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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

SHYLA THIERRY, as an individual and on behalf of all others similarly situated, Plaintiff, vs. BAKEMARK USA LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No.: C23-01818 [Assigned for all purposes to the Hon. Edward G. Weil, Department 39] **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: _____________, 2025 Time: _______ a.m./p.m. Dept.: 39 Complaint Filed: July 24, 2023 Trial Date: None

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

PLEASE TAKE NOTICE that on ________________, 2025, at ______ a.m./p.m., or as soon thereafter as the matter be heard in Department 39 of the Superior Court of the State of California for the County of Contra Costa located at 725 Court Street, Martinez, CA 94553, Plaintiff SHYLA THIERRY ("Plaintiff") will, and hereby does, move the Court for entry of an order approving the Private Attorneys General Act Settlement Agreement and Release ("Settlement Agreement" or "Settlement") entered into in the above-captioned civil action between Plaintiff and Defendant BAKEMARK USA LLC ("Defendant") (Plaintiff and Defendant shall collectively be referred to as the "Parties") under the Labor Code Private Attorneys General Act of 2004 (the "PAGA").

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

This Motion is based on this Notice of Motion and Motion for Approval of the Parties' Settlement Agreement concurrently filed herewith; the attached Memorandum of Points and Authorities in support of this motion; the concurrently filed Declarations of Larry W. Lee, Mai Tulyathan, and Plaintiff Shyla Thierry in support of this Motion; all pleadings, records, and files in this action; and upon such other matters as may be properly presented to, or received by, the Court at or before the hearing on this motion.

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DATED: July 16, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Larry W. Lee
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this Motion, Plaintiff Shyla Thierry ("Plaintiff") respectfully requests the Court's approval of the Private Attorneys General Act Settlement Agreement and Release[1] (the "Settlement Agreement" or "Settlement") with Defendant Bakemark USA LLC ("Defendant").

The settlement was reached after an informal exchange of discovery, including documents pertaining to Defendant's policies and practices and Aggrieved Employee data, and a full-day mediation with mediator Daniel J. Turner, Esq. As part of the informal discovery, Defendant produced data regarding the Aggrieved Employees and the number of pay periods at issue from which Plaintiff's counsel calculated the maximum PAGA penalty exposure. Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 9. As a result of the mediation and by way of acceptance of a mediator's proposal, the Parties have settled this case on a representative PAGA basis for $167,000.00. *Id.* at ¶¶ 10-11.

The Settlement Agreement allocates one-third of the Gross Settlement Amount for attorneys' fees, or $55,666.67, up to $15,000.00 in litigation costs incurred by Plaintiff's Counsel, up to $10,000.00 to Plaintiff as the enhancement award and in exchange for a general release, and up to $2,950.00 for settlement administration costs. Settlement Agreement ¶¶ 3(a)(1) - 3(a)(3). For the remainder, the "Net Settlement Amount" is allocated to the payment of civil penalties under PAGA, of which 75% is to be distributed to the Labor and Workforce Development Agency (the "LWDA"), and 25% of which is to be distributed to the "Aggrieved Employees"[2] on whose behalf Plaintiff filed this action as required by PAGA. *Id.* ¶ 3(a)(5).

Under PAGA, the Court must review and approve the proposed settlement. *See* Cal. Lab. Code § 2699 (l)(2). Accordingly, Plaintiff brings this Motion to request approval of the

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[1] A true and correct copy of the fully executed Settlement Agreement is attached as Exhibit B to the Declaration of Mai Tulyathan ("Tulyathan Decl.").

[2] "Aggrieved Employees" includes all current and former Sales Representatives who worked for Defendant in the State of California and who were paid commissions and a draw from May 22, 2022, until February 8, 2025. Settlement Agreement ¶ 3(a)(5).

Settlement Agreement on the grounds it is fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes, and the facts and circumstances discussed in detail below.

II. PROCEDURAL BACKGROUND

On May 22, 2023, Plaintiff Shyla Thierry sent notice to the LWDA giving notice of her intent to pursue a representative PAGA action, on behalf of herself and the State of California as well as on behalf of other aggrieved employees (the "PAGA Notice"). Tulyathan Decl. at ¶ 2, Ex. A. On July 24, 2023, Plaintiff filed her representative complaint for violation of Labor Code § 2698, *et seq.* (the "PAGA") based on violations of Labor Code §§ 204 and 226. *Id.* at ¶ 3.

With respect to the Labor Code § 204 violation, Plaintiff alleges that Defendant fails to pay its employees on a timely basis as required by Labor Code § 204's timing requirements. Specifically, Labor Code § 204(d) provides that wages must be paid no later than 7 days following the close of the payroll period when wages are paid on a weekly or bi-weekly basis. Plaintiff alleges that Defendant paid wages later than the statutorily mandated timeframe by issuing paychecks more than seven days after the close of the bi-weekly payroll period. With respect to the Labor Code § 226 violation, Plaintiff alleges that to the extent that the pay period dates and pay dates as listed on the wage statements Defendant issued to Plaintiff and aggrieved employees are inaccurate, Defendant failed to issue accurate itemized wage statements in violation of Labor Code § 226(a). In that regard, if the pay period dates and pay dates displayed on the wage statements do not correspond to the actual pay period and pay dates that Defendant paid Plaintiff and the aggrieved employees, Plaintiff alleges that Defendant violated Labor Code § 226(a). *Id.* at ¶ 4.

On September 28, 2023, Defendant filed a Demurrer to Plaintiff's complaint, arguing that Plaintiff is an "outside salesperson" and that her pay consisted of commissions. *Id.* at ¶ 5. On December 7, 2023, the Court overruled Defendant's Demurrer in the entirety. The Court found that while the Complaint alleges that "wages" were not timely paid (and not "commissions"), even if Plaintiff was paid commissions, commissions are a form of wages and are subject to the timing requirements of Labor Code § 204 once they are earned. *Id.* at ¶ 6.

The Parties have exchanged some formal discovery. *Id.* at ¶ 7. Following the ruling on the Demurrer, on February 28, 2024, Plaintiff served written discovery. On April 19, 2024, Defendant served its responses to the discovery. The Parties continued to meet and confer regarding discovery issues, and Defendant served supplemental responses on August 9, 2024. *Id.*

At a Case Management Conference in March 2024, the Court ordered the Parties to participate in mediation. Tulyathan Decl. at ¶ 8. The Parties exchanged informal discovery, including documents pertaining to Defendant's policies and practices, and data pertaining to the Aggrieved Employees and the pay periods at issue, which allowed Plaintiff's counsel to conduct an exposure analysis. *Id.* at ¶ 9. On November 19, 2024, the Parties participated in private mediation with mediator Daniel J. Turner, Esq. after undertaking an investigation and exchange of information and documents pertaining to Plaintiff and the Aggrieved Employees. *Id.* at ¶ 10. After engaging in a full day mediation and continued negotiations facilitated by the mediator, the Parties ultimately agreed to fully and finally resolve the Action by accepting the mediator's proposal. *Id.* The Parties formalized the settlement and executed the Settlement Agreement on or about May 21, 2025. *Id.* at ¶ 11.

III. <u>FACTUAL BACKGROUND</u>

The Gross Settlement Amount is $167,000.00. Settlement Agreement ¶ 3(a). The Settlement Agreement allocates one-third of the Gross Settlement Amount for attorneys' fees, or $55,666.67; up to $15,000.00 in litigation costs incurred by Plaintiff's Counsel; $10,000.00 to Plaintiff as the enhancement award and in exchange for a general release of claims; and up to $2,950.00 for settlement administration costs. *Id.* ¶ 3(a)(1) – 3(a)(3). The remainder, or the Net Settlement Amount, is allocated to the payment of civil penalties under PAGA, of which 75% ($62,537.50) is to be distributed to the LWDA and 25% ($20,845.83) of which is to be distributed to the Aggrieved Employees on whose behalf Plaintiff filed this action as required by PAGA. *Id*. at ¶ 3(a)(5).

However, based on the actual costs being sought by PAGA counsel, the actual amount to be allocated to the payment of civil penalties under PAGA, is $89,657.28. 75% of that amount of PAGA Penalties, or $67,242.96, is to be distributed to the LWDA and 25% of PAGA Penalties, or $22,414.32, is to be distributed to the Aggrieved Employees. Tulyathan Decl. at ¶ 14.

The Settlement Agreement provides the following release of PAGA claims by Aggrieved Employees:

> Upon Defendant's fulfillment of its payment obligations under Section 3 of this Settlement Agreement, Plaintiff and each of the Aggrieved Employees on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to have released and forever discharged Defendant and each of its parents, subsidiaries, affiliates, shareholders, members, agents, predecessors, successors and assigns (collectively, the Released Parties), to the fullest extent permitted by law, from any and all claims for PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the Operative Complaint and PAGA Notice, including without limitation claims brought under the PAGA for civil penalties premised on violations of Labor Code sections 204 and 226, that accrued during the PAGA Period (collectively, the "Released Claims").

Settlement Agreement ¶ 8(a). The Released Claims only cover those civil penalties which are recoverable under PAGA, and do not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees may have under the law against Released Parties for violations of the California Labor Code. *Id.* ¶ 8(a). Further, the Released Claims are limited to the PAGA Period, which is May 22, 2022 through February 8, 2025[3]. *Id.* ¶ 3(a)(5).

Based on Defendant's representation, there are an estimated 80 Aggrieved Employees who worked no more than 3,216 pay periods. *Id.* ¶ 3(a)(5). Each Aggrieved Employee will receive an individual PAGA payment proportionate to the number of pay periods worked during the PAGA Period. *Id.* ¶ 7(a)(1). One hundred percent (100%) of each individual PAGA payment will be

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[3] The Parties agreed to February 8, 2025 as the end date of the PAGA Period pursuant to the terms of the mediator's proposal. The mediator's proposal defined the PAGA Period as running from May 22, 2022 until the earlier of (1) 60 days after the Parties accept the mediator's proposal, or (2) the date the Court approves the settlement. The Parties accepted the mediator's proposal on December 10, 2024. Thus, based on that date, the 60-day period concludes on February 8, 2025. Tulyathan Decl. at ¶ 16.

treated as penalties with no tax withholdings to be made, and will be reported, if required, by applicable tax laws, by the Settlement Administrator on IRS Form 1099s. *Id.* ¶ 7(a)(2).

IV. STANDARD OF REVIEW

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

A. Plaintiff's Discovery and Investigation Prior to Settlement

Here, Plaintiff propounded written discovery, including special interrogatories and request for production of documents related to the PAGA claims. Tulyathan Decl. at ¶ 7. Prior to the mediation, the Parties exchanged informal discovery, including documents pertaining to Defendant's policies and practices, and data pertaining to the Aggrieved Employees and the pay periods at issue, which allowed Plaintiff's counsel to conduct an exposure analysis. *Id*. at ¶ 9. Based upon the data provided by Defendant, there are 80 Aggrieved Employees who were paid on a monthly basis. *Id*. at ¶¶ 17, 19. Because Section 204 requires payment of wages twice each calendar month, each monthly pay period potentially gives rise to two violations. With 1,608 monthly pay periods identified by Defendant, the total number of pay periods at issue is approximately 3,216. *Id.*

The following is the breakdown of the exposure analysis:

- $635,200 for PAGA Section 204 violations (calculated based on 80 pay periods at $100 initial penalty, and 3,136 pay periods at $200 subsequent penalty);
- $321,600 for PAGA Section 226 violations (calculated based on 3,216 pay periods at $100 initial penalty).

Tulyathan Decl. at ¶ 20. Based on the above, this amounts to a total PAGA penalty exposure of $956,800, without taking into account any defenses and the Court's discretion to reduce penalties. *Id.*

B. The Settlement Is Reasonable In Light of the Strength of Plaintiff's Claims

Plaintiff believes that the claims have merit, but Defendant could have various defenses. The PAGA is a *qui tam* action which seeks recovery of penalties on behalf of the State. As explained by the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 387 (2014):

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

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

The PAGA does not permit employees to seek unpaid wages, or damages; rather, the only remedy available to employees is the civil penalty, which again, 75% of which must be paid to the State. *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 193 (2019) ("If it were in the ambit of the Legislature's purpose for PAGA plaintiffs to recover unpaid wages as civil penalties, it presumably would have addressed this apparent conflict directly. But our holding today makes clear the conflict is illusory, because unpaid wages are not recoverable as civil penalties under the PAGA in the first place.").

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

Here, Defendant argued that Plaintiff and Aggrieved Employees, as outside salespersons, entered into agreements to be paid on a monthly basis, and that such agreements by outside salespersons are permissible under the Labor Code. Furthermore, Defendant argued that Plaintiff and Aggrieved Employees were compensated solely through commissions, which based on the terms of the agreements, were not due until the month following the period in which the commissions were earned. Based on this position, Defendant asserted that Section 204 does not apply to the payments at issue. If the Court were to accept Defendant's interpretation of Section 204 and find that Defendant's monthly payment structure complied with the law, Plaintiff and the Aggrieved Employees would be entitled to no recovery under PAGA. With respect to the wage statement claim, Defendant argued that derivative penalties would should not be awarded as it was pled as an alternative theory and would result in stacking of penalties. Tulyathan Decl. at ¶ 22.

Moreover, courts have discretion to reduce PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018); Tulyathan Decl. at ¶ 23. As shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at 517; Tulyathan Decl. at ¶ 23. Upon review, the Court of Appeal found such reduction to be proper. 30 Cal. App. 5th at 539. Here, there is a chance that the Court could similarly exercise its discretion to significantly reduce the PAGA penalties, even if liability were established. Tulyathan Decl. at ¶ 23. Defendant has maintained that it acted in good faith and based its pay practices on a reasonable interpretation of the law. Given these defenses and the risk that the Court could either find no liability or substantially reduce the penalties, the proposed settlement represents a fair and reasonable resolution in light of the strengths and weaknesses of the claims. Tulyathan Decl. at ¶ 24.

Under the circumstances of this case, the settlement amount of $167,000.00 is fair, adequate, and reasonable. The payment of $167,000.00 in exchange for a limited release of only those claims for civil penalties that are pleaded in the Action or that could have been pleaded based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the Action will have a substantial deterrent effect on Defendant and other California employers and will confer benefits on the Aggrieved Employees, who will each receive a portion of the settlement.

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

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

All of the factors that would give rise to a presumption of fairness in the context of a class action settlement are present in this PAGA action. The Parties participated in a full-day mediation with mediator, Daniel J. Turner, Esq. Tulyathan Decl. at ¶ 26. The Parties exchanged sufficient formal and informal discovery prior to attending mediation. *Id*. While the Parties did not agree to settle at the mediation, the Parties continued settlement discussions through the assistance of the mediator. This settlement was only reached by way of acceptance of a mediator's proposal. *Id.* Furthermore, both Plaintiff's and Defendant's counsel have significant experience in litigating wage and hour class and PAGA actions, which further supports the reasonableness of the settlement. *Id.* at ¶ 27. Therefore, the Settlement Agreement is entitled to a presumption of fairness.

2. The Settlement Agreement Apportions Civil Penalties Between the LWDA and the Aggrieved Employees as Required by PAGA

Except when civil penalties are recovered from a defendant who did not have any employees at the time of an alleged violation, civil penalties recovered under PAGA must be distributed so that 75% of the civil penalties are paid to the LWDA and 25% are paid to the "aggrieved employees" on whose behalf the PAGA action was brought. *See* Cal. Lab. Code § 2699(i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net Settlement Amount to be paid to the LWDA and 25% of the PAGA Payment to be paid to the Aggrieved Employees. Settlement Agreement ¶ 3(a)(5). The Aggrieved Employees will receive penalties based on the number of pay periods they worked during the applicable period using a pro rata distribution formula. *Id.* ¶ 7(a)(1).

3. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Attorneys' Fees

a. Percentage of the Fund

PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab. Code § 2699 (g). In recognition of this, the Settlement Agreement allows Plaintiff's Counsel to request up to 33 and 1/3 percent ($55,666.67) in attorneys' fees. *See* Settlement Agreement ¶ 3(a)(1). This amount is fair, adequate, and reasonable for two reasons.

First, in class actions, state and federal courts have held that when a class action establishes a monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created." *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3 percent of the fund and joining "the overwhelming majority of federal and state courts" in approving the "percentage method" as a reasonable means for determining attorney fee awards in class actions). While different from class action settlements in important ways, PAGA settlements also involve the establishment of a common fund for the benefit of persons other the named plaintiff, so the reasons for utilizing the percentage method are the same. *See id.* (noting that the percentage method provides "ease of calculation," "alignment of incentives between counsel and the class," "a better approximation of market conditions in a contingency case," and the "encouragement...to seek an early settlement"). The $55,666.67 requested by Plaintiff's Counsel represents one-third of the Gross Settlement Amount, which is consistent with awards usually approved in class actions. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008) ("[F]ee awards in class actions average around one-third of the recovery"); *see also Laffitte*, 1 Cal. 5th at 506 (upholding the approval of a fee award equal to one-third of the total settlement amount).

b. Lodestar Cross-Check

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to "cross-check" the amount of fees calculated by way of percentage. The *Laffitte* Court emphasized, however, that "the lodestar calculation, when used in this manner, does not override the trial court's 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, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

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

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); *see also*, e.g., *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). 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. The intermediate court opinion was affirmed in full by the California Supreme Court in its decision guiding lower courts on assessing fees.

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). Federal district courts applying California law have likewise routinely approved cross-check multipliers between 2 and 3 in employment cases. *See*, *e.g*., *Willner v. Manpower Inc*., No. 11-CV-02846-JST, 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*., No. 11-CV-02786-LHK, 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 on a cross-check after surveying a large body of cases affirming a higher multiplier).

With respect to Plaintiff's Counsel's lodestar, Plaintiff's Counsel will have expended approximately 147.5 hours litigating this case, which includes approximately 10 hours of anticipated time after approval to handle any issues and/or matters from Aggrieved Employees, the Settlement Administrator, and Defendant's Counsel. Tulyathan Decl. at ¶¶ 35-36. Plaintiff's Counsel requests an hourly rate of $600.00 per hour. *Id.* at ¶ 37. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986) .

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

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

Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the supporting declarations, Plaintiff's Counsel have significant experience in the area of employment and wage and hour class and representative actions. Their practices focus on representing employees in employment matters, particularly wage and hour cases on a contingency basis. Tulyathan Decl. at ¶¶ 30-34. As such, based on the hours and applicable rate, Plaintiff's Counsel's lodestar amount through the finalization of this settlement – **without a multiplier** – will be approximately $88,500.00, which *exceeds the fee requested* by Plaintiff here and results in a **negative** lodestar multiplier. *Id.* at ¶ 37. Accordingly, the cross-check supports the fee requested.

4. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Litigation Costs

PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code § 2699(g). Accordingly, the Settlement Agreement allows Plaintiff's Counsel to request up to $15,000.00 in litigation costs. Settlement Agreement ¶ 3(a)(1).

Plaintiff's Counsel request $8,726.05 for the reimbursement of actual litigation costs. As set forth in accompanying declarations of Plaintiff's Counsel, these costs were all directly incurred in the prosecution of this action, including, but not limited to, filing fees, service fees, and mediation fees. Tulyathan Decl. at ¶ 39, Ex. D. As such, Plaintiff's Counsel's request for costs in the amount of $8,726.05 is fair, adequate, reasonable, and consistent with PAGA's policies.

5. The Payments to Plaintiff Should Be Approved

Courts have held that named plaintiffs in class, or private attorney general actions 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 **<u>willingness to act as a private attorney general</u>**") (emphasis added).

Here, Plaintiff respectfully requests $10,000.00, which is intended to compensate Plaintiff for the time spent on this case. Declaration of Shya Thierry ("Thierry Decl.") at ¶ 6.

Plaintiff estimates she spent over 30 hours in connection with the litigation of this action. *Id.* at ¶ 6. In particular, Plaintiff spoke with her attorneys on several occasions to discuss the facts supporting the theories of liability in this action. *Id*. Plaintiff also searched for and provided documents to her attorneys, including, but not limited to, wage statements and employment documents. *Id*. Plaintiff also conferred with her attorneys regarding the terms of the proposed settlement, reviewed the proposed settlement agreement, and assisted in reviewing, drafting, and revising his declaration in support of the PAGA approval motion. *Id*. at ¶¶ 6-7. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $55,000, and three incentive awards of $35,000).

Plaintiff also took the risk of bringing the lawsuit, which was a matter of public record. Thierry Decl. at ¶ 8. Given that future employers are less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. *Id*. Plaintiff took this risk upon herself and the Aggrieved Employees benefited from these risks taken by Plaintiff. *Id*. at ¶¶ 8-9. Aggrieved Employees did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential retaliation and not getting future employment had they filed a public lawsuit.

In addition, Plaintiff also provided a general release of claims, including a waiver under Section 1542, which the other Aggrieved Employees did not have to do. Settlement Agreement ¶ 9. In light of Plaintiff's efforts, the service award should be awarded to Plaintiff for her commitment, dedication, and risks taken for this litigation.

6. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Settlement Administration Costs

Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff's 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 other things, the Settlement Administrator will calculate each individual PAGA payment; issue appropriate tax forms to all parties who receive payments under the Settlement Agreement; mail payments to Plaintiff, Plaintiff's Counsel, the LWDA, and each Aggrieved Employee; and void any checks not cashed by Aggrieved Employees so that the unclaimed amount can be forwarded to the *cy pres* beneficiary—Legal Aid At Work. *See* Settlement Agreement ¶ 7(b)(4); Tulyathan Decl. at ¶ 38.

In contemplation of these expenses, the parties will engage Phoenix Settlement Administrators to act as a third-party settlement administrator and have allocated up to $2,950.00 to cover the cost of settlement administration. Settlement Agreement ¶ 3(a)(3); Tulyathan Decl. at ¶ 40, Ex. E.

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

When enacting PAGA, the Legislature intended to ensure that the LWDA retained "primacy" over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA online "at the same time that it is submitted to the court," to give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the Settlement Agreement and this motion to the LWDA through the LWDA's online filing system in conjunction with filing this motion. *See* Tulyathan Decl. ¶ 41, Ex. F.

VI. CONCLUSION

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

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Dated: July 16, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________

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