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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SAN DIEGO**

CASSANDRA WALKER, FRANCES PARDO,  
CHRISTIAN VERDUZCO, COLLIN JOHNSON,  
and HANNAH GANSEN, as private attorneys  
general,

Plaintiffs,

vs.

FITNESS ALLIANCE, LLC, a California limited  
liability company; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 37-2023-00020191-CU-OE-CTL

[Hon. Joel R. Wohlfeil, Department C-73]

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF PAGA  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT**

Date: November 7, 2024  
Time: 9:00 a.m.  
Department: C-73

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

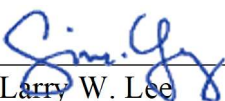
2 **PLEASE TAKE NOTICE** that on November 11, 2024, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department C-73 of the above-entitled court located at 330 West Broadway, San  
4 Diego, California 92101, Plaintiffs Cassandra Walker, Frances Pardo, Christian Verduzco, Collin  
5 Johnson, and Hannah Gansen will and hereby do move for an Order approving the Joint Stipulation of  
6 PAGA Settlement (the “Agreement”) entered into between Plaintiffs and Defendant, Fitness Alliance,  
7 LLC.<sup>1</sup>

8 The motion is made pursuant to Labor Code section 2699(1)(2), which requires a court to “review  
9 and approve any settlement of any civil action filed pursuant to [the Labor Code Private Attorneys  
10 General Act of 2004, Lab. Code §§ 2698 et seq. (“PAGA”)].” Lab. Code § 2699(1)(2). The motion is  
11 made on the grounds that the Agreement and the Parties’ settlement are fundamentally fair, adequate,  
12 and reasonable in light of PAGA’s policies and in furtherance of PAGA’s purposes. As set forth in the  
13 concurrently filed declaration of Simon L. Yang, a copy of the Agreement and the motion have been  
14 electronically submitted to the Labor and Workforce Development Agency in accordance with Labor  
15 Code sections 2699(1)(2) and 2699(1)(4).

16 The motion is based on this notice, the memorandum of points and authorities, the Agreement,  
17 the supporting Declarations of Larry W. Lee, Simon L. Yang, Kyle Nordrehaug, Cassandra Walker,  
18 Frances Pardo, Christian Verduzco, Collin Johnson, and Hannah Gansen, all pleadings and papers on  
19 file herein, and any further oral and documentary evidence as may be presented before or at the hearing  
20 of this matter.

21 DATED: October 16, 2024

DIVERSITY LAW GROUP, P.C.

22 By:   
23 Larry W. Lee  
24 Simon L. Yang  
25 Attorneys for Plaintiff  
26  
27  
28

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<sup>1</sup> The Agreement is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

**MEMORANDUM OF POINTS AND AUTHORITIES**

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## SUMMARY OF MOTION

As a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004, Lab. Code §§ 2698 et seq. (“PAGA”), Plaintiffs Cassandra Walker, Frances Pardo, Christian Verduzco, Collin Johnson, and Hannah Gansen sue Defendant, Fitness Alliance, LLC, for alleged failures to pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and rest periods, to pay all wages and overtime wages, to pay all sick pay wages, to reimburse all business expenses, to timely pay all wages during employment or upon termination of employment, and to provide complete and accurate itemized wage statements.

Through the litigation, Plaintiffs discovered that the alleged Labor Code violations affected approximately 1,840 employees in about 28,841 relevant pay periods from July 8, 2022, through April 26, 2024. Plaintiffs then negotiated and obtained an excellent result for the State that requires Defendant to pay \$650,000.00 for the resolution of the alleged PAGA claims—or approximately \$22.54 for each of the relevant pay periods at issue. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant. The terms of the settlement are memorialized in the Joint Stipulation of PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

Under PAGA, the Court must review and approve the proposed settlement. Lab. Code § 2699(s)(2). Plaintiffs thus move for approval of the Agreement:

- The Agreement provides for an award of Attorneys’ Fees and Costs in the amount of 33⅓% of the \$650,000.00 Settlement Amount, or \$216,666.67, in fees, plus up to \$30,000.00 in costs.
- It also provides for a \$10,000.00 General Release Payment to each Plaintiff (i) as consideration for his or her additional general release of claims and waiver of Civil Code section 1542 and (ii) in recognition of his or her efforts and work in prosecuting the lawsuit on behalf of the State.
- It also provides for \$11,500.00 in Administration Costs to a settlement administrator for effectuating the payments contemplated by the Agreement.
- Finally, it provides for all remaining funds to constitute a PAGA Penalty Fund, 75% of which would be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% of which would be distributed to allegedly aggrieved employees.

1 The terms of the Agreement are fundamentally fair, adequate, and reasonable. In light of  
2 PAGA’s policies and in furtherance of PAGA’s purposes, the Court should approve the settlement.

### 3 RELEVANT BACKGROUND

4 On May 1, 2023, the initial class action complaint in this matter was filed. Declaration of Simon  
5 L. Yang (“Yang Decl.”) ¶ 2. On June 30, 2023, the initial class action complaint was amended to also  
6 pursue representative action under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).  
7 *Id.* Separately, on July 14, 2023, Plaintiff Pardo separately filed a class action complaint against  
8 Defendant, and on September 20, 2023, Plaintiff Pardo also filed a PAGA complaint against Defendant  
9 separately. *Id.* Collectively, Plaintiffs sued for claims for alleged failures to pay an additional hour of  
10 regular rate wages for missed, late, or interrupted meal periods and rest periods, to pay all wages and  
11 overtime wages, to pay all sick pay wages, to reimburse all business expenses, to timely pay all wages  
12 during employment or upon termination of employment, and to provide complete and accurate itemized  
13 wage statements. *Id.*

14 The Parties met and conferred about Plaintiffs’ allegations and claims as well as Defendant’s  
15 defenses, including those related to a prior settlement and various arbitration agreements that contained  
16 class action waivers. Yang Decl. ¶ 3. Plaintiffs also requested (and Defendant provided) additional  
17 informal discovery to enable the Parties to explore the possibility of an informal resolution. *Id.*  
18 Defendant’s willingness to produce this information enabled Plaintiffs to evaluate the full scope of  
19 Defendant’s potential liability. *Id.*

20 On February 23, 2024, the Parties attended a mediation with Tripper Ortman, an experienced  
21 mediator knowledgeable of both the wage and hour laws and PAGA claims at issue in the Action. Yang  
22 Decl. ¶ 4. Although the Parties were unable to agree to a resolution during the mediation, the Parties  
23 continued to work with the mediator in the weeks thereafter. *Id.* With the mediator’s assistance and  
24 based on a mediator’s proposal, the Parties were able to agree to settlement terms, which were  
25 negotiated in light of all known facts and circumstances—including the uncertainty associated with  
26 litigation, the risks of significant delay, and numerous potential appellate issues. *Id.* The settlement  
27 terms are memorialized in the Joint Stipulation of PAGA Settlement. *Id.* Ex. 1 (the “Agreement”).  
28

## SUMMARY OF PROPOSED SETTLEMENT

### I. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Settlement Amount of \$650,000.00. Agreement § 3.1. From the Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Administration Costs, Attorneys' Fees and Costs Award, and General Release Payments. *Id.* § 3.1.1-4. It is expected that the LWDA will receive \$256,375.00 as its share of PAGA Penalties and that employees will receive \$85,458.33 as their share of PAGA Penalties. Yang Decl. ¶ 10.

### II. Settlement Releases

Plaintiffs are subject to general releases. Agreement § 5.2. The State releases "any and all PAGA claims from July 8, 2022, through April 26, 2024, that were actually alleged, or that could have been alleged against Defendant based on the facts stated in the Action, as well as the Labor & Workforce Development Agency letters" Plaintiffs sent to the LWDA." *Id.* § 5.1.

## LEGAL STANDARD

PAGA requires courts to "review and approve" the settlement of any action filed under PAGA. Lab. Code §2699(l)(2). The California Supreme Court has explained that a court's review of a PAGA settlement is to ensure "that any negotiated resolution is fair to those affected." *Williams v. Superior Court*, 3 Cal. 5th 531, 549 (2017). But "PAGA does not establish a standard for evaluating PAGA settlements." *Griffin v. Consolidated Commc'ns*, 2023 WL 3853643, at \*3 (E.D. Cal. June 6, 2023) (quoting *Smith v. H.F.D. No. 55, Inc.*, 2018 WL 1899912, at \*2 (E.D. Cal. Apr. 20, 2018)). Indeed, the Legislature, California Supreme Court, California Courts of Appeal, and LWDA have not definitively established the standards for review. *E.g., Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019) (noting the absence of a "definitive" guidance for approval of a PAGA settlement). The LWDA acknowledges the lack of a "specific benchmark" and has stated only that the relief provided under PAGA must be "genuine and meaningful," "consistent with the underlying purpose of the statute to benefit the public" and, in the context of a class action, "meet[ ] the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the public policies underlying the

PAGA.” See *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (quoting California Labor and Workforce Development Agency’s Comments on Proposed PAGA Settlement).

Federal district courts have typically followed the LWDA’s limited guidance by requiring settlements to be “fundamentally fair, adequate, and reasonable in light of PAGA’s policies and purposes.” See *Haralson*, 383 F. Supp. 3d at 972 (collecting cases). When applying this test, federal district courts often consider factors such as strength of a Plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent of discovery completed; and the expertise and views of counsel. See *Smith*, 2018 WL 1899912, at \*3. Federal district courts have also been mindful of the fact that trial courts have broad discretion to award civil penalties in amounts that are less than the maximum amounts authorized by PAGA. *Id.* at \*3; see also Lab. Code § 2699(e)(2).<sup>2</sup>

“Given PAGA’s purpose to protect the public interest, [authoritative California courts] also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA’s purposes and policies.” *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021).

## DISCUSSION

### I. The Settlement Complies with Statutory Requirements.

PAGA states that any “proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” Lab. Code. § 2699(s)(2). In satisfaction of that requirement, Plaintiffs submitted a copy of the Agreement and this motion to the LWDA through the LWDA’s online filing system in conjunction with filing this motion. Yang Decl. ¶ 18, Ex. 4.

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<sup>2</sup> A party asserting a PAGA claim is not required to meet the requirements of a class action. *Arias v. Superior Court*, 46 Cal. 4th 969, 984 (2009). Due process concerns with respect to absent class members are not present in a PAGA action. *Williams*, 3 Cal. 5th at 547 n.4. Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim. E.g., *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (noting that unnamed employees need not be given notice of the PAGA claim or settlement approval) (citing *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at \*4 (N.D. Cal. Apr. 2, 2010)). “The court does not have to approve the named PAGA plaintiff, nor does the court inquire into the adequacy of counsel’s ability to represent the unnamed employees.” *Ochoa-Hernandez*, 2010 WL 1340777, at \*4. “[T]he purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *Id.*

1 **II. The Settlement Should Be Approved as Fair in Light of PAGA’s Purposes and Policies.**

2 **A. The Settlement Is Entitled to a Presumption of Fairness.**

3 In the class action context, a trial court must determine and approve a class action settlement is  
4 fair to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class  
5 action.” *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. Of America*, 141 Cal. App. 4th 46, 60 (2006).  
6 Courts presume the absence of fraud or collusion in the negotiation of settlement unless there is  
7 evidence to the contrary. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*  
8 *Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust*  
9 *Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980).

10 While the recommendations of counsel proposing the settlement are not conclusive, the Court  
11 can properly take them into account, particularly where, as here, they have been involved in thorough  
12 investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s  
13 length negotiation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.47 (4th ed.  
14 2002); *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. at 528 (C.D. Cal. 2004) (“So  
15 long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial  
16 presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the  
17 recommendations of counsel, who are most closely acquainted with the facts of the underlying  
18 litigation.”) (citations omitted). In such circumstances, as here, courts do not substitute their judgment  
19 for that of the proponents. *National Rural Telecomms. Coop.*, 221 F.R.D. at 528; *accord Hammon v.*  
20 *Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re*  
21 *Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal*  
22 *Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

23 The factors that would give rise to a presumption of fairness in the context of a class action  
24 settlement are present in this PAGA action. Here, both Plaintiffs’ counsel and Defendant’s counsel have  
25 a great deal of experience in wage and hour and PAGA litigation. Plaintiffs’ counsel have extensive  
26 class action and PAGA litigation experience and have been approved as class counsel in numerous wage  
27 and hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 2-5; Yang Decl. ¶¶ 11-14;  
28 Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”) ¶¶ 3-5. Each side has apprised the other of their

1 respective factual contentions and legal theories, and each side has considered the other’s contentions  
2 and theories. Defendant provided the relevant numbers of aggrieved employees and pay periods, among  
3 other things—enabling Plaintiffs to assess the full value of the PAGA claims and further enabling  
4 negotiations to take place between the Parties. Yang Decl. ¶ 3. As the settlement is the result of  
5 extensive arm’s length negotiations between the Parties and their counsel, it is entitled to a presumption  
6 of fairness. *Id.* ¶¶ 3-4.

7 **B. The Settlement Obtains an Excellent Result for the State.**

8 **1. The Settlement Amount Is Reasonable.**

9 Plaintiffs contended that Defendant’s alleged Labor Code violations resulted in a \$100 per pay  
10 period penalty for each of approximately 28,841 relevant pay periods that allegedly involved failures to  
11 pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and rest  
12 periods, to pay all wages and overtime wages, to pay all sick pay wages, to reimburse all business  
13 expenses, to timely pay all wages during employment or upon termination of employment, and to  
14 provide complete and accurate itemized wage statements. Yang Decl. ¶ 5; Lab. Code § 2699(f).<sup>3</sup>

15 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 6. For example,  
16 Defendant contended that the facts showed that there were no underpayments of wages or overtime  
17 wages at all. *Id.* Moreover, even if Plaintiffs prevailed on the merits, Defendant contested the extent of  
18 liability. *Id.* Specifically, Defendant contended that PAGA penalties would be subject to discretionary  
19 reductions. *Id.* Nonetheless, the Agreement requires Defendant to pay \$650,000.00—or approximately  
20 \$22.54 per pay period for the 28,841 relevant pay periods in which Plaintiffs contended Labor Code  
21 violations occurred. *Id.*

22 While the Parties disagree on the application of the law to the facts, each Party recognized in  
23 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the  
24 settlement to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 7. Ultimately, based on a  
25 review of Defendant’s records, Plaintiffs argued that the potential total recovery amounted to  
26 \$2,884,100.00—or \$100 for each of approximately 28,841 relevant pay periods that Plaintiffs contended  
27

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<sup>3</sup> Except as otherwise noted, all “Section” references are to the Labor Code.

1 had Labor Code violations. *Id.* ¶ 6. Plaintiffs contend that the Settlement Amount of \$650,000.00—  
2 approximately 22.54% of that potential recovery—is an excellent result. *Id.*

3 Although Plaintiffs and their counsel are confident that litigation of the claims would result in a  
4 judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks  
5 that the applicable law could change, that liability could not be established at trial, or that penalties  
6 awarded after trial would be reduced. Yang Decl. ¶ 8. The settlement is fair, reasonable, and adequate,  
7 given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing  
8 litigation. *Id.*

## 9 **2. The Settlement Releases Are Appropriate.**

10 As discussed above, only Plaintiffs are subject to general releases. Agreement § 5.2. The State  
11 releases “any and all PAGA claims from July 8, 2022, through April 26, 2024, that were actually  
12 alleged, or that could have been alleged against Defendant based on the facts stated in the Action, as  
13 well as the Labor & Workforce Development Agency letters” Plaintiffs sent to the LWDA.” *Id.* § 5.1.  
14 Plaintiffs alleged targeted claims in the Action, and any settlement releases also are specifically tailored  
15 to the targeted claims alleged. The settlement releases are thus appropriate. *E.g., Carter v. City of Los*  
16 *Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were or  
17 could have been raised in the suit—is common in class action settlements.”).

## 18 **C. The Requested Payments and Allocations Are Reasonable.**

19 The Agreement provides for a Settlement Amount of \$650,000.00. Agreement § 3.1. From the  
20 Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Settlement Amount (or  
21 \$216,666.67) and litigation costs of up to \$30,000.00 are permitted—though Plaintiffs’ Counsel actually  
22 incurred \$35,305.46 in costs. *Id.* § 3.1.1; Yang Decl. ¶ 9, Ex. 2 (\$9,847.49); Nordrehaug Decl. ¶¶ 13, Ex.  
23 3 (\$25,457.97). The requested General Release Payments are \$10,000.00 to each Plaintiff. Agreement §  
24 3.1.2. The requested Administration Costs are \$11,500.00. Agreement § 3.1.3. The PAGA Penalty Fund  
25 thus will be \$341,833.33, and pursuant to statute, 75% of the PAGA Penalty Fund (or \$256,375.00)  
26 would constitute the LWDA Payment, and 25% of the PAGA Penalty Fund (or \$85,458.33) would be  
27  
28

payable to Aggrieved Employees based on the number of relevant pay periods worked by each Aggrieved Employee. *Id.* § 3.1.4; *see also* Yang Decl. ¶ 10.<sup>4</sup>

**1. The Requested Attorneys' Fees and Costs Award Is Reasonable.**

Plaintiffs request an attorneys' fees award of 33⅓% of the Settlement Amount. Agreement § 3.1.1. Further, the Parties have agreed to reimbursement of Plaintiffs' Counsel's litigation costs. Plaintiffs' Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of process, mediation fees, and payment of other litigation related costs.

**a. The percentage of the fund method supports the requested fees.**

PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. Lab. Code § 2699(k)(1). As discussed below, the requested attorneys' fees of \$216,666.67 are reasonable in light of the standards established in the class action context. There, 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 settlement beneficiaries. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *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).

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

The requested attorneys' fees of \$216,666.67 should be awarded for several reasons:

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<sup>4</sup> Plaintiffs file this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 18.

1 First, the fee award representing 33⅓% of the fund clearly falls within the accepted range and is  
2 consistent with other rulings of other courts and comprehensive surveys of fee awards. Attorneys' fees  
3 awards of 35% of the fund are within the expected range in the "market in legal services." See  
4 Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg.  
5 Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee awards  
6 were between 25 percent and 35 percent"); see also *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66  
7 n.11 (2008) ("[E]mpirical studies [that] show that ... fee awards in class actions average around one-  
8 third of the recovery.").<sup>5</sup>

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

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

15 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$650,000.00 has been  
16 created. For Plaintiffs' Counsel, the fees here were wholly contingent in nature and the case presented  
17 far more risk than the usual contingent fee case—as a pending California Supreme Court decision had  
18 the potential to eliminate the possibility of any recovery on the PAGA claims. Yang Decl. ¶ 3.  
19 Nonetheless, despite the possibility of recovering nothing on the PAGA claims, Plaintiffs' Counsel did  
20 not attempt to secure a heavily discounted settlement at the outset but instead continued litigating the  
21 claims to obtain an excellent result for the State.

22 **b. The lodestar cross-check supports the requested fees.**

23 The amount requested is reasonable for an additional reason. While the primary method  
24 employed to determine fees is the percentage method, courts have discretion to use the lodestar method  
25 to "cross-check" the amount of fees calculated by way of percentage. The *Laffitte* court emphasized,  
26 however, that "the lodestar calculation, when used in this manner, does not override the trial court's

27 <sup>5</sup> Such a fee award mimics the market and "is supported by the fact that typical contingency fee  
28 agreements provide that class counsel will recover 33% if the case is resolved before trial and 40% if the  
case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at \*16 n.59 (C.D. Cal. July  
21, 2008) (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and  
Non-Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11).

primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) (“[T]he lodestar cross-check does not trump the primary reliance on the percentage of common fund method”).

Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001).<sup>6</sup> Indeed, the intermediate court in *Laffitte*—after finding that “2 to 4” is a reasonable range for multipliers on a cross-check—affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82.<sup>7</sup> Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded by the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in over 30 cases).<sup>8</sup>

With respect to Plaintiffs’ Counsel’s lodestar, at least 330.7 hours have been spent by Plaintiffs’ Counsel in litigating this case. Yang Decl. ¶ 15, Ex. 3 (125.7 hours); Nordrehaug Decl. ¶ 11, Ex. 3 (205.0 hours). Moreover, Plaintiffs’ Counsel expects to incur approximately 5.0 hours of anticipated time spent to attend the settlement approval hearing, secure approval, and respond to post-approval phone calls and correspondence from the Administrator and defense counsel to effectuate the terms of the settlement. Yang Decl. ¶ 15. Courts are quite liberal in the evidence required to prove an attorney’s hours; an attorney’s testimony alone may suffice. *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986)

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<sup>6</sup> *Accord Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand).

<sup>7</sup> The intermediate court opinion was affirmed in full upon review by the California Supreme Court.

<sup>8</sup> Federal district courts applying California law have likewise routinely approved cross-check multipliers between 2.0 and 3.0 in employment cases. *See, e.g., Willner v. Manpower Inc.*, 2015 WL 3863625, at \*7 (N.D. Cal. June 22, 2015) (affirming a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at \*5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations). Other courts have found even higher multipliers to be reasonable by comparison to other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008) (approving a 5.2 multiplier after surveying a large body of cases affirming a higher multiplier).

1 (“Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence  
2 to support an award of attorney fees, even in the absence of detailed time records.”).

3 Reasonable hours include, in addition to time spent during litigation, the time spent before the  
4 action is filed, including time spent interviewing the clients, investigating the facts and the law, and  
5 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee  
6 award should also include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v.*  
7 *Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiffs’ Counsel seeks compensation involve  
8 only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

9 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
10 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000).  
11 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney’s skill  
12 and experience, the nature of the work performed, the relevant area of expertise and the attorney’s  
13 customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

14 Here, the requested hourly rates range from \$250 to \$995 per hour. Yang Decl. ¶ 16; Nordrehaug  
15 Decl. ¶ 11, Ex. 3. Plaintiffs’ Counsel’s skill and experience justify the requested rates. As shown in the  
16 supporting declarations, Plaintiffs’ Counsel has significant experience in the area of employment and  
17 wage and hour class and representative actions. Plaintiffs’ Counsel’s practices focus on representing  
18 employees in employment matters, particularly wage and hour cases on a contingency basis. Yang Decl.  
19 ¶¶ 11-14; Nordrehaug Decl. ¶¶ 3-5, Ex. 1.

20 Based on the rates and 335.7 total hours, the lodestar for Plaintiffs’ Counsel through the  
21 finalization of this settlement will be approximately \$239,610.00. Yang Decl. ¶ 17; Nordrehaug Decl. ¶  
22 11, Ex. 3. The requested attorneys’ fees result in a negative multiplier of approximately 0.90. Again, the  
23 requested fees are reasonable and fair, based on the factors described above. The cross-check also  
24 supports the requested fees.

25 **c. The requested litigation costs are reasonable.**

26 PAGA also allows a prevailing plaintiff to recover litigation costs. Lab. Code § 2699(g). The  
27 Agreement permits Plaintiffs’ Counsel to request up to \$30,000.00 in litigation costs. Agreement § 3.1.1.  
28 Even though Plaintiffs’ Counsel incurred \$35,305.46 in costs, Plaintiffs’ Counsel seeks \$30,000.00 in

costs only. Yang Decl. ¶¶ 9-10, Ex. 2; Nordrehaug Decl. ¶ 13, Ex. 3. As set forth in accompanying declarations of Plaintiffs' counsel, these costs were all directly incurred in the prosecution of this action, including filing fees and service fees. *Id.* As such, Plaintiffs' Counsel's request for costs in the amount of \$30,000.00 is fair, adequate, reasonable, and consistent with PAGA's policies. Because this amount is less than what was provided in the Agreement, the difference will be distributed to the LWDA and Aggrieved Employees as part of the PAGA Penalty Fund.

## **2. The Requested General Release Payment Is Reasonable.**

Plaintiffs Cassandra Walker, Frances Pardo, Christian Verduzco, Collin Johnson, and Hannah Gansen request modest General Release Payments of \$10,000.00 each. Agreement § 3.1.2. The requests are reasonable in light of the general releases that the Agreement requires of Plaintiffs. Independently, the requests are appropriate in recognition of Plaintiffs' efforts on behalf of the State. Declaration of Cassandra Walker ("Walker Decl.") ¶¶ 2-3, Declaration of Frances Pardo ("Pardo Decl.") ¶¶ 5-8, Declaration of Christian Verduzco ("Verduzco Decl.") ¶¶ 5-8, Declaration of Collin Johnson ("Johnson Decl.") ¶¶ 5-8, and Declaration of Hannah Gansen ("Gansen Decl.") ¶¶ 5-8.

With respect to the general releases, Plaintiffs did not proceed with litigation of all of their potential claims and instead strategically pursued the targeted claims in this lawsuit to maximize their ability to recover penalties for the State. Nonetheless, Plaintiffs were required to agree to a general release as part of this settlement, though in any other context, Plaintiffs would have sought at least a \$10,000.00 payment in exchange for a general release.

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

As part of their duties as private attorneys general, Plaintiffs provided all necessary information and evidence that resulted in this settlement. Walker Decl. ¶¶ 2-3; Pardo Decl. ¶¶ 5-8, Verduzco Decl. ¶¶ 5-8, Johnson Decl. ¶¶ 5-8, and Gansen Decl. ¶¶ 5-8. Plaintiffs met and conferred with their counsel on a number of occasions to discuss the case. *Id.* ¶ 3; Pardo Decl. ¶¶ 5-8, Verduzco Decl. ¶¶ 5-8, Johnson

Decl. ¶¶ 5-8, and Gansen Decl. ¶¶ 5-8. They provided information and documents to their counsel and made themselves available to answer any other questions. *Id.* Ultimately, Plaintiffs' efforts secured an exceptional result.

In addition to the invaluable services that Plaintiffs provided, they also took a significant risk. Walker Decl. ¶ 4; Pardo Decl. ¶ 10, Verduzco Decl. ¶ 10, Johnson Decl. ¶ 10, and Gansen Decl. ¶ 10. Plaintiffs risk prejudice in the future from other potential employers that may be less willing to hire an individual who has filed suit against a prior employer. Plaintiffs took these risks upon themselves and the State benefited. No other allegedly aggrieved employees had to face potential prejudice in future employment. Nor did the State have to allocate its limited resources to ensure compliance with the Labor Code.

### **3. The Administration Costs Are Reasonable.**

Because the Agreement requires payments not only to Plaintiffs, Plaintiffs' Counsel, and the LWDA, but also to other current and former employees, significant time and effort will be required to administer the Agreement if it is approved by this Court. Among other things, the Administrator will prepare and mail each absent employee's share and prepare appropriate tax forms for all parties who receive payments under the Agreement. Similarly, any uncashed checks must be voided so that the unclaimed amounts can be forwarded to the State of California Controller's Office Unclaimed Property Fund. Agreement § 4.4.

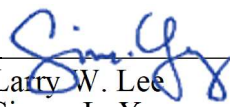
Phoenix Settlement Administrators, a well-recognized settlement administrator, has quoted Administration Costs not to exceed \$11,500.00 to administer the settlement. Yang Decl. ¶ 10; *see also* Agreement § 3.1.3. The Administration Costs are reasonable and should be approved.

### **CONCLUSION**

The proposed settlement would result in substantial monetary benefits to the State. It was the result of informed, arm's length negotiations conducted by counsel experienced in wage and hour class and representative action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the benefit of the State and in furtherance of PAGA's policies, Plaintiffs respectfully request that the Court grant approval of the settlement.

1 DATED: October 16, 2024

DIVERSITY LAW GROUP, P.C.

2  
3 By:   
4 Larry W. Lee  
5 Simon L. Yang  
6 Attorneys for Plaintiff  
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