

Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Aggrieved Employees
(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MARION TELLEZ, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

MERCY HOUSING MANAGEMENT
GROUP, a corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 23CV031003

[Assigned for all purposes to the Hon. Victoria
Kolakowski in Department 518]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE THE PARTIES'
SETTLEMENT AGREEMENT PURSUANT
TO THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004;
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: January 23, 2025

Time: 2:30 pm

Dept.: 518

Reservation ID: 119802275085

ADDITIONAL COUNSEL

Edward W. Choi, State Bar No. 211334
Edward.choi@choiandassociates.com

LAW OFFICES OF CHOI & ASSOCIATES, APLC

515 S. Figueroa St. Suite 1250
Los Angeles, CA 90010
Telephone: (213) 381-1515
Facsimile: (213) 465-4885

Dennis S. Hyun (State Bar No. 224240)

HYUN LEGAL, APC

515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Cal Bar No. 170131

POLARIS LAW GROUP

501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: 831.531.4214
Facsimile: 831.634.0333
bill@polarislawgroup.com

Attorneys for Plaintiff and the Aggrieved Employees

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

2 **PLEASE TAKE NOTICE** that on January 23, 2025, at 2:30 p.m., or as soon thereafter as
3 the matter be heard in Department 518 of the Superior Court of the State of California for the
4 County of Alameda, Hayward Hall of Justice Courthouse located at 24405 Amador Street
5 Hayward, CA 94544, Plaintiff Marion Tellez will, and hereby do, move the Court for entry of an
6 order approving the Private Attorneys General Act Settlement Agreement and Release (“Settlement
7 Agreement” or “Settlement”) entered into in the above-captioned civil action between Plaintiff and
8 Defendant MERCY HOUSING MANAGEMENT GROUP (“Defendant”) (Plaintiff and Defendant
9 shall collectively be referred to as the “Parties”) under the Labor Code Private Attorneys General
10 Act of 2004 (the “PAGA”).

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

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

25 ///

26 ///

1 Dated: December 30, 2024

DIVERSITY LAW GROUP, P.C.
LAW OFFICES OF CHOI & ASSOCIATES

3 By: 
4 _____

Larry W. Lee

Edward W. Choi

Attorneys for Plaintiff Marion Tellez and the
Aggrieved Employees

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. FACTUAL AND PROCEDURAL BACKGROUND	1
III. STANDARD OF REVIEW	3
IV. ARGUMENT.....	4
A. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant to Labor Code § 2699(l)(2).....	4
B. The Court Should Approve the Settlement Agreement.....	4
1. The Settlement Agreement is Entitled to a Presumption of Fairness	4
2. The Scope of the Settlement Agreement is Fair, Adequate, and Reasonable	5
3. The Settlement Agreement Apportions Civil Penalties Between the LWDA and the Aggrieved Employees as Required by PAGA	8
4. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Attorneys' Fees.....	9
a. Percentage of the Fund.....	9
b. Lodestar Cross-Check.....	9
5. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Litigation Costs	12
6. The Payments to Plaintiff Should Be Approved	13
7. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Settlement Administration Costs.....	13
V. CONCLUSION	14

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Arias v. Superior Court</i> , 46 Cal. 4th 969, 985 (2009)	5, 6
<i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809	7
<i>Carrington v. Starbucks Corporation</i> (Cal. Ct. App. Nov. 27, 2018) No. D072392	7
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43, 66, fn. 11 (2008)	9
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	10
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1800–01 (1996)	5
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629, 632-33 (1998)	12
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , 59 Cal. 4th 348, 383 (2014)	6
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 130 (2008)	6
<i>Laffitte v. Robert Half Int’l</i> , 1 Cal. 5th 480, 503 (2016)	9, 10
<i>Lealao</i> , 82 Cal. App. 4th 19, 29–30	10
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553, 559 (1986)	11
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084, 1095 (2000)	12
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 639 (1982) [<i>Serrano IV</i>]	12
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal App.4th 495, 512 (2009)	10
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 250 (2001)	6, 10

Federal Cases

<i>Ceja-Corona v. CVS Pharmacy, Inc.</i> , No. 1:12-cv-01868, 2014 WL 4472691, at *9 (E.D. Cal. Sept. 11, 2014)	5
<i>Craft v. County of San Bernardino</i> , 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal. 2008)	11
<i>Dyer v. Wells Fargo Bank, N.A.</i> , 303 F.R.D. 326, 334 (N.D. Cal. 2014)	11
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *5 (N.D. Cal. Feb. 6, 2013)	11
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) ...	13
<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000)	7

1	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294, 306-307 (3d Cir. 2005).....	10
2	<i>Lane v. Facebook, Inc.</i> , 696 F.3d 811, 819 (9th Cir. 2012).....	6
3	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54, 62 (1980).....	12
4	<i>O'Connor v. Uber Techs., Inc.</i> , 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016)	4, 5, 6
5	<i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948, 958–59 (9th Cir. 2009)	13
6	<i>Sakkab v. Luxottica Retail North America, Inc.</i> , 803 F.3d 425, 435 (9th Cir. 2015)	5
7	<i>Smith v. H.F.D. No. 55, Inc.</i> , No. 2:15-cv-01293, 2018 WL 1899912, at *2 (E.D. Cal. Apr. 20,	
8	2018)	3, 4, 6
9	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)	8
10	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	13
11	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043, 1051 (9th Cir. 2002).....	11
12	<i>Willner v. Manpower Inc.</i> , No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22,	
13	2015)	11
14	Statutes	
15	Civil Code § 1542	3, 13
16	Labor Code § 1194.....	2, 6
17	Labor Code § 1197.....	2, 6
18	Labor Code § 201.....	2, 6
19	Labor Code § 202.....	2, 6
20	Labor Code § 203.....	2, 6
21	Labor Code § 204.....	2, 6
22	Labor Code § 226.....	2, 6
23	Labor Code § 226.7.....	2, 6
24	Labor Code § 233.....	2
25	Labor Code § 246.....	2, 6
26	Labor Code § 2698, <i>et seq</i>	2, 6
27	Labor Code § 2699 (e)(2)	4
28	Labor Code § 2699 (g).....	9, 12

1	Labor Code § 2699 (l)(4)	4
2	Labor Code § 2699(e)(2)	6
3	Labor Code § 2699(i).....	8
4	Labor Code § 510.....	2, 6
5	Labor Code § 512.....	2, 6
6	Labor Code § 558.....	2, 6
7	Other Authorities	
8	2003 Cal. Stat. ch. 906 § 1	6
9	2003 Cal. Stat. ch. 906 § 1(d)	4
10	Business and Professions Code § 17200, <i>et seq.</i>	2, 6
11	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237, 258	
12	(1985).....	10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion Plaintiff Marion Tellez respectfully requests the Court’s approval of
4 the Private Attorneys General Act Settlement Agreement and Release¹ (the “Settlement
5 Agreement” or “Settlement”) with Defendant MERCY HOUSING MANAGEMENT GROUP
6 (“Defendant”). The settlement was reached after propounding written discovery and then
7 agreeing to mediation and production of documents and data on an informal basis. As part of the
8 privileged settlement negotiations, Defendant produced data regarding the Aggrieved Employees
9 and the number of pay periods at issue for each of Plaintiff’s claims from which Plaintiff’s
10 counsel calculated the maximum PAGA penalty exposure. Declaration of Larry W. Lee (“Lee
11 Decl.”) ¶¶6-7. Based on this information, the Parties have settled this case on a representative
12 PAGA basis for \$290,000.00. *Id.* at ¶¶6-10, Ex. B.

13 The Settlement Agreement allocates one-third of the Maximum Settlement Amount for
14 attorneys’ fees, or \$96,666.66, up to \$15,000.00 in litigation costs incurred by Plaintiff’s
15 Counsel, \$5,000.00 to Plaintiff in exchange for a general release, and up to \$6,500.00 for
16 settlement administration costs. Settlement Agreement ¶4.1. The remainder, or the “PAGA
17 Payment,” is allocated to the payment of civil penalties under PAGA, of which 75% is to be
18 distributed to the Labor and Workforce Development Agency (the “LWDA”) and 25% of which
19 is to be distributed to the “Aggrieved Employees” on whose behalf Plaintiff filed this action as
20 required by PAGA. *Id.* ¶ 2.14.

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

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 On April 6, 2023, Plaintiff Marion Tellez (“Tellez”) sent notice to the LWDA giving
27 _____

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

1 notice of her intent to pursue a representative PAGA action, on behalf of herself and the State of
2 California as well as on behalf of other aggrieved employees (the “PAGA Notice”). Lee Decl. ¶
3 2, Ex. A. On April 10, 2023, Plaintiff filed a supplemental PAGA notice to the LWDA adding
4 Labor Code §233. *Id.*

5 On April 11, 2023, Plaintiff filed a Class Action Complaint against Defendant in the
6 Superior Court of California, County of Alameda, asserting violation of Labor Code §§ 201, 202,
7 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197 and 1197.1. Lee Decl. ¶ 3.

8 On June 20, 2023, with leave of Court, Plaintiff filed a First Amended Representative
9 Action Complaint under the Private Attorneys General Act of 2004 for violation of Labor Code
10 §§ 2698, *et seq.* (the “Action”). Lee Decl. ¶4.

11 Plaintiff propounded interrogatories and request for production of documents on
12 Defendant. *Id.* ¶5. After service of written discovery, the Parties agreed to engage in mediation
13 before neutral Daniel J. Turner, Esq. *Id.*. In connection with the mediation, Defendant’s Counsel
14 provided Plaintiff’s Counsel with information regarding the number of pay periods where (1)
15 overtime and non-discretionary remuneration was paid during the same pay period; (2) meal
16 and/or rest break premium wages and non-discretionary remuneration was paid during the same
17 pay period; and (3) wage statements that included the foregoing payments. *Id.* ¶6. Based on this
18 information, the Parties conducted settlement negotiations. *Id.*

19 The Parties engaged in a full day of arm’s-length negotiation through the mediator and
20 was able to reach a settlement. Lee Decl. ¶9. The Parties subsequently executed the Settlement
21 Agreement. *Id.* ¶10, Ex. B.

22 The Maximum Settlement Amount is \$290,000.00. Settlement Agreement ¶2.11.
23 Settlement Agreement allocates one-third of the Maximum Settlement Amount for attorneys’
24 fees, or \$96,666.66, up to \$15,000.00 in litigation costs incurred by Plaintiff’s Counsel,
25 \$5,000.00 to Plaintiff in exchange for a general release, and up to \$6,500.00 for settlement
26 administration costs. *Id.* ¶4.1. The remainder, or the Net PAGA Settlement Amount, is allocated
27 to the payment of civil penalties under PAGA, of which 75% is to be distributed to the LWDA
28 and 25% of which is to be distributed to the Aggrieved Employees on whose behalf Plaintiff

1 filed this action as required by PAGA. *Id.* at 2.14.

2 The Settlement Agreement provides the following PAGA Released Claims:

3 “All PAGA Settlement Employees (including Plaintiff) are deemed
4 to release, on behalf of themselves and their respective former and
5 present representatives, agents, attorneys, heirs, administrators,
6 successors, and assigns, the Releasees from all claims for PAGA
7 penalties (and associated attorneys’ fees, costs, and interest) that
8 were alleged, or reasonably could have been alleged, for based on
9 the facts alleged in the PAGA Notice and the Complaint arising
10 during their work for MHMG in California during the PAGA
11 Release Period.”

12 *Id.* ¶ 4.6.2. Plaintiff also executed a general release as part of the Settlement Agreement,
13 including a waiver of Civil Code § 1542. *Id.* ¶4.6.1.

14 Each PAGA Settlement Employee will receive an Individual PAGA Payment
15 proportionate to the number of pay periods worked. *See id.* ¶ 4.3.1(a)-(c). Each Individual PAGA
16 Payment will be treated as nonwage income with no tax withholdings to be made, and will be
17 reported, if required, by applicable tax laws, by the Settlement Administrator on IRS Form
18 1099s. *Id.* ¶4.3.2.

19 **III. STANDARD OF REVIEW**

20 Although PAGA requires courts to “review and approve” the settlement of any civil
21 action filed under PAGA, *see* Cal. Lab. Code § 2699 (l)(2), neither the Legislature, the California
22 Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard
23 PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d
24 959, 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a
25 PAGA settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL
26 1899912, at *2 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating
27 PAGA settlements.”). The LWDA itself has acknowledged the lack of a “specific benchmark”
28 and 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* California Labor and Workforce

Development Agency’s Comments on Proposed PAGA Settlement at 2-3, *O’Connor v. Uber Techs. Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

Left to develop their own standards, 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 plaintiff’s 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. *See, e.g., id.* at *3; *see also* Cal. Lab. Code § 2699 (e)(2).

IV. ARGUMENT

A. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant to Labor Code § 2699(l)(2)

When enacting PAGA, the Legislature intended to ensure that the LWDA retained “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA online “at the same time that it is submitted to the court,” to give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement Agreement and this motion to the LWDA through the LWDA’s online filing system in conjunction with filing this motion. *See* Lee Decl. ¶ 18, Ex. E.

B. The Court Should Approve the Settlement Agreement

1. The Settlement Agreement is Entitled to a Presumption of Fairness

In class actions, judicial review of a settlement’s fairness is designed to protect class members who had no say in the negotiation of the settlement by ensuring that the settlement is not the product of “fraud,” “overreaching,” or “collusion” by the negotiating parties and that

1 “due regard” was given to the rights and interests of absent class members subject to the
2 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Although
3 PAGA actions and class action have certain “fundamental” differences (*see Sakkab v. Luxottica*
4 *Retail North America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)), PAGA settlements are also
5 subject to Court approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing
6 the scope of a judgment in a PAGA action); *O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d
7 1110, 1134 (N.D. Cal. 2016).

8 Against this backdrop, California courts have identified a set of circumstances entitling
9 class action settlements to a “presumption of fairness.” *See Dunk*, 48 Cal. App. 4th at 1802. In
10 particular, a presumption of fairness arise where “(1) the settlement is reached through arm’s-
11 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
12 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
13 objectors is small.” *See id.*

14 All of the factors that would give rise to a presumption of fairness in the context of a
15 class action settlement are present in this PAGA action. After this lawsuit was commenced, the
16 Parties agreed to engage in arm’s length negotiations between highly experienced counsel. As
17 part of their privileged settlement negotiations, Defendant produced data regarding the number
18 of pay periods at issue for each of the claims, from which Plaintiff’s Counsel calculated the
19 maximum PAGA penalties and analyzed Defendant’s potential liability. Lee Decl. ¶¶ 6-7. Both
20 Plaintiff’s and Defendant’s counsel have significant experience in litigating wage and hour class
21 and PAGA actions, which further supports the reasonableness of the settlement. Lee Decl. ¶¶ 15-
22 17; Declaration of Edward W. Choi (“Choi Decl.”) ¶ 5; Declaration of Dennis S. Hyun (“Hyun
23 Decl.”) ¶¶2-5. Therefore, the Settlement Agreement is entitled to a presumption of fairness.

24 **2. The Scope of the Settlement Agreement is Fair, Adequate, and Reasonable**

25 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the
26 “vigorous assessment and collection of civil penalties as provided in the Labor Code” to
27 sometimes be “the only meaningful deterrent to unlawful conduct,” the Legislature enacted
28 PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement

1 capability of the LWDA with private enforcement actions by “aggrieved employees” acting as
2 private attorneys general. *See* 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS*
3 *Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of
4 in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA
5 to collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see*
6 *also Iskanian*, 59 Cal. 4th at 381-82. In that role, the named plaintiff “take[s] on a special
7 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.”
8 *See O’Connor*, 201 F. Supp. 3d at 1134.

9 Plaintiff’s claims in this action are based on alleged violations of Labor Code §§ 201,
10 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et seq.* *See generally*
11 Plaintiff’s First Amended Complaint and PAGA notices. When reviewing a settlement
12 agreement, “the test is not the maximum amount plaintiffs might have obtained at trial on the
13 complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), nor is it
14 “whether the settlement agreement is perfect in the estimation the reviewing court.” *See Lane*
15 *v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is “whether the settlement is
16 reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App. 4th at 250. Relevant
17 considerations include the strength of a plaintiff’s case and the risk, expense, complexity, and
18 likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,
19 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In PAGA settlements, courts also consider
20 their authority to award less than the maximum penalty authorized by PAGA. *See* Cal. Lab. Code
21 § 2699(e)(2); *see also Smith*, 2018 WL 1899912 at *3.

22 Here, Defendant produced data for each of Plaintiff’s claims, which permitted Plaintiff to
23 analyze Defendant’s potential exposure and liability. Lee Decl. ¶¶6-7. Defendant’s potential
24 exposure could be as high as \$1,163,200 if the Court were to award a \$100 penalty for each pay
25 period encompassed by the proposed settlement for each of the violations alleged. *Id.* ¶7.
26 Specifically, there were approximately 4,531 pay periods wherein overtime wages and non-
27 discretionary remuneration were paid during the same pay period, which amounts to a maximum
28 exposure of \$453,100. *Id.* Further, there were approximately 1,224 pay periods wherein meal

1 and rest break premiums and non-discretionary remuneration were paid during the same pay
2 period, which amounts to a maximum exposure of \$122,400. *Id.* There were 5,755 wage
3 statements issued to aggrieved employees that contained one of the foregoing payments, which
4 amounts to a maximum exposure of \$575,500. *Id.* Finally, there were 122 formerly employee
5 aggrieved employees which amounts to a maximum exposure of \$12,200 for PAGA penalties
6 predicated on waiting time penalties. *Id.*

7 Defendant also argued that even if Plaintiff prevailed, the recoverable penalties under
8 PAGA are minimal. *Id.* ¶8. Indeed, courts to consider the issue have refused to “stack” PAGA
9 penalties and often significantly reduce the penalties awarded. *Id.* If penalties were not
10 “stacked”, the total amount of exposure would amount to \$575,500. *Id.* Further, courts have
11 discretion to reduce PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App.
12 Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction
13 to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018). If the Court
14 in this case were to reduce penalties to \$5 a pay period, as was approved in *Carrington*, the
15 potential exposure amounts to approximately \$58,160.00 (5% of \$1,163,200). *Id.*

16 Under the circumstances of this case, the payment of \$290,000.00 in civil penalties in
17 fair, adequate, and reasonable. The payment of \$290,000.00 in exchange for a release of only
18 those claims for civil penalties that are pleaded in the Action or that could have been pleaded
19 based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the
20 Action will have a substantial deterrent effect on Defendant and other California employers and
21 will confer benefits on the Aggrieved Employees, who will each receive a portion of the
22 settlement.

23 Numerous courts have held that gross settlements approximating between only 8 and
24 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin.*
25 *Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement
26 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash
27 settlement amounting to only a fraction of the potential recovery does not per se render the
28 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should

1 be assessed relative to risks of pursuing the litigation to judgment”; noting that whether the
2 settlement is fair and adequate depends on the “the difficulties in proving the case”);
3 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
4 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
5 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct.
6 Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour
7 class settlement which obtained **only 9.1%** of projected damages, given the risks of continued
8 litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
9 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of
10 approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A.*,
11 *Inc.*, No. 10–cv–02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was
12 reasonable).

13 In the present case, the Maximum Settlement Amount is approximately 25% of the total
14 maximum “stacked” exposure, which is a very reasonable settlement amount. In sum, this
15 settlement is fair, reasonable, and consistent with PAGA’s policies and purposes under these
16 circumstances.

17 **3. The Settlement Agreement Apportions Civil Penalties Between the**
18 **LWDA and the Aggrieved Employees as Required by PAGA**

19 Except when civil penalties are recovered from a defendant who did not have any
20 employees at the time of an alleged violation, civil penalties recovered under PAGA must be
21 distributed so that 75% of the civil penalties are paid to the to LWDA and 25% are paid to the
22 “aggrieved employees” on whose behalf the PAGA action was brought. *See* Cal. Lab. Code §
23 2699(i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net
24 PAGA Payment to be paid to the LWDA and 25% of the PAGA Payment to be paid to the
25 Aggrieved Employees. Settlement Agreement ¶ 2.14. The Aggrieved Employees will receive
26 penalties based on the number of pay periods they worked during the applicable period using a
27 pro rata distribution formula. *Id.* ¶ 4.3.1 (a)-(c).

28 ///

1 **4. The Settlement Agreement Allocates a Fair, Adequate, and**
2 **Reasonable Amount to the Payment of Attorneys' Fees**

3 **a. Percentage of the Fund**

4 PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab.
5 Code § 2699 (g). In recognition of this, the Settlement Agreement allows Plaintiff's Counsel to
6 request up to 33 and 1/3 percent (\$96,666.66) in attorneys' fees. *See* Settlement Agreement ¶4.1.
7 This amount is fair, adequate, and reasonable for two reasons.

8 First, in class actions, state and federal courts have held that when a class action
9 establishes a monetary fund for the benefit of the class members out of which attorneys' fees
10 may be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate
11 percentage of the fund created." *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016)
12 (affirming a fee award representing 33 1/3 percent of the fund and joining "the overwhelming
13 majority of federal and state courts" in approving the "percentage method" as a reasonable
14 means for determining attorney fee awards in class actions). While different from class action
15 settlements in important ways, PAGA settlements also involve the establishment of a common
16 fund for the benefit of persons other the named plaintiff, so the reasons for utilizing the
17 percentage method are the same. *See id.* (noting that the percentage method provides "ease of
18 calculation," "alignment of incentives between counsel and the class," "a better approximation of
19 market conditions in a contingency case," and the "encouragement...to seek an early
20 settlement"). The \$96,666.66 requested by Plaintiff's Counsel represents one-third of the
21 Maximum Settlement Amount, which is consistent with awards usually approved in class
22 actions. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008) ("[F]ee awards in
23 class actions average around one-third of the recovery"); *see also Laffitte*, 1 Cal. 5th at 506
24 (upholding the approval of a fee award equal to one-third of the total settlement amount).

25 **b. Lodestar Cross-Check**

26 When the primary method employed to determine fees is the percentage method, courts
27 have discretion to use the lodestar method to "cross-check" the amount of fees calculated by way
28 of percentage. The *Laffitte* Court emphasized, however, that "the lodestar calculation, when used

1 in this manner, does not override the trial court’s primary determination of the fee as a
2 percentage of the common fund and thus does not impose an absolute maximum or minimum on
3 the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs.*
4 *Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the
5 primary reliance on the percentage of common fund method”).

6 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means
7 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
8 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
9 range, but the court is not necessarily required to make such an adjustment.” *Id.* (emphasis
10 added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-
11 checks are not required; in many cases, performing a cross-check “undermines” one of the
12 primary reasons for using the percentage method: aligning counsel’s incentives with the benefits
13 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain
14 the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court*
15 *Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29-30 (citing
16 the recommendations of the Third Circuit Task Force with approval and observing that “[t]he
17 criticisms of the lodestar approach set forth in this Report are now echoed by many authorities,
18 who have been most vocal about the manner in which it exacerbates the problem of ‘cheap
19 settlements’ and burdens already overworked trial judge.”).

20 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or
21 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*, e.g.,
22 *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
23 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
24 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
25 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
26 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
27 a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was
28 affirmed in full by the California Supreme Court in its decision guiding lower courts on

1 assessing fees.

2 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
3 awarded by the percentage method showing that the majority of multipliers awarded are “in the
4 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming
5 a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
6 over 30 cases). Federal district courts applying California law have likewise routinely approved
7 cross-check multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower*
8 *Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a
9 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
10 *N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar
11 multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
12 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
13 violations). Other courts have found even higher multipliers to be reasonable by comparison to
14 other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal.
15 2008) (approving a 5.2 multiplier on a cross-check after surveying a large body of cases
16 affirming a higher multiplier).

17 With respect to Plaintiff’s Counsel’s lodestar, Plaintiff’s Counsel will have expended
18 approximately 146.00 hours litigating this case, which includes approximately 30 hours of
19 anticipated time spent after approval responding to correspondence and phone calls from
20 Aggrieved Employees, the Settlement Administrator, and Defendant’s Counsel. Lee Decl. ¶12;
21 Choi Decl. ¶ 7; Hyun Decl. ¶ 10. Plaintiff’s Counsel request hourly rate of \$900.00 per hour.
22 Lee Decl. ¶ 13; Choi Decl. ¶ 6; Hyun Decl. ¶ 11. The courts are quite liberal in the evidence
23 required to prove an attorney’s hours. Detailed time records are not required. An attorney’s
24 testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a
25 particular case is sufficient evidence to support an award of attorney fees, even in the absence of
26 detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

27 Reasonable hours include, in addition to time spent during litigation, the time spent
28 before the action is filed, including time spent interviewing the clients, investigating the facts and

1 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
2 62 (1980). The fee award should also include fees incurred to establish and defend the attorneys’
3 fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff’s Counsel
4 seek compensation involve only these types of tasks. Thus, the number of hours for which fees
5 are sought is reasonable.

6 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
7 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
8 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
9 attorney’s skill and experience, the nature of the work performed, the relevant area of expertise
10 and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
11 4th 629, 632-33 (1998).

12 Plaintiff’s Counsel’s skill and experience justify the requested rates. As shown in the
13 supporting declarations, Plaintiff’s Counsel have significant experience in the area of
14 employment and wage and hour class and representative actions. Their practices focus on
15 representing employees in employment matters, particularly wage and hour cases on a
16 contingency basis. Lee Decl. ¶ 16; Choi Decl. ¶ 5; Hyun Decl. ¶ 7. As such, based on the hours
17 and applicable rate, Plaintiff’s Counsel’s lodestar amount through the finalization of this
18 settlement – without a multiplier – will be approximately \$149,600, which **exceeds the fee**
19 **requested** by Plaintiff here and results in a negative lodestar multiplier. Lee Decl. ¶ 13; Choi
20 Decl. ¶ 7; Hyun Decl. ¶ 11. Accordingly, the cross-check supports the fee requested.

21 **5. The Settlement Agreement Allocates a Fair, Adequate, and**
22 **Reasonable Amount to the Payment of Litigation Costs**

23 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code §
24 2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s Counsel to request up to
25 \$15,000.00 in litigation costs. Settlement Agreement ¶4.7.

26 Plaintiff’s Counsel request \$9,313.44 for the reimbursement of litigation costs. As set
27 forth in accompanying declarations of Plaintiff’s Counsel, these costs were all directly incurred in
28 the prosecution of this action, including, but not limited to, filing fees, service fees, and

1 mediation fees. Lee Decl. ¶ 14, Ex. C; Choi Decl. ¶ 8, Ex. B. As such, Plaintiff's Counsel's
2 request for costs in the amount of \$9,313.44 is fair, adequate, reasonable, and consistent with
3 PAGA's policies. Because this amount is less than the \$15,000.00 that was provided in the
4 Settlement Agreement, the difference will be distributed to the LWDA and Aggrieved
5 Employees.

6 **6. The Payments to Plaintiff Should Be Approved**

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

13 Here, Plaintiff respectfully requests \$5,000.00, which is intended to compensate Plaintiff
14 for the time spent on this case and for executing a general release, including of Civil Code §
15 1542, which was not required by Aggrieved Employees. Declaration of Marion Tellez ("Tellez
16 Decl.") ¶¶6-7. This requested enhancement is consistent with awards approved in other common
17 fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal.
18 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130
19 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards
20 of \$35,000). Plaintiff also took the risk of bringing the lawsuit, which was a matter of public
21 record. Future employers may be less likely to hire an employee who has previously filed an
22 action against an employer. This in conjunction with Plaintiff's agreement to provide a general
23 release supports the requested award.

24 **7. The Settlement Agreement Allocates a Fair, Adequate, and**
25 **Reasonable Amount to the Payment of Settlement Administration**
26 **Costs**

27 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff's
28 Counsel, and the LWDA, but also to Defendant's current and former employees, significant time
and effort will be required to administer the Settlement if it is approved by this Court. Among

1 other things, the Settlement Administrator will calculate each PAGA Settlement Employee
2 Individual PAGA Payment; issue appropriate tax forms to all parties who receive payments
3 under the Settlement Agreement; mail payments to Plaintiff, Plaintiff's Counsel, the LWDA, and
4 each Aggrieved Employee; and void any checks not cashed by Aggrieved Employees so that the
5 unclaimed amount can be forwarded to the Legal Aid at Work who did not cash their respective
6 Individual PAGA Payment. See Settlement Agreement ¶ 4.7.6.

7 In contemplation of these expenses, the parties will engage XPand Legal Consulting to
8 act as a third-party settlement administrator and have allocated up to \$6,500.00 to cover the cost
9 of settlement administration. Settlement Agreement ¶ 2.24; Choi Decl. Ex. C.

10 **V. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
12 Agreement pursuant to Labor Code § 2699(l)(2).
13

14 Dated: August 30, 2023

DIVERSITY LAW GROUP, P.C.
LAW OFFICES OF CHOI & ASSOCIATES

16 By: 
17 Larry W. Lee
18 Edward W. Choi
19 Attorneys for Plaintiff Marion Tellez and the
20 Aggrieved Employees
21
22
23
24
25
26
27
28