 504.

²⁴ See e.g., *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17 (finding that, because the plaintiff pursued class action not only for himself but on behalf of a class and ultimately obtained awards for 209 drivers, he satisfied "the 'significant benefit,' 'public interest,' and 'large class of persons' requirements of [C.C.P. §] 1021.5.").

2) Plaintiff's Counsel is entitled to an award of reasonable attorneys' fees and costs under the percentage of the common fund doctrine.

Counsel is entitled to recover attorneys' fees and costs under the "common fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."²⁵

Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund.²⁶ In *Laffitte*, the California Supreme Court held 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."²⁷ The California Supreme Court also noted that the percentage of the fund method "more accurately reflects the results achieved" than the lodestar method, serves as a "better approximation of market conditions in a contingency case," and encourages "counsel to seek an early settlement and avoid unnecessarily prolonging the litigation."²⁸

When applying the percentage of the fund method, California courts routinely grant fee awards of 33.33% and higher.²⁹ Further, courts have recognized that "[f]ee award percentages

²⁵ See *Boeing*, *supra*, 444 U.S. at 478.

²⁶ *Id.*; see also, e.g., *Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25, 34; *Glendale City Employees' Assoc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn.19; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

²⁷ *Laffitte*, *supra*, 1 Cal.5th at 503 (providing an extended analysis of California law regarding fee award methodology).

²⁸ *Id.* at 503-04.

²⁹ See e.g., *Laffitte*, *supra*, 1 Cal.5th at 506 (affirming that trial court did not abuse its discretion in awarding 33.33% fees based on the percentage of the fund method); *Roos v. Honeywell International, Inc.* (Nov. 10, 2015) 2015 Cal. App. LEXIS 1004, at *26, (affirming 37.5% fee award in \$8,150,000 million class settlement), *overruled on other grounds* by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 269; *Borelli v. Black Diamond Aggregates, Inc.* (E.D. Cal. June 8, 2022) No. 2:14-cv-02093-KJM-KJN, 2022 U.S. Dist. LEXIS 103734, at *26-27 (granting 33% fee request, citing string of cases that did the same); *Johnson v. United States Bank Nat'l Ass'n* (S.D. Cal. Aug. 20, 2020) No. 19-CV-286 JLS (LL), 2020 U.S. Dist. LEXIS

(Cont'd)

generally are higher in cases where the common fund is below \$10 million.”³⁰

3) The requested fee amount is within the range of reasonable fee awards under the “percentage of the fund” method.

The amount of fees that Plaintiff’s Counsel requests – 33.33% of the Settlement Amount – is reasonable based on standards applicable to the “percentage of the fund” method – especially when compared to the lodestar in this case. “When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases.”³¹

First, the results achieved are significant, as approximately \$130,752.76 will be paid out to the LWDA and \$43,584.25 will be paid to the PAGA Group — for a total payout of \$174,337.01.³² Second, such results were achieved in the face of significant risks. Defendant maintained defenses to Plaintiff’s PAGA claims that would place a serious risk to recover at trial.³³ Third, notwithstanding this risk of loss, Plaintiff’s Counsel undertook representation of the instant PAGA

151168, at *9 (awarding 33% fee award, finding that the percentage “is in line with other attorneys’ fees awards in California and the Ninth Circuit,”) citing *Lafitte, supra*, 1 Cal.5th at 506 and other cases; *Aguilar v. Wawona Frozen Foods* (E.D. Cal. May 18, 2017) No. 1:15-cv-00093-DAD-EPG, 2017 U.S. Dist. LEXIS 76751, at *14-15 (approving one-third fee award); *Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) No. 13-cv-00222-JSC, 2015 U.S. Dist. LEXIS 166484, 2015 WL 8526982, at *9-14 (approving one-third fee award); *Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. July 2, 2013) 297 F.R.D. 431, 450 (approving a one-third fee award, citing cases with similar awards); *Burden v. SelectQuote Ins. Servs.* (N.D. Cal. Aug. 2, 2013) No. C 10-5966 LB, 2013 U.S. Dist. LEXIS 109110, at *13 (granting one-third fee award); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Ca. 2010) 266 F.R.D. 482, 491-92 (granting 33.33% fee award, citing cases with similar awards).

³⁰ *Alvarez v. Farmers Ins. Exch.* (N.D. Cal. Jan. 17, 2017) No. 3:14-cv-00574-WHO, 2017 U.S. Dist. LEXIS 119128, at *9; *see also, e.g., Hawkins v. Kroger Co.* (S.D. Cal. Feb. 4, 2022) No. 15cv2320 JM (AHG), 2022 U.S. Dist. LEXIS 20956, at *29) (recognizing same); *Moreno v. Capital Bldg. Maint. & Cleaning Servs.* (N.D. Cal. Sep. 10, 2021) No. 19-cv-07087-DMR, 2021 U.S. Dist. LEXIS 172633, at *12 (same); *Martin v. AmeriPride Servs.* (S.D. Cal. June 9, 2011), No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at *23 (same); *Cicero, supra*, 2010 U.S. Dist. LEXIS 86920, at *18 (same).

³¹ *See Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 492.

³² *See Spencer Decl.* at ¶¶ 19-20, *see also, ¶¶ 28*, Ex. 1 at §§ I.I, I.J, I.K, VI, X, XI. Defendant has identified 300 PAGA Group members. Ex. 1 at § I.K; *Spencer Decl.* at ¶ 18.

³³ *Spencer Decl.* at ¶¶ 28, 42.

claims for the benefit of the State (and the PAGA Group) on a contingency basis for the duration of this litigation.³⁴ This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in securing the financial benefit that the State of California stands to receive, but constitutes a "loan" on Plaintiff's Counsel service—both of which are factors warranting fee enhancement under applicable California Supreme Court authority:

One of the most common fee enhancers ... is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.'"³⁵

Finally, the percentage requested falls within a typical range, particularly in light of the settlement size.³⁶ It is recognized 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."³⁷

Accordingly, Plaintiff's Counsel's fee request is fair and reasonable and is consistent with other awards in California and the Ninth Circuit.

4) The requested fees are justified under the lodestar method.

As a common fund case, the lodestar method serves as cross check the reasonableness of the percentage fee request.³⁸ Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the

³⁴ Spencer Decl. at ¶¶ 41-42.

³⁵ *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

³⁶ See e.g., *Alvarez, supra*, 2017 U.S. Dist. LEXIS 119128, at *9; *Hawkins, supra*, 2022 U.S. Dist. LEXIS 20956, at *29; *Moreno, supra*, 2021 U.S. Dist. LEXIS 172633, at *12; *Martin, supra*, 2011 U.S. Dist. LEXIS 61796, at *23; *Cicero, supra*, 2010 U.S. Dist. LEXIS 86920, at *18.

³⁷ See e.g., *Alvarez, supra*, 2017 U.S. Dist. LEXIS 119128, at *9, citing *Cicero, supra*, 2010 U.S. Dist. LEXIS 86920, at *18.

³⁸ See e.g., *Glass v. UBS Fin. Servs.* (9th Cir. 2009) 331 F.App'x 452, 456 (approving the district court's "informal lodestar cross-check" for confirming the reasonableness of the percentage award); *Vizcaino, supra*, 290 F.3d at 1050 (similar).

1 attorney. Plaintiff's Counsel's hourly rates are summarized in the Spencer Declaration filed in
2 support of this motion.³⁹ Counsel's hourly rates have been approved in other cases⁴⁰ and are well
3 within the range of those found permissible for attorneys practicing class action litigation in
4 California.⁴¹

5 Plaintiff's Counsel Keller Grover LLP has spent over 194 hours litigating this case through
6 February 7, 2025, as described in further detail in the Spencer Declaration.⁴² Counsel expects to
7 spend another 10 hours completing the work on this motion, preparing for and attending the
8 approval hearing, and dealing with settlement administration issues.⁴³ The fee award should
9 include fees incurred to establish and defend the attorneys' fee claim.⁴⁴

10 1. The lodestar for Plaintiff's Counsel Keller Grover LLP through February 7, 2025
11 is \$147,690.⁴⁵ Keller Grover LLP expects to incur another \$7,250 in fees for a total final lodestar

12 ³⁹ Spencer Decl. at ¶¶ 35-40.

13 ⁴⁰ See e.g., *Parker v. Cherne Contr. Corp.*, 2021 U.S. Dist. LEXIS 236229, *20-21 (N.D. Cal. Dec.
14 9, 2021) (finds that Keller Grover LLP's billing rates used "to calculate the lodestar are reasonable
15 and in line with prevailing rates in this district for personnel of comparable experience, skill, and
16 reputation,") citing *Hefler v. Wells Fargo & Co.* (N.D. Cal. Dec. 18, 2018) No. 16-CV-05479,
17 2018 U.S. Dist. LEXIS 213045, 2018 WL 6619983, at *14 (finding rates from \$650 to \$1,250 for
18 partners or senior counsel and \$400 to \$650 for associates were reasonable) and *In re Volkswagen*
19 *"Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.* (N.D. Cal. Mar. 17, 2017) No. 2672
20 CRB (JSC), 2017 U.S. Dist. LEXIS 39115, 2017 WL 1047834, at *5 (finding rates up to \$1600
21 for partners and up to \$790 for associates were reasonable). Courts have found that "rate
22 determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are
23 satisfactory evidence of the prevailing market rate." *Cresci, supra*, 2021 U.S. Dist. LEXIS
24 134293, at *14, quoting *United Steel Workers v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d
25 403, 407.

26 ⁴¹ See cases cited in previous footnote; see also, e.g., *Gonzalez v. S. Wine & Spirits of Am., Inc.*
27 (9th Cir. 2014) 555 F. App'x 704, 704-05 (reversing district court's order reducing attorneys'
28 hourly rates without considering evidence of "prevailing hourly rates for comparable legal services
in the community"); *O'Bannon v. NCAA*, (N.D. Cal. 2015) 114 F. Supp. 3d 819, 827 (similar range
of rates for Bay Area counsel experienced in complex class actions were reasonable); *Williams v.*
SuperShuttle Int'l, Inc. (N.D. Cal. Feb. 12, 2015) No. 12-cv-06493-WHO, 2015 U.S. Dist. LEXIS
19341, at *5 (similar); *Steinfeld v. Discover Fin. Servs.* (N.D. Cal. Mar. 31, 2014) 2014 U.S. Dist.
LEXIS 48540, at *4-5 (similar); *Vedachalam v. Tata Consulting Serv. Ltd.* (N.D. Cal. July 18,
2013) 2013 U.S. Dist. LEXIS 100796, at *8 (similar); *Bolton v. U.S. Nursing Corp.* (N.D. Cal.
Oct. 18, 2013) 2013 U.S. Dist. LEXIS 150299, at *14-15 (similar).

⁴² Spencer Decl. at ¶¶ 32-39.

⁴³ *Id.* at 39.

⁴⁴ *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 ("Serrano IV").

⁴⁵ Spencer Decl. at ¶ 39.

of \$154,940 an amount that represents a negative multiplier of 0.645.⁴⁶ Adding in the additional loadstar of \$33,220 reflecting time spent by co-counsel Capstone Law APC,⁴⁷ the combined loadstar of the two firms is \$188,140.⁴⁸ This represents a negative multiplier of 0.53.⁴⁹

Plaintiff's Counsel's requested costs are reasonable.

During this litigation, Plaintiff's Counsel had to incur out-of-pocket costs of \$14,162.99.⁵⁰ As described in the Spencer Declaration and Perez Declaration, the incurred costs included filing fees, legal research fees, consultant fees, mediation fees, service fees, and mailing charges.⁵¹ Such costs are appropriate for cost reimbursement in these types of cases.⁵²

The costs that Plaintiff's Counsel incurred in this litigation benefited the LWDA, the Plaintiff and the PAGA Group members. Plaintiff's cost request of \$14,162.99 is reasonable and should be granted.

C. The enhancement payment sought by Plaintiff is reasonable.

As the Settlement Agreement permits, Plaintiff seeks an enhancement payment in the amount of \$7,500 for the representative PAGA Plaintiff.⁵³ The service award is intended to recognize the time and efforts that she spent on behalf of the State and other aggrieved employees during this litigation.⁵⁴

Although PAGA does not address service payments to private attorneys general, the reasoning of case law approving named plaintiff's service award in class actions supports that they also are appropriate in PAGA representative actions. Like in class actions, service payments should be awarded to named plaintiffs in representative actions to acknowledge the effort and risk

⁴⁶ *Id.*

⁴⁷ Perez Decl. at ¶¶ 16-17.

⁴⁸ Spencer Decl. at ¶ 39.

⁴⁹ *Id.*

⁵⁰ See Spencer Decl. at ¶¶ 46-47, Ex. 5.

⁵¹ Spencer Decl. at ¶ 46, Ex. 5.

⁵² See e.g., *In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); see also, *In re GNC Shareholder Litig.* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

⁵³ Ex. 1 at § XI.

⁵⁴ Declaration of Dalia Delgado, submitted herewith; see Spencer Decl. at ¶¶ 30-31.

1 they undertake to obtain a reward on behalf of others.⁵⁵ The California Court of Appeal has found
2 that “incentive awards are fairly typical in class action cases” and “are intended to compensate
3 class representatives for work done on behalf of the class, to make up for financial or reputational
4 risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
5 private attorney general.”⁵⁶ The Ninth Circuit also has recognized that a named Plaintiff’s
6 “willingness to act as a private attorney general” may justify the award of an incentive payment.⁵⁷

7 Further, two separate authorities compel service payments for an employee plaintiff
8 serving as a private attorney general. First, PAGA and its legislative history make clear that its
9 purpose is to incentivize individuals to act on behalf of, and for the benefit of, the State to enforce
10 the Labor Code due to shortage of the State’s law enforcement resources.⁵⁸ With that goal in mind,
11 it is reasonable to conclude that the statute permits compensation for individuals who take on that
12 work. Even if, for example, the statute that enables the State to employ an attorney general did
13 not specify a salary for that position, it would be reasonable to conclude that the State has authority
14 to pay the individual who performs that work. The same must be true for an individual who acts
15 as a private attorney general. The Legislature’s stated purpose of encouraging private law
16 enforcement work necessarily contemplates compensation for individuals who do that work.

17 It should not be assumed that the share of compensation paid to each aggrieved employee
18 is somehow intended to be the only money available to the individual who takes on the risk and
19 effort of filing and litigating a lawsuit. If that were the rule, each employee who is subjected to an
20 illegal wage and hour practice would be better off waiting for someone else to file a representative
21 claim so that he or she could reap the same reward without taking any risk.

22
23 ⁵⁵ See e.g., *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94, citing *Clark*
24 *v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.

25 ⁵⁶ *Id.* at 1393-94 (internal citations, quotations and alterations omitted), citing *Rodriguez v. West*
26 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, 4 *Newberg on Class Actions* (4th ed. 2002) §
11:38, p. 81, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical*
Study (2006) 53 UCLA L. Rev. 1303.

27 ⁵⁷ *Rodriguez, supra*, 563 F.3d at 959.

28 ⁵⁸ *Iskanian, supra*, 59 Cal.4th at 379 (discussing the goal stated in PAGA and its legislative history
to enable private attorneys general to enforce the Labor Code due to the State’s shortage of
resources).

1 The second authority supporting a service award is the California Supreme Court's
2 consistent mandate that courts must "liberally construe[]" the Labor Code "in favor of affording
3 workers protection."⁵⁹ When addressing questions for which there is no specific statutory answer,
4 the California Supreme Court has explained that courts interpreting the Labor Code must "adopt
5 the construction that best gives effect to the purpose of the Legislature" which is "the protection
6 of employees."⁶⁰ The Court's mandate weighs in favor of providing service awards because
7 refusing them would dramatically impair the State's ability to achieve its goal of Labor Code
8 enforcement through private attorneys general. If an employee plaintiff acting as a private attorney
9 general can expect no compensation other than his or her individual share of the recovered
10 penalties, it would be extremely difficult to find anyone willing to undertake the extensive risk and
11 effort involved in bringing a representative PAGA action.

12 Without Plaintiff's efforts, there would be no recovery at all. An incentive award is
13 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit
14 on other of Defendant's employees and the State of California. As a result of Plaintiff's efforts,
15 the State of California will receive \$130,752.76, to be put toward education about, and
16 enforcement of, California's labor laws.⁶¹ The PAGA Group members will receive monetary
17 settlement payments – on average, approximately \$145.28 each.⁶²

18 In this case, Plaintiff performed the following tasks, among others: (1) assisted Plaintiff's
19 Counsel in investigating and substantiating the claims alleged in this action, including multiple
20 telephone calls with counsel to review facts, documents, and Defendant's policies; (2) assisted in
21 the preparation of the complaint in this action; (3) produced evidentiary documents to Plaintiff's
22 Counsel; (4) responded to written discovery, and (5) reviewed the Settlement Agreement.⁶³
23 Moreover, as with any plaintiff who files a civil action, Plaintiff undertook the financial risk that,
24

25 ⁵⁹ See e.g., *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 754, citing string of California
26 Supreme Court cases stating the same.

27 ⁶⁰ *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 839.

28 ⁶¹ Spencer Decl. at ¶ 20-21; Ex. 1 at §§ I.I, I.J, I.P, VI, X, XI; Lab. Code § 2699(i).

⁶² Spencer Decl. at ¶ 22 (\$43,584/300 = \$145.28); Ex. 1 at §§ I.G, I.J, VIII.A.

⁶³ See generally, Delgado Declaration; see also, Spencer Decl. at ¶¶ 30-31.

1 in the event of a judgment in favor of Defendant in this action, she could have been personally
2 responsible for any attorneys' fees and costs awarded in its favor.

3 The enhancement payment to Plaintiff Delgado is especially warranted in a case like this
4 one, involving claims brought to enforce the Labor Code's protections for employees. Plaintiff
5 should be commended for pursuing representative PAGA claims; a modest enhancement award
6 like that sought here is an appropriate means of doing so. Considering the work that Plaintiff
7 performed on behalf of the State and the PAGA Group, the requested service payment is reasonable
8 and appropriate.

9 **D. The Settlement Administrator's fee is reasonable and should be paid.**

10 Simpluris has agreed to provide all administrative functions necessary for the distribution
11 of the Settlement Amount for an amount not to exceed \$4,000, which is the amount set forth in the
12 Settlement Agreement.⁶⁴ Plaintiff requests that the Court approve payment to Simpluris of up to
13 \$5,000. If the amount is lower, it will revert to the Net Settlement Amount.⁶⁵

14 **IV. CONCLUSION**

15 For all the reasons set forth above, Plaintiff respectfully requests that this Court, as set forth
16 in the proposed Order Approving Settlement submitted herewith, approve Simpluris, Inc. as the
17 Settlement Administrator and approve payment of its administration fees of up to \$4,000; approve
18 an award of \$100,000 in attorneys' fees and \$14,162.99 in costs to Plaintiff's Counsel, and approve
19 an enhancement award to Plaintiff Delgado in the amount of \$7,500.

20
21 Dated: February 28, 2025

KELLER GROVER LLP

22
23 By: 

24 ERIC A. GROVER
25 ROBERT SPENCER
26 *Counsel for Plaintiff*
27 DALIA DELGADO

28 ⁶⁴ Ex. 1 at § VI; Spencer Decl. at ¶¶ 19-20.

⁶⁵ Ex. 1 at § VI.

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **February 28, 2025**, in the case of *Dalia Delgado v. Avalon Villa Health Care, LLC*, Los Angeles Superior Court Case Number 23STCV15615, I served the foregoing document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER APPROVING ATTORNEYS' FEES, COSTS, ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION FEES

on the interested party(ies) below, using the following means:

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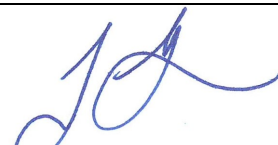
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ