

Edward W. Choi, Esq. SBN 211334
edward.choi@choiandassociates.com
LAW OFFICES OF CHOI & ASSOCIATES
A Professional Corporation
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885

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 Mya Herrera

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

MYA HERRERA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

IHOP RESTAURANTS LLC, a Limited
Liability Company; MONTEREY PARK 767
INC., A Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 23STCV14263

Assigned to the Hon. Kenneth R. Freeman,
Dept. SSC-14

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

Date: May 21, 2025
Time: 10:00 a.m.
Dept.: 14

[Filed concurrently with Declaration of Mya
Herrera, Declaration of Jody Lawrence,
Declaration of Edward W. Choi, Declaration of
Larry W. Lee and [Proposed] Order]

Action Filed: June 20, 2023
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on May 21, 2025 at 10:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Kenneth R. Freeman, Judge presiding in
4 Department 14 of the above-referenced Court located at 312 N. Spring Street, Los Angeles,
5 California 90012, Plaintiff Mya Herrera (“Plaintiff”) will seek an Order approving the
6 concurrently filed PAGA Settlement Agreement (“Settlement Agreement”), pursuant to the
7 procedures set forth in Labor Code § 2698, *et seq.*

8 This motion will be based on this notice of motion, the attached memorandum of points
9 and authorities, the accompanying declarations of Edward W. Choi, Larry W. Lee, Plaintiff Mya
10 Herrera, and Jodey Lawrence of Phoenix Settlement Administrators, the records and file herein,
11 and on such other evidence as may be presented at the hearing of the motion.

12
13 DATED: April 2, 2025

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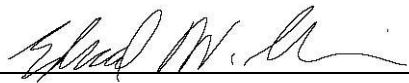
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15 By: 
16 Larry W. Lee
17 Edward W. Choi
Attorneys for Plaintiff Mya Herrera

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1 **I. INTRODUCTION**

2 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et*
3 *seq.*, Plaintiff Mya Herrera (“Plaintiff”) hereby moves the Court for an order approving the non-
4 reversionary settlement with Defendant Monterey Park 767, Inc.. The settlement was reached after
5 investigation and informal discovery, including Defendant Monterey Park 767, Inc.’s production
6 of payroll data. Furthermore, pursuant to the terms of PAGA Settlement Agreement (“Settlement
7 Agreement” or “SA”), Defendant will pay the gross amount of \$120,000.00, which includes an
8 estimated payment of approximately \$40,254.44 in civil penalties to the California Labor and
9 Workforce Development Agency (“LWDA”) and \$13,418.15 to the Aggrieved Employees.¹ The
10 proposed release is also narrowly tailored to release only claims for civil penalties under PAGA
11 predicated on the Labor Code violations alleged in the operative Complaint and PAGA Notice. As
12 further demonstrated below and in the accompanying declarations of counsel, the proposed
13 settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and
14 Aggrieved Employees, and accomplishes the goals of the PAGA.

15 **II. PROCEDURAL HISTORY**

16 **A. PAGA Notice**

17 On June 16, 2023, Plaintiff submitted written notice under Labor Code § 2699.3 to the
18 California Labor and Workforce Development Agency (“LWDA”) and Defendants, alleging that
19 Defendants violated Labor Code §§ 201-204, 226, 226.7, 351, 510, 512, 558, 1174, 1194, 1198,
20 and 1199 (the “PAGA Notice”). Declaration of Edward W. Choi (“Choi Decl.”) ¶ 3, Ex. A. As set
21 forth in the PAGA Notice, Plaintiff alleged that Defendants failed to pay all wages owed, provide
22 off-duty meal and rest breaks, provide accurate itemized wage statements, and timely pay all
23 wages upon separation of employment. *Id.*

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27 ¹ The Settlement Agreement sets forth approximately \$39,000 payment to the LWDA and \$13,000
28 payment to the Aggrieved Employees. The approximate figures are based on the actual costs
being sought by Plaintiff’s counsel.

1 **B. The Complaint**

2 On June 20, 2023, Plaintiff filed a class action complaint against Defendants in the
3 Superior Court of California, County of Los Angeles (the “Action”). *See* Choi Decl. ¶ 4. The
4 complaint alleged causes of action for: (1) violation of Labor Code §§ 201-204, 510, 1194, 1197,
5 and 1197.1; (2) violation of Labor Code § 226; (3) violation of Labor Code §§ 226.7 and 512; (4)
6 violation of Labor Code § 226.7; and (5) violation of Business and Professions Code § 17200, *et*
7 *seq. Id.* As alleged in the complaint, Defendants had a policy of automatically deducting a
8 percentage of their gross sales against employee wages. For example, if there was \$1,000 in gross
9 sales from the tables that an employee served, Defendants would deduct \$100 from the
10 employee’s wages as tips received even if the tip amount actually received was less than \$100. As
11 a result, the employee was not paid all wages earned. In addition, Defendants failed to provide
12 meal periods within the first five hours worked for shifts under 10 hours, a second meal period
13 after the 10th hour of work, and/or provide at least 30 minutes of meal periods. Defendants also
14 failed to provide compliant rest periods or pay the requisite rest period premium pay. Moreover,
15 all wages owed were not paid upon separation of employment. As a result of these violations, the
16 wage statements issued to employees displayed inaccurate net and gross wages earned.

17 On August 29, 2023, Plaintiff filed a First Amended Complaint, adding a cause of action
18 for violation of Labor Code § 2698, *et seq. Id.* ¶ 6. Plaintiff seeks civil penalties predicated on
19 Defendants’ alleged violation of Labor Code §§ 201-204, 226, 226.7, 510, 512, 1194, 1197, and
20 1197.1.

21 On April 22, 2024, the Parties filed a Stipulation to Dismiss the class allegations *without*
22 *prejudice. Id.* ¶7. Assuming that the Court grants this Stipulation to Dismiss, the operative
23 Complaint will only be for Plaintiff’s cause of action under the PAGA. *Id.*

24 **C. The Parties Participate in Mediation**

25 In about March 2024, the Parties agreed to private mediation. Choi Decl. ¶ 8. Prior to
26 mediation, Defendants provided Plaintiff’s counsel with a copy of an arbitration agreement signed
27 by Plaintiff, which contained a class action waiver. Based thereon, the Parties agreed to negotiate
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1 Plaintiff's representative PAGA claims. *Id.* ¶ 9.

2 In lieu of the exchange of formal discovery, Defendants provided Plaintiff with payroll
3 data for the aggrieved employees, including the number of pay periods in which wages were paid
4 during the period of June 16, 2022, and May 9, 2024. *Id.* ¶ 10. Based on the information provided
5 by Defendants, Plaintiff's counsel conducted a full penalties analysis as to the value of Plaintiff's
6 claims. *Id.* ¶¶ 23-24. Thus, Plaintiff's counsel entered mediation with a clear understanding of
7 Defendants' maximum exposure. *Id.*

8 On August 8, 2024, the Parties engaged in a full-day mediation with Steve Pearl, Esq. *See*
9 Choi Decl. ¶ 11. As a result of the mediation and arm's length negotiations, the Parties reached the
10 present settlement. *Id.* The terms of the settlement have been memorialized in the PAGA
11 Settlement Agreement. *Id.* ¶ 12, Ex. B.

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

13 The material terms of the settlement are described below and set forth in detail in the
14 concurrently filed Settlement Agreement. Choi Decl. Ex. B. Defendant IHOP Restaurant LLC
15 produced documents showing that it is an independent franchisee and did directly or indirectly
16 control the working hours, wages and conditions of the employees of Defendant Monterey Park
17 767, Inc.² Choi Decl. ¶ 9. Defendant IHOP Restaurant LLC is not a party to the subject PAGA
18 Settlement Agreement, and pursuant to the terms of the Settlement Agreement at Paragraph 6.1,
19 Defendant IHOP Restaurant LLC will be dismissed upon the full funding of the Settlement
20 Agreement by Defendant Monterey Park 767, Inc. *Id.*, Ex. B. In light of the class action waiver in
21 the subject Arbitration Agreement, the Parties have stipulated to dismiss of the class allegations
22 *without prejudice*, as called out in paragraph 6.1 of the Settlement Agreement.

23 **A. The Aggrieved Employees**

24 The current Action is being settled on behalf of the following employees: any current
25 and/or former non-exempt California employee who worked for Defendant Monterey Park 767
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28 ²Unless otherwise stated, reference to Defendant in the singular refers to Monterey Park 767, Inc.

1 during the PAGA Period. (“Aggrieved Employees”). *See* SA § 1.3. The PAGA Period is defined
2 to mean the period from June 16, 2022, through August 8, 2024. SA § 1.17. As of April 2024,
3 Defendant’s records show there are approximately 108 Aggrieved Employees. SA § 4.1. These
4 individuals worked approximately 3,358 pay periods during the PAGA Period. *Id.*

5 **B. Gross Settlement Amount and Allocation**

6 The Settlement Agreement requires Defendant Monterey Park 737, Inc. to pay the gross
7 amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the “Gross Settlement
8 Amount”). *See* SA § 3.1. Based on the Gross Settlement Amount, Defendant will pay
9 approximately \$35.74 per pay period to resolve the claims alleged in the Operative Complaint.
10 Choi Decl. ¶ 20.

11 The balance of the Gross Settlement Amount remaining after deduction of the approved
12 Service Payment Amount to Plaintiff, Attorneys’ Fees and Litigation Expenses Payment, and
13 Administration Expenses Payment (the “Net Settlement Amount” or “PAGA Penalties”), will be
14 available for distribution to the LWDA and Aggrieved Employees. *See* SA §§ 1.13, 3.2.4. Plaintiff
15 estimates that the PAGA Penalties will total \$53,672.59. Choi Decl. ¶ 19.

16 Seventy-five percent (75%) of the PAGA Penalties, or approximately \$40,254.44, will be
17 paid to the LWDA for PAGA penalties. *See* Choi Decl. ¶ 19. The remaining twenty-five percent
18 (25%), or approximately \$13,418.15 will be distributed to Aggrieved Employees. *Id.* at ¶19.

19 Based on the number of Aggrieved Employees, employees will be entitled to recover, on
20 average, up to approximately \$124.24 each. *See* Choi Decl. ¶ 21. The amount any particular
21 Aggrieved Employee will be entitled to recover will depend on the number of pay periods worked
22 by the employee during the PAGA Period. *See* SA § 3.2.4. This is fair, as it directly allocates
23 greater penalties to individuals who have allegedly suffered greater harm. Choi Decl. ¶ 21. Any
24 uncashed checks will escheat to the Unclaimed Property Fund administered by the California State
25 Controller’s Office in the name of the Aggrieved Employee. *See* SA § 4.4.3.

26 As part of the settlement, Defendants do not object to Plaintiff’s counsel’s request for
27 attorneys’ fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Forty Thousand
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1 Dollars (\$40,000.00), and reimbursement for litigation costs of up to \$15,000, subject to the Court
2 finally approving this settlement. *See* SA § 3.2.1.³ Plaintiff’s counsel requests reimbursement of
3 \$13,327.41 for litigation-related expenses. *See* Choi Decl. ¶ 18. Any portion of the requested
4 attorneys’ fees and/or costs not approved by the Court shall be added to the Net Settlement
5 Amount. *See* SA § 3.2.1.

6 As part of the settlement, Defendants do not object to Plaintiff’s request for a Service
7 Payment Amount in the amount of Ten Thousand Dollars (\$10,000.00). *See* SA § 3.2.3.

8 Finally, the settlement provides for the payment of the fees and expenses reasonably
9 incurred by the Settlement Administrator. *See* SA § 3.2.2. The Parties have agreed to utilize
10 Phoenix Settlement Administrators to administer the settlement, with the administration costs
11 estimated to be Three Thousand Dollars (\$3,000.00). *See* SA §§ 3.2.2, 7.1; Declaration of Jodey
12 Lawrence (“Admin. Decl.”) ¶ 16, Ex. B.

13 **C. The Scope of the Released Claims is Appropriately Limited**

14 Upon funding of the Gross Settlement Amount, Plaintiff and Aggrieved Employees will
15 release the Released Parties from all Released PAGA Claims. *See* SA § B-17. As defined in the
16 Settlement Agreement, the term “Released PAGA Claims” means “all claims for PAGA penalties
17 that were alleged or reasonably could have been alleged, based on the PAGA Period facts stated in
18 the Operative Complaint and the PAGA notice.” *See* SA §§ 1.23, 5.2. The settlement is not
19 intended to release and does not extend to violations of any predicate statutes other than PAGA.
20 The settlement also does not affect a waiver of claims by Aggrieved Employees against the
21 Released Parties for any individual wage and hour claims.⁴

22 _____
23 ³ As set forth below, Plaintiff’s counsel seeks reimbursement for its anticipated actual litigation
24 costs in the amount of \$13,327.41. *See* Choi Decl. ¶ 18.

25 ⁴ Because an aggrieved employee’s PAGA action is a substitute for an action brought by the
26 government, “judgment in [a PAGA] action is binding not only on the named employee plaintiff
27 but also on government agencies and any aggrieved employee not a party to the proceeding.”
28 *Arias*, 46 Cal. 4th at 986. However, “the nonparty employees, because they were not given notice
of the action or afforded any opportunity to be heard, would not be bound by the judgment as to
remedies other than civil penalties.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(1) (non-party
(footnote continued)

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

2 **A. PAGA Overview**

3 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the
4 LWDA and other aggrieved employees, to bring suit against their employers for alleged violations
5 of the California labor laws and to obtain penalties that previously could only be obtained by the
6 State. The PAGA was enacted because the Legislature determined that it was “in the public
7 interest to allow aggrieved employees, acting as private attorneys general, to recover civil
8 penalties for Labor Code violations,” since the State had not been able to fully or adequately
9 enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-Hernandez v.*
10 *Cjaders Foods, Inc.*, 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) (“The act’s declared
11 purpose is to supplement enforcement actions by public agencies, which lack adequate resources
12 to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to
13 compensate unnamed employees because the action is fundamentally a law enforcement action.”
14 [citations omitted].)

15 Labor Code § 2699(a) states that any Labor Code provision “that provides for a civil
16 penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through
17 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
18 or former employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved
19 employee” means “any person who was employed by the alleged violator and against whom one
20 or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to commencing an
21 action, the allegedly aggrieved employee must provide notice to the LWDA and the employer
22 setting forth the “specific provisions of [the Labor Code] alleged to have been violated, including
23 the facts and theories to support the alleged violation.” Lab. Code § 2699.3(a)(1). If the LWDA
24 decides not to investigate the allegations or issue a citation to the employer, the proposed
25 representative plaintiff is entitled to commence a PAGA action after 65 days. Lab. Code §

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28 aggrieved employees retain all rights “to pursue or recover other remedies available under state or
federal law, either separately or concurrently with an action taken under this part”).

1 2699.3(a)(2).

2 The California Supreme Court has explained that a plaintiff who brings a PAGA claim
3 “represents the same legal right and interest as state labor law enforcement agencies,” and brings
4 PAGA claims “as the proxy or agent” of the State. *Arias*, 46 Cal. 4th at 986. Of the civil penalties
5 recovered, 75 percent goes to the LWDA, and the remaining 25 percent goes to the “aggrieved
6 employees” for collecting the penalties on behalf of the State Lab. Code § 2699(i); *Baumann v.*
7 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (a PAGA representative’s recovery
8 is “an incentive to perform a service to the state, not restitution for wrongs done to members of the
9 class”).

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

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

26 By contrast, court approval of PAGA settlements is governed by Section 2699(1) of the
27 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties
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1 sought as part of a proposed settlement agreement pursuant to this part.” The parties are not
2 obligated to “satisfy class action requirements,” including the standards for class action settlement
3 approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff need not
4 satisfy class action requirements” to assert a PAGA claim).

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

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

11 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
12 ultimately receive as a result of a settlement, but instead, on whether the Gross Settlement Amount
13 achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement
14 agency funding for education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the
15 settlement represents an extraordinary recovery for the Aggrieved Employees and the State, and
16 thus the settlement certainly effectuates PAGA’s purpose. The settlement is also consistent with
17 the State’s public policy favoring resolution of disputes. “California law favors the settlement of
18 disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves
19 resources, and minimizes court congestion. [] The parties are best positioned to understand their
20 interests and resolve a dispute in a mutually beneficial manner without court intervention into the
21 settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006)
22 (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277- 278 (1992)).

23 **D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
24 **Litigation**

25 Although Plaintiff’s counsel is reasonably confident that Plaintiff would prevail at trial,
26 proceeding in litigation entails significant risk on the underlying merits of Plaintiff’s theories, in
27 addition to the still-developing law under PAGA.

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

2 Plaintiff asserts that her representative PAGA claim is based on the allegation that
3 Defendants failed to pay all earned wages, provide off-duty meal and rest periods, pay all wages
4 owed upon separation of employment, and provide accurate itemized wage statements. Choi Decl.
5 ¶ 26. Specifically, Plaintiff alleged that the automatic deduction of wages for tips resulted in an
6 underpayment of wages to the Aggrieved Employees because for some shifts, the automatic
7 deduction was greater than the amount of tips earned by the employees. *Id.* at ¶ 27. Plaintiff also
8 alleged that Defendant had a policy requiring employees to return to work during their meal
9 breaks when the restaurant gets busy or they are understaffed and also required employees to take
10 their meal breaks late if the restaurant was busy. *Id.* at ¶28. Similarly, Plaintiff alleged that
11 employees were subject to call back during their rest breaks. *Id.* Plaintiff and Aggrieved
12 Employees were never paid any meal break premium wages. *Id.* Finally, Plaintiff alleged
13 derivative Labor Code §§203 and 226 penalties for the above violations. *Id.* at ¶¶29-30.

14 Defendants have denied violation of any applicable laws and liability for any claims
15 asserted in the Action. Specifically, Defendants argued that the automatic deduction of wages
16 were compliant pursuant to IRS regulations and that they had a good faith believe that such
17 practices were legal. Choi Decl. ¶27

18 With respect to meal and rest periods, Defendants argued that they had facially compliant
19 policies. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537
20 (2012) (“On the other hand, the employer is not obligated to police meal breaks and ensure no
21 work thereafter is performed.”). Defendants argued that they had legally compliant written
22 policies, which satisfied *Brinker* and that any failure to take a legally compliant meal or rest period
23 by employees was the result of individual choice and thus not capable of resolution through a
24 representative action. Defendants also disputed that they controlled Aggrieved Employees during
25 meal or rest periods. Choi Decl. ¶ 28.

26 Defendants also argued that the waiting time penalties are subject to a complete defense.
27 Defendants would have argued that a good faith dispute exists as to whether the allegedly
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1 underpaid wages were due to Plaintiff and the aggrieved employees considering Defendants’
2 legally compliant policies. If Defendants were successful on the good faith defense, the Court may
3 not have awarded waiting time penalties at all. *Naranjo v. Spectrum Sec. Servs., Inc.*, No.
4 S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024); *Chavez v. Converse, Inc.*, 2020 WL
5 1233919, at *1 (N.D. Cal. 2020) (holding that an employer’s failure to pay is not willful where
6 there is uncertainty in the law or a “good faith mistaken belief that wages are not owed”). The
7 California Supreme Court also recently approved a good faith defense to the imposition of Section
8 226 penalties, which further undermines the certainty of recovering these damages even if Plaintiff
9 prevailed on liability. *Id.*

10 As a result of the alleged underpayment and/or non-payment of wages to Aggrieved
11 Employees, Plaintiff contends that the wage statements omit information required by Labor Code
12 226, including accurate gross and net wages earned. Choi Decl. ¶ 30. As argued by Defendants,
13 Plaintiff’s derivative wage statement violation is vulnerable to a motion for summary judgment
14 based on the weaknesses of the underlying primary claims. *Maldonado v. Epsilon Plastics, Inc.*,
15 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a)
16 where their wage statement cause of action was derived from an underlying wage and hour
17 violation for overtime).

18 2. Recovery of Civil PAGA Penalties is Uncertain

19 If Plaintiff was to prevail on the merits of the PAGA claim, the potential recovery remains
20 uncertain. As argued by Defendants, in deciding whether to award the maximum penalty amount,
21 courts may focus on whether the employer made a good faith effort to follow the law. For
22 example, in *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal upheld the trial
23 court’s significant reduction of PAGA penalties by 30% because the employer was not initially on
24 notice that it was in violation of the law and because it would have been unfair to award penalties
25 where the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When
26 the employer made aware of the violations, it timely took steps to come into compliance. *Id.* By
27 contrast, the imposition of full penalties was justified when an employer took a “cavalier
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1 approach to fulfilling its contractual and statutory obligations” and demonstrated “reckless
2 disregard.” *Id.* Furthermore, as the California Court of Appeal has affirmed, trial courts are well
3 within their discretion to reduce PAGA penalties “for technical violations that cause no injury,”
4 especially where the “violation was inadvertent.” *Raines v. Coastal Pac. Food Distributors, Inc.*,
5 23 Cal. App. 5th 667, 681 (2018).

6 In this case, Defendant contends that a substantial reduction in potential PAGA penalties is
7 warranted because it had a good faith belief that automatic deductions were compliant with the
8 law based on IRS regulations. Further, Defendant asserts that it maintained facially compliant
9 meal and rest break policies and that its employees actually took meal and rest breaks. Finally,
10 Defendant contends that its good faith defenses apply to derivative waiting time and wage
11 statement penalties.

12 **E. The Settlement is Reasonable When Compared to the Realistic Amount of**
13 **PAGA Civil Penalties at Issue**

14 Defendant have indicated that Aggrieved Employees worked approximately 3,358 pay
15 periods during the PAGA Period. *See* SA § 4.1. Assuming that Plaintiff was to prevail on the
16 merits of the PAGA claim, applying the standard penalty of \$100 per pay period yields \$335,800
17 in potential liability. Choi Decl. ¶ 23. In the alternative, if the Court were to “stack” penalties, (*i.e.*,
18 award multiple PAGA penalties for different Labor Code violations in the same pay period), the
19 potential PAGA penalties could total as high as \$1,516,055. *Id.* at ¶ 24.

20 However, the Court’s assessment of the proposed settlement must take into account that
21 any penalties awarded may be subject to substantial reduction. Pursuant to Labor Code §
22 2699(f)(2) the Court can decline to award the full amount of PAGA penalties “if, based on the
23 facts and circumstances of the particular case, to do otherwise, would result in an award that is
24 unjust, arbitrary and oppressive, or confiscatory.” Courts routinely award far less than the
25 statutory maximum amount of civil penalties, even where an underlying violation of the Labor
26 Code is found. Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
27 *Corp.*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the
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1 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying
2 with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such a
3 reduction to be proper. *Id.* at 539; see *O'Connor v. Uber Technologies, Inc.*, 201 F. Supp. 3d 1110,
4 1133 (N.D. Cal., 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and
5 assesses PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of
6 the maximum PAGA penalties at issue is \$151,605. Choi Decl. ¶33.

7 When the discretionary reduction in penalties is considered, in conjunction with the history
8 of PAGA settlements, and the fact that Plaintiff may recover nothing, the proposed settlement is
9 reasonable. Indeed, even utilizing the **stacked** exposure, the Gross Settlement Amount is
10 approximately 8% (\$120,000 divided by \$1,516,055) of the penalties at issue. See Choi Decl. ¶ 34.
11 If the Court were to utilize a single penalty per pay period, the Gross Settlement Amount is
12 approximately 36% (\$120,000 divided by \$335,770). *Id.* at ¶ 35.

13 Given Defendants' potential defenses to the alleged violations at issue, the risks and costs
14 of continued litigation, Plaintiff's counsel believes that the settlement is fair and reasonable. See
15 Choi Decl. ¶ 36. The settlement proposes a payment of approximately \$40,254.44 in penalties to
16 the LWDA and approximately \$13,418.15 penalties to the Aggrieved Employees. *Id.* ¶ 19.
17 Furthermore, the LWDA has been provided with notice of this motion and the PAGA settlement.
18 *Id.* Decl. ¶ 42, Ex. E.

19 **F. The Request for Attorneys' Fees is Reasonable and Should be Approved**

20 Labor Code § 2699(g)(1) provides for the recovery of attorneys' fees and costs in any
21 successful action brought under PAGA. Although this is not a class action, in class actions
22 California state and federal courts have recognized that an appropriate method for determining
23 award of attorneys' fees is based on a percentage of the total value of benefits to class members by
24 the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v.*
25 *Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
26 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this
27 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs
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1 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
2 burden alone.” *Vincent*, 557 F. 2d at 769. Under the percentage of the fund method, the Court’s
3 objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160
4 F.3d 361, 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the
5 object is to set it at a level that will approximate what the market will set.... The judge, in other
6 words, is trying to mimic the market in legal services.”).

7 An award of one-third of the Gross Settlement Amount in attorneys’ fees mimics the
8 marketplace as it “is supported by the fact that typical contingency fee agreements provide that
9 class counsel will recover 33.33% if the case is resolved before trial and 40% if the case is tried.”
10 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008);
11 *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011)
12 (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour class
13 actions that result in recovery of a common fund under \$10 million”). Indeed, “empirical studies
14 [that] show that...fee awards in class actions average around one-third of the recovery.” *Chavez v.*
15 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

16 In addition, it is recognized that one of the primary factors justifying an enhanced
17 attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of*
18 *Detroit v. Grinnell Corp.* 495 F.2d 448, 470 (2d Cir. 1974) (“No one expects a lawyer whose
19 compensation is contingent upon his success to charge, when successful, as little as he would
20 charge a client who had agreed to pay for his services, regardless of success. Nor, particularly in
21 complicated cases producing large recoveries, is it just to make a fee depend solely on the
22 reasonable amount of time expended”). For Plaintiff’s counsel, the fees were wholly contingent in
23 nature and the case presented far more risk than the usual contingent fee case. Among the risks
24 was the cost inherent in PAGA litigation, as well as a long battle with Defendants who had
25 retained an highly experienced defense firm. As such, the requested fee should be awarded.

26 As a secondary support for the percentage of the fund method, when fees are allocated by
27 percentage method, courts have discretion to “cross-check” the fees awarded through the lodestar
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1 method. However, the *Laffitte* Court “emphasize[d] [that] the lodestar calculation, when used in
2 this manner, does not override the trial court’s primary determination of the fee as a percentage of
3 the common fund and thus does not impose an absolute maximum or minimum on the potential
4 fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d
5 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the primary reliance on
6 the percentage of common fund method”). The Supreme Court in *Laffitte* stated: “If the multiplier
7 calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should
8 consider whether the percentage used should be adjusted so as to bring the imputed multiplier
9 within a justifiable range, but the court is not necessarily required to make such an adjustment.”
10 *Id.* Thus, a lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not
11 required; in many cases, performing a cross-check “undermines” one of the primary reasons for
12 using the percentage method: aligning counsel’s incentives with the benefits delivered to the class
13 and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo
14 a lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees*
15 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30
16 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing
17 that “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many
18 authorities, who have been most vocal about the manner in which it exacerbates the problem of
19 ‘cheap settlements’ and burdens already overworked trial judge”).

20 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
21 or even higher.” *Wershba*, 91 Cal. App. 4th at 255; *see also, e.g., Sutter Health Uninsured Pricing*
22 *Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an
23 antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar
24 cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34
25 multiplier without remand).

26 With respect to Plaintiff’s counsel’s lodestar, approximately 88 hours have been expended
27 by counsel this matter. *See Choi Decl.* ¶ 40; Declaration of Larry W. Lee (“Lee Decl.”) ¶ 7. The
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1 courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records
2 are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the
3 number of hours worked on a particular case is sufficient evidence to support an award of attorney
4 fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559
5 (1986). Reasonable hours include, in addition to time spent during litigation, the time spent before
6 the action is filed, including time spent interviewing the clients, investigating the facts and the
7 law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62
8 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys'
9 fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*].

10 For the purpose of the lodestar calculation, Plaintiff's counsel apply an hourly rate of
11 \$900.00 per hour. *See* Choi Decl. ¶ 40; Lee Decl. ¶ 10. The hourly rate is consistent with the
12 prevailing rate charged by attorneys of similar skill and experience in the relevant community.
13 *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other
14 factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the
15 nature of the work performed, the relevant area of expertise and the attorney's customary billing
16 rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

17 Here, Plaintiff's counsel's skill and experience justify the requested rate. As shown in the
18 supporting declarations, counsel has significant experience in the area of employment and wage
19 and hour class actions. Specifically, Plaintiff's counsel's practice focuses on representing
20 employees in employment matters, particularly wage and hour cases. *See* Lee Decl. ¶¶ 4-6; Choi
21 Decl. ¶ 38. As such, based on the hours and applicable rate, the total lodestar to be expended by
22 Plaintiff's counsel through finalizing this settlement will be approximately \$97,200.00 which is
23 more than the requested attorneys' fee award. *See* Choi Decl. ¶ 40; Lee Decl. ¶ 11. As such, the
24 requested fee award is fair and reasonable, and should be awarded in its entirety. Plaintiff's
25 counsel risked not only a great deal of time, but also a great deal of expense to ensure the
26 successful litigation of this action on behalf of all Aggrieved Employees.

27 Pursuant to a previously signed agreement, 60% of the attorney's fees awarded will be paid
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1 to the Law Offices of Choi & Associates, P.C. and 40% to the Diversity Law Group, P.C. Choi
2 Decl. ¶ 43; Lee Decl. ¶13; Herrera Decl. ¶ 12.

3 **G. The Court Should Approve the Request for Reimbursement of Costs**

4 The request for reimbursement of costs, in the amount of \$13,327.41 is fair and reasonable.
5 The costs are all litigation related costs, which have been detailed in the supporting declarations of
6 Plaintiff's counsel. See Choi Decl. ¶ 41, Ex. D; Lee Decl. ¶12, Ex. B. This amount is less than the
7 \$15,000.00 set forth in the Settlement Agreement. As such, this request should be approved.

8 **H. Plaintiff's Request for a Service Payment Should be Approved**

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

15 Here, Plaintiff seeks \$10,000 for her Service Payment, which is intended to compensate
16 Plaintiff for the time spent on this case, including reviewing pleadings, the potential for hesitation
17 from later prospective employers that might find out they brought this claim, and for executing a
18 general release, including for all known and unknown claims under Civil Code § 1542. See SA §
19 5.1; Declaration of Mya Herrera ("Herrera Decl.") ¶¶ 9-10. This requested Service Payment is
20 consistent with awards approved in other common fund cases. See *Van Vranken v. Atlantic*
21 *Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re*
22 *Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
23 incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*,
24 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter.*
25 *Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)
26 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007
27 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in

FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative in ERISA case).

I. The Settlement Administrator's Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or Three Thousand Dollars (\$3,000.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. *See* SA §§ 7.1, 3.2.2; Admin. Decl. ¶ 16, Ex. B. The Parties believe that the administration fee is reasonable and should be approved.

J. Notice to the LWDA Has Been Provided

As discussed above, and concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. *See* Choi Decl. ¶ 42, Ex. E.

V. CONCLUSION

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

DATED: April 25, 2025

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

By: _____



Larry W. Lee

Edward W. Choi

Attorneys for Plaintiff Mya Herrera