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

9 KENIA CASTRO, as a private attorney
general and proxy for the State of
10 California,

11 Plaintiffs,

12 vs.

13 FRED LEEDS PROPERTY
MANAGEMENT, INC., a California
14 corporation; MAXIMILIAN LEEDS, an
individual; and DOES 1 through 10,
15 inclusive,

16 Defendants.
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Case No. 23STCV21642

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR APPROVAL OF
PAGA ACTION SETTLEMENT**

Date: January 17, 2024

Time: 8:30 a.m.

Dept. 37

Judge: Hon. Gail Killefer

[Assigned for all purposes]

Reservation ID: 135370417337

Complaint Filed: September 8, 2023

Trial Date: June 3, 2025

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

PLEASE TAKE NOTICE that, on January 17, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 37 of the above-captioned court located at 111 N. Hill St, Los Angeles, California 90012, Plaintiff Kenia Castro, individually and on behalf of all other aggrieved employees, will and hereby does move this Court for entry of an order and judgment approving the Parties' PAGA settlement pursuant to Labor Code Section 2699(1)(2).

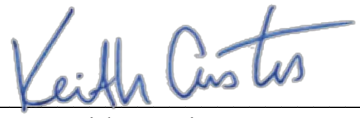
This Motion is based upon: (1) this Notice of Motion and Motion; (2) the attached Memorandum of Points and Authorities; (3) the Declarations of Keith Custis, Kenia Castro, and Lisa Mullins; (4) the PAGA Action Settlement, which is attached as **Exhibit A** to the Custis Declaration; (5) the [Proposed] Order Granting Approval of PAGA Action Settlement; (6) the [Proposed] Judgment; (7) the records, pleadings, and papers filed in this action; and (8) any other documentary and oral evidence or argument presented to the Court at or prior to the hearing of this Motion.

Pursuant to Labor Code Section 2699(1)(2), a copy of PAGA Action Settlement was e-filed with the LWDA on December 4, 2024. Declaration of Keith Custis, **Ex. B**.

Respectfully submitted,

CUSTIS LAW, P.C.

Dated: December 4 2024

By: 
Keith Custis

Attorneys for Plaintiff
KENIA CASTRO

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I. INTRODUCTION

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”), Plaintiff Kenia Castro respectfully seeks approval of the settlement of her claim for PAGA civil penalties with Defendants Fred Leeds Property Management, Inc. (“Fred Leeds”) and Maximilian Leeds (collectively, “Defendants”).¹

Under the terms of the Settlement, Fred Leeds will pay \$200,000 in resolution of Plaintiff’s claim for violation of the PAGA. Subject to Court approval, this common fund will be used to pay (a) \$86,758.61 to the State of California; (b) \$28,919.54 to the Aggrieved Employees; (c) attorneys’ fees in the amount of \$66,660.00; (d) litigation costs in the amount of \$8,661.85; (d) Plaintiff’s Service Payment in the amount of \$5,000.00; and (e) the Administration Expenses Payment in the amount of \$4,000.00.

As detailed below, the Settlement satisfies all criteria for approval. The Settlement is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. Accordingly, Plaintiff respectfully requests that the Court grant this Motion.

II. BACKGROUND

A. The Parties

Fred Leeds is a property management company. Custis Decl., ¶ 4. Fred Leeds employed Plaintiff from April 1, 2022 through June 10, 2022. *Id.*, ¶ 5.

B. Procedural History

On June 7, 2023, Plaintiff’s Counsel provided pre-filing written notice to the LWDA and by certified mail to Defendants of the alleged Labor Code violations on behalf of the LWDA, Plaintiff, and similarly situated employees as required by Labor Code § 2699.3(a). Custis Decl., ¶ 6.

On September 8, 2023, Plaintiff commenced the Action against Defendants by filing her complaint, which asserts a single cause of action under PAGA seeking civil penalties for alleged

¹ The settlement terms are set forth in the PAGA Settlement Agreement (“SA” or “Settlement”), attached as **Exhibit A** to the concurrently-filed Declaration of Keith Custis (“Custis Decl.”). Unless otherwise specified, all capitalized terms used herein have the same definitions as those defined in the Settlement.

violations of the Labor Code sections 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and 2802. Custis Decl., ¶ 7; *see also generally* Complaint (“Cmpl.”). In the Action, Plaintiff sought civil penalties on behalf of all employees of Defendant Fred Leeds who worked in the position of onsite property managers in the State of California. Cmpl., ¶ 20.

Plaintiff’s primary theories of liability are as follows:

Minimum and Overtime Wage Claim. Plaintiff alleges that Defendants failed to pay the applicable minimum and overtime wages for all hours worked because Fred Leeds required Aggrieved Employees to work off-the-clock to respond to tenant inquiries after hours, and Fred Leeds failed to compensate the Aggrieved Employees for all off-the-clock hours worked including off-the-clock hours worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek. Cmpl., ¶¶ 48-71.

Failure to Reimburse Business Expenses. Plaintiff alleges that Fred Leeds required employees to use their personal vehicles for work purposes, but failed to reimburse any portion of the cost of their personal vehicles. Cmpl., ¶¶ 72-81.

Waiting Time Penalties, Wage Statement and Labor Code § 204 Claims. Plaintiff’s allegations that Fred Leeds violated Labor Code Sections 201, 202, 204, and 226 are derivative of Plaintiff’s minimum wage and overtime claims. Cmpl., ¶¶ 82-86, 98-112.

C. Discovery and Investigation

Plaintiff’s Counsel’s investigation of the PAGA claim and theories of liability prior to mediation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130. Custis Decl., ¶¶ 9-10. During the litigation, Defendants also produced all written wage and hour policies, and the time and pay records for Plaintiff. *Id.*

In preparation for the mediation, Fred Leeds also provided Plaintiff’s Counsel with (1) the total number of former and current Aggrieved Employees during the PAGA period; (2) the total number of separated Aggrieved Employees during the PAGA period; and (3) the total aggregate number of pay periods during the PAGA period (the “PAGA Data”). Custis Decl., ¶ 10. Using the

1 PAGA Data, Plaintiff’s Counsel prepared a comprehensive damage analysis prior to mediation,
2 which is detailed in the Custis Declaration and summarized below. *Id.* ¶¶ 40-59.

3 **D. The Parties Settled After Mediation**

4 On June 24, 2024, the parties and their counsel participated in a full-day mediation with
5 Steven Paul, Esq., a well-respected mediator with considerable experience mediating wage and hour
6 class and PAGA actions. The settlement discussions were conducted at arm’s length. Following the
7 June 2024 mediation session, the Parties accepted the mediator’s proposal to resolve the action. The
8 Parties continued to engage in extensive post-mediation settlement negotiations regarding settlement
9 terms over several months. The Parties also exchanged multiple drafts of the settlement documents
10 before agreeing on the final form of the Settlement Agreement. The negotiations were at all times
11 adversarial and at arm’s length. Custis Decl., ¶ 11.

12 **E. Overview of the Settlement**

13 **1. The Aggrieved Employees and PAGA Period**

14 The term “Aggrieved Employees” means “a person employed by Fred Leeds in California as
15 an onsite property manager during the PAGA Period.” SA, ¶ 1.4. The PAGA Period is defined as
16 “June 7, 2022 through August 31, 2024.” SA, ¶ 1.20. There are approximately 113 Aggrieved
17 Employees. SA, ¶ 4.1.

18 **2. Monetary Terms**

19 Defendants have agreed to pay a Gross Settlement Amount of \$200,000 (“GSA”) to settle the
20 action. SA, ¶¶ 1.11, 3.1. After deducting amounts for Plaintiff’s Service Payment, Attorneys’ Fees
21 and Costs, and Settlement Administration Costs, the Settlement provides that the remaining Gross
22 Settlement Amount (“GSA”) will be distributed pursuant to Labor Code § 2699(i) to the LWDA and
23 the Aggrieved Employees as follows: 75% to the LWDA and 25% to Aggrieved Employees. SA, ¶
24 3.2; *see also* ¶ 3.2.4. The Settlement is non-reversionary. SA, ¶ 3.1.

25 The principal monetary terms of the Settlement, and the amounts sought by this Motion,
26 respectively, are as follows:

27 //

28 //

	Negotiated Settlement Amounts	Amounts Sought By Motion
Maximum Settlement Amount:	\$200,000.00	\$200,000.00
Less PAGA Counsel's Attorneys' Fees	-\$66,660.00	-\$66,660.00
Less PAGA Counsel's Litigation Costs	-\$10,000.00	-\$8,661.85
Less Plaintiff's Service Award	-\$5,000.00	-\$5,000.00
<u>Less Settlement Administration Costs</u>	-\$4,000.00	-\$4,000.00

Assuming the Court grants the relief requested by the Motion, the NSA will be \$115,678.15. Seventy-five percent (75%) of the NSA—or \$86,758.61—will be distributed to the LWDA as required by the PAGA. SA, ¶ 3.2.4. The remaining twenty-five percent (25%)—or \$28,919.54—will be distributed on a pro-rata basis to the Aggrieved Employees. *Id.* The average net payment of civil penalties to Aggrieved Employees will be \$255.93 (\$28,919.54 / 113 employees).

3. Individual PAGA Payments

Individual PAGA Payments will be calculated and paid from the NSA based on the number of pay periods an Aggrieved Employee worked during the PAGA Period. SA, ¶ 3.2.4.1. To calculate Individual PAGA Payments, the Administrator will calculate the total number of Pay Periods worked by each Aggrieved Employee during the PAGA Period and the aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's Individual PAGA Payment, the Administrator will use the following formula: The Aggrieved Employee Portion of the NSA will be divided by the aggregate number of Pay Periods, resulting in the "pay period value." Each Aggrieved Employee's Individual PAGA Payment will be calculated by multiplying each individual Aggrieved Employee's total number of Pay Periods by the pay period value. *Id.*

4. The Aggrieved Employees' Release

As of the Effective Date, all Aggrieved Employees including Plaintiff will release the Released Claims, which are defined as follows:

[A]ll claims, transactions, or occurrences under the PAGA that occurred during the PAGA Period, including, but not limited to: (a) all claims under the PAGA that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint in the Action and the PAGA Notice, including but not limited to alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 432, 510, 558, 1174(d), 1182.12, 1194, 1174.5, 1197, 1197.1, 1198, 1198.5, and

2802, as set forth in the PAGA Notice and including attorneys’ fees and costs related thereto. SA, ¶ 5.2.

5. Settlement Administration

The Settlement provides that ILYM Group, Inc. (“ILYM”) will serve as the Settlement Administrator. SA, ¶ 7.1. ILYM is a reputable administrator that has successfully administered thousands of class and PAGA action settlements. Declaration of Lisa Mullins, ¶¶ 2; *see also id.* Ex. A (ILYM resume). ILYM will administer the Settlement for the capped costs of \$4,000.00. *Id.*, ¶ 5, Ex. C. If the Settlement is approved, Fred Leeds will pay the GSA and provide the Aggrieved Employees List to ILYM, respectively, within 14 and 15 days after the Effective Date. SA, ¶¶ 4.2, 4.3. ILYM, in turn, will make all payments required by the Settlement including the payments to the LWDA and all Aggrieved Employees within 28 days after the Effective Date. SA, ¶¶ 4.4.

6. Treatment of Uncashed Settlement Checks

Settlement checks will be negotiable for 180 days. If a check is returned to the Administrator as undeliverable during the 180-day period, the Administrator shall take all reasonable efforts to identify the employee’s correct address, including the performance of a “skip-trace,” and to send another check to the employee at his or her updated address. SA, ¶ 4.4.2. For any Aggrieved Employee whose check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Aggrieved Employee. SA, ¶ 4.4.3; *see also* Civ. Proc. Code § 1500, *et seq.*

III. ARGUMENT

A. A PAGA Settlement Must Be Fair, Reasonable, and Adequate

A court must review and approve any PAGA settlement. Labor Code § 2699(1)(2). In *Moniz v. Adecco USA Inc.*, the California Court of Appeal held that “a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” (2021) 72 Cal.App.5th 56, 77.

Moniz also held that, because “many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of

the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.” *Moniz*, 72 Cal.App.5th at 77.

B. The Settlement is Presumptively Fair, Reasonable and Adequate

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk*, 48 Cal. App. 4th at 1802. All of those factors are satisfied here. Custis Decl., ¶¶ 9-11, 22-61.

C. The Settlement is Fair, Reasonable and Adequate

When evaluating whether a settlement is fair, reasonable and adequate, courts also consider: (1) the strength of Plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the amount offered in settlement; (4) the extent of discovery completed; and (5) the experience and views of counsel. *Dunk*, 48 Cal. App. 4th at 1801. Application of those factors here demonstrates that the proposed settlement is fair, reasonable and adequate.

1. The Strength of Plaintiff’s Case

Although Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges there are substantial risks and uncertainties in trying the Action on the merits. As described below and in the Custis Declaration, Fred Leeds could present multiple defenses to Plaintiff’s claims. Custis Decl., ¶¶ 38, 40-59. Thus, while Plaintiff was prepared to litigate her claims through trial, success was far from certain. This factor supports approval.

2. Risk, Expense, Complexity and Duration of Further Litigation

If the case had not settled, and continued to be litigated, Plaintiff anticipates that the parties would spend hundreds of hours preparing for a trial. Both parties would engage in extensive, formal discovery including depositions of Plaintiff, other Aggrieved Employees, several defense witnesses, and each party’s experts. Defendants also would engage in motion practice. The parties would thus incur considerably more attorneys’ fees and costs through trial, and possible appeals. This Settlement avoids those risks and the accompanying expense.

//

1 **3. Amount Offered in Settlement Given the Realistic Value of the Claims**

2 This Settlement provides a fair and reasonable monetary recovery for the LWDA and the
3 Aggrieved Employees in the face of disputed claims. A comparison of the amount that Defendants
4 offered in settlement to Defendants’ total exposure demonstrates that \$200,000 is reasonable.

5 Statutory penalties would be calculated according to Labor Code 2699(f)(2). If, at the time of
6 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
7 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
8 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Several
9 courts have found, however, that the “subsequent” penalty under PAGA applies only after a court or
10 the Labor Commissioner determines that the employer has violated the Labor Code. *See Gunther v.*
11 *Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) (“the increased \$200 civil penalty for
12 ‘subsequent violation[s]’ does not apply unless [Plaintiff] presents evidence that the Labor
13 Commission or a court notified [Defendant] that it was in violation of the Labor Code.”); *Bernstein*
14 *v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil
15 penalties” because the defendant was not given notice by the Labor Commissioner when the
16 “subsequent” violations occurred).

17 According to the PAGA Data produced by Fred Leeds, Fred Leeds employed 113 Aggrieved
18 Employees during the PAGA Period. The Aggrieved Employees worked a total of approximately
19 4,300 pay periods during the PAGA Period. During the PAGA Period, approximately 20 Aggrieved
20 Employees separated from Fred Leeds. Custis Decl., ¶ 41; *see also* S.A., ¶ 4.1.

21 Using that data, and assuming a 100% violation rate where Plaintiff could obtain the initial
22 civil penalties available under the PAGA, Plaintiff predicted Fred Leeds’s total exposure for civil
23 penalties would be approximately \$430,000 (4,300 pay periods x \$100 civil penalty) without
24 stacking; and \$2,210,050 with stacking (i.e., the tabulating and aggregating of all potential penalties).
25 Custis Decl., ¶¶ 49, 71.

26 After calculating Fred Leeds’s maximum exposure under PAGA, Plaintiff then discounted
27 that exposure for settlement purposes to account for the risks of continued litigation, including: (1)
28 the strength of Fred Leeds’s defenses on the merits, which are detailed in the Custis Declaration; (2)

1 the risk of losing on any number of dispositive motions that could have been brought between now
2 and trial (e.g., motions for summary judgment and/or motions in limine), which may have eliminated
3 Plaintiff's claim, or barred evidence necessary to prove his claim; (3) the risk that the Court would
4 exercise its discretion under PAGA to reduce the maximum civil penalties available by statute; (4)
5 the risk that the court would not stack all available civil penalties; (5) the chances of a favorable
6 verdict being reversed on appeal; and (6) the difficulties attendant to collecting on a judgment. Custis
7 Decl., ¶¶ 40-59 (describing Fred Leeds's defenses).

8 Fred Leeds would also undoubtedly argue that an award of \$2,210,050 is "unjust, arbitrary
9 and oppressive, or confiscatory." PAGA authorizes the court to reduce the maximum amount of civil
10 penalties "based on the facts and circumstances of a particular case" when "to do otherwise would
11 result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2).
12 In reducing PAGA penalties, courts have considered issues including whether the employees suffered
13 actual injury from the violations, whether the defendant was aware of the violations, and the
14 employer's willingness to fix the violation. *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
15 504, 528 (awarding PAGA penalties of only 0.2% of the maximum, reducing approximately
16 \$70,000,000 in penalties to \$150,000); *see also Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
17 Cal. App. 4th 1112, 1136 (reducing original penalty of \$512,268.88 by 30% to \$358,588.22);
18 *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011), No. ED CV 10-01487 RGK (OPx), 2011 WL
19 7563047, at *4 (reducing original penalty of \$2.8 million by 82% to \$500,000 where Defendant was
20 "not aware" that its actions violated the law).

21 Taking into account the above contingencies, and as detailed in the Custis Declaration,
22 Plaintiff determined that a realistic total recovery would be approximately \$672,750 with the stacking
23 of available civil penalties. Custis Decl., ¶¶ 40-59. The proposed settlement of \$200,000 thus
24 represents approximately 29.7% of the predicted realistic total recovery of \$672,750 with stacking,
25 and 46.5% of the maximum recovery without stacking, and is thus reasonable. *See, e.g., 7-Eleven*
26 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150 ("The fact that
27 a proposed settlement may only amount to a fraction of the potential recovery does not, in and of
28 itself, mean that the proposed settlement is grossly inadequate and should be disapproved.").

1 **4. Discovery Completed and the Status of Proceedings**

2 As detailed above and in the Custis Declaration, Plaintiff's Counsel engaged in sufficient
3 investigation, and informal discovery before mediation. Custis Decl., ¶¶ 9-10.

4 **5. The Settlement Was Reached By Competent Counsel With The Involvement of**
5 **A Neutral Mediator**

6 "The court . . . should give considerable weight to the competency and integrity of counsel
7 and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an
8 arm's-length transaction entered without self-dealing or other potential misconduct." *Kullar*, 168
9 Cal.App.4th at 129. Plaintiff's Counsel has considerable experience in PAGA and other complex
10 employment litigation and is qualified to evaluate the PAGA claims, the value of the settlement
11 compared to the risks and costs of litigation, and the viability of Defendants' defenses. Custis Decl.
12 ¶¶ 22-36. Plaintiff's Counsel believes that the settlement is fair, reasonable, and adequate in light of
13 the risks associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the
14 Court's discretion to lower the amount of penalties ultimately awarded, and the secured benefit to
15 the LWDA and Aggrieved Employees. In addition, as noted above, the Settlement was reached with
16 the assistance of Steven Paul, an experienced mediator with ample experience resolving wage and
17 hour class and PAGA actions. *See Kullar*, 168 Cal.App.4th at 129.

18 For the foregoing reasons, the proposed settlement is fair, reasonable and adequate and should
19 be approved.

20 **D. The Settlement Furthers PAGA's Public Policies**

21 The Settlement should also be approved because it furthers PAGA's public policies. First, it
22 maximizes enforcement of the state's labor laws by augmenting its enforcement capabilities.
23 Assuming the Court approves the requests for fees, costs, and the service payment, the LWDA will
24 receive a payment of \$86,758.61. Custis Decl., ¶ 17. Second, the claims and the settlement remediate
25 alleged Labor Code violations. Finally, the GSA of \$200,000 is also robust enough to deter
26 Defendants from committing further Labor Code violations

27 **E. The Settlement Satisfies PAGA's Statutory Requirements**

28 PAGA's statutory requirements are satisfied here. In compliance with Labor Code §

2699(1)(2), Plaintiff submitted a copy of the Settlement, along with a copy of this Motion and supporting documents, to the LWDA on December 4, 2024. Custis Decl., Ex. B. Plaintiff is seeking Court approval of the Settlement, and has otherwise complied with PAGA.

F. The Court Should Approve Plaintiff's Service Payment

While there appears to be no California appellate authority analyzing the appropriateness of service payments to PAGA representatives, California courts routinely approve such payments because the reasons for awarding incentive awards in class actions are similarly present in PAGA litigation.² The purpose of service awards is to incentivize aggrieved employees to step into the shoes of the LWDA and undertake the risks associated with initiating a lawsuit and serving in a representative capacity. *See, e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726 (“service payments” compensate named plaintiff “for [his] efforts in bringing the action”). Service awards thus further the Legislature’s sole purpose in enacting PAGA by incentivizing a plaintiff “to augment the limited enforcement capability of the [LWDA] . . . to enforce the Labor Code as representatives of the [LWDA].” *See Adolph v. Uber Technologies, Inc.* (2023) 14 Cal. 5th 1104, 1122.

That the PAGA statute is silent on the issue of service payments should not be an impediment to approving such payments. Notably, like the PAGA, the class action statutes—Federal Rule of Civil Procedure Rule 23 and California Code of Civil Procedure section 382—are equally silent as to service payments. *See* 5 Newberg and Rubenstein on Class Actions § 17:5 (5th ed.) (“Rule 23 does not currently make, and has never made, any reference to incentive awards The judiciary has created these awards out of whole cloth.”).

The two main California cases that considered the propriety of service payments in class actions relied on federal class action cases, which found service payments to be appropriate based on the policy rationales for the payments: (a) to incentivize the class representatives to bring cases, (b) “to compensate class representatives for work done on behalf of the class, [(c)] to make up for

² *See, e.g., Galindo v. 20/20 Plumbing and Heating, Inc.*, (Cal.Super. Oct. 24, 2021) No. CIVSB-2118276, 2021 WL 9880030, at *1 (\$5000 incentive award to PAGA representative); *Lawson v. California Bank & Trust*, Case No. 37-2016-00005578-CU-OE-CTL, 2020 WL 3579290, at *2 (Feb. 21, 2020 San Diego Cty. Super. Ct.) (court approval of \$10,000 incentive award to PAGA plaintiff).

1 financial or reputational risk undertaken in bringing the action, and, sometimes, [(d)] to recognize
2 their willingness to act as a private attorney general.” See *Cellphone Termination Fee Cases*, 186
3 Cal. App. 4th 1380, 1393-1394 (2010) (quoting *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-
4 59 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11:38 (4th ed.
5 2008))); *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). The same policy
6 rationales that support service payments to class representatives also support service payments to
7 PAGA plaintiffs.

8 Notably, the LWDA has voiced support for the approval of service payments to PAGA
9 plaintiffs. See “Comments of LWDA Regarding Proposed Settlement,” filed in *Doe v. Google, Inc.*,
10 *et al.*, Case No. CGC-16-556034 (S.F. Sup. Ct) (“LWDA Comments”), attached as Exhibit A to the
11 concurrently-filed Request for Judicial Notice (“RJN”). In November 2023, the LWDA submitted
12 comments in support of the \$27,000,000 settlement *Doe v. Google, Inc., et al.*, Case No. CGC-16-
13 556034 (S.F. Sup. Ct), a PAGA-only action. See RJN, Exhibit 1 at p.4-p.5. In *Doe v Google*,
14 Plaintiffs’ Counsel sought two \$20,000 and two \$10,000 service payments. RJN, Ex. 2 (Order
15 Approving Settlement). In the LWDA Comments, the LWDA wrote that, “[a]lthough the express
16 statutory terms of PAGA do not address incentive awards, the reasons for awarding incentive awards
17 in class actions may similarly be present in PAGA litigation.” RJN, Ex 1 at 4-5. The LWDA also
18 expressed its approval for the proposed settlement in *Doe v. Google*, including the \$20,000 and
19 \$10,000 service payments. RJN, Ex. 1 at 4-5; see also *Yamaha Corp. of America v. State Bd. of*
20 *Equalization* (1998) 19 Cal.4th 1, 7 (“An agency interpretation of the meaning and legal effect of a
21 statute is entitled to consideration and respect by the courts.”).

22 Here, Plaintiff seeks the Court’s approval of a \$5,000 Service Payment for her service to the
23 State of California and the other Aggrieved Employees and the risks incurred in serving as Plaintiff
24 in a PAGA action. SA, ¶ 3.2.2. The requested Service Award is fair and reasonable compensation
25 for Plaintiff’s efforts in representing the interests of the LWDA and other Aggrieved Employees,
26 assisting counsel with the litigation and settlement, attending several telephonic meetings with
27 Plaintiff’s counsel to discuss the claims and theories at issue in the litigation, reviewing drafts of the
28 complaint, the Memorandum of Understanding, and the PAGA Settlement Agreement. Castro Decl.,

¶¶ 2-16. The requested Service Payment is reasonable and should be approved.

G. The Court Should Approve Plaintiff's Counsel's Attorneys' Fees

The Settlement establishes a common fund of \$200,000. Pursuant to the Settlement, the Parties agreed that Plaintiff could seek attorneys' fees up to 33.33% of the GSA, or \$66,660. SA, ¶ 3.2.1. By this Motion, Plaintiff seeks an award of \$66,660 in attorneys' fees. Plaintiff's Counsel is entitled to attorneys' fees and costs as a matter of right under PAGA. Labor Code § 2699(g)(1).

For well over a century, courts have recognized that when counsel's efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, counsel have an equitable right to be compensated from that fund for their successful efforts in creating it. *Boeing Co. v. Van Gernert*, 444 U.S. 472, 478 (1980) (the Supreme Court "has recognized consistently that a litigant or lawyer who recovers a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole"). "The [common fund] doctrine has been recognized and applied consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110.

California state and federal courts routinely award attorneys' fees equaling one-third of the common fund in class and PAGA actions. *Laffitte v. Robert Half Internat. Inc.* (2016) 231 Cal. App. 4th 860, 871 ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.1 ("empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery").

Here, Plaintiff's Counsel's fee request of \$66,660, or 33.33% of the common fund, is fair and reasonable. The result achieved in this case—a \$200,000 settlement—provides an excellent monetary recovery for the State of California and the Aggrieved Employees in the face of hotly-disputed claims. The litigation here was also risky: Plaintiff's Counsel took this case on contingency, working over 59 hours since May 2023 without being paid, and advancing over \$8,500 in costs without any guarantee of reimbursement. Custis Decl., ¶¶ 67, 80, Exs. C & E; *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) ("Courts consistently recognize that the risk of non-payment or reimbursement of expenses is a factor in determining the appropriateness of counsel's

1 fee award.”). Plaintiff’s Counsel also undertook this representation to the exclusion of other paying
2 work. Custis Decl., ¶ 66.

3 To further evaluate reasonableness, the Court may—but is not required to—cross-check the
4 percentage of recovery against Plaintiff’s Counsel’s lodestar. *Laffitte*, 1 Cal. 5th at 506. In conducting
5 a lodestar cross-check, the court is not “required to closely scrutinize each claimed attorney-hour.”
6 *Laffitte*, 1 Cal. 5th at 505. An evaluation may be done by reviewing “counsel declarations
7 summarizing overall time spent.” *Id*

8 Here, the requested fees of \$66,660 are equal to Plaintiff’s Counsel’s lodestar of \$53,190,
9 increased by a modest upward multiplier of 1.25. Custis Decl., ¶ 71. A 1.25 multiplier is not
10 “extraordinarily high.” To the contrary, the normal range for a multiplier on a lodestar cross-check
11 “can range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255
12 (2001).

13 Plaintiff’s Counsel has spent over 59 hours litigating Plaintiff’s PAGA claim, including
14 conducting pre-filing investigation, legal research and analysis, reviewing Fred Leeds’s policies,
15 interviewing other Aggrieved Employees, drafting discovery, preparing for and attending mediation,
16 negotiating and drafting the settlement agreement, preparing this Motion for Approval, and otherwise
17 litigating the case. Custis Decl., ¶¶ 68-69. Plaintiff’s Counsel will continue to incur time preparing
18 for and attending the hearing on this Motion, and submitting a report regarding dissemination of
19 funds to the Court. Custis Decl., ¶ 70. In reaching this figure, Plaintiff’s Counsel has exercised
20 significant billing judgment, reducing hours billed to exclude redundancies, inefficiencies, or other
21 time not appropriately charged to a paying client. *Id.* ¶ 72.

22 In determining the reasonableness of the hours expended, “the court should defer to the
23 winning lawyer’s professional judgment as to how much time he was required to spend on the case;
24 after all, he won, and might not have, had he been more of a slacker.” *Kerkeles v. City of San Jose*,
25 243 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th
26 Cir. 2008)). Given the numerous tasks required and the results obtained, the hours of work performed
27 by Plaintiff’s Counsel in prosecuting the PAGA claim (which have been reduced in the exercise of
28 billing judgment) are reasonable. *Id.* ¶ 67, Ex. C (Plaintiff’s Counsel’s time records).

1 The lodestar should be calculated using hourly rates that are “the prevailing market rates in
2 the relevant community.” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). As detailed in the Custis
3 Declaration, the rate used in calculating the lodestar is reasonable and commensurate with other
4 attorneys with comparable skill and experience litigating wage-and-hour class and PAGA actions.
5 Custis Decl., ¶¶ 74-79; *see also id.*, Exs. C & D.

6 For the foregoing reasons, Plaintiff’s request for \$66,660 in attorneys’ fees is reasonable and
7 should be approved.

8 **H. The Court Should Approve Plaintiff’s Counsel’s Costs**

9 Plaintiff is entitled to reimbursement of litigation costs. Labor Code § 2699(g)(1). The Parties
10 agreed that Plaintiff could seek litigation costs in an amount up to \$10,000. SA, ¶ 3.2.1. By this
11 Motion, Plaintiff seeks an award of \$8,661.85 for reasonably incurred costs, including filing fees,
12 mediation fees, and postage. Custis Decl., ¶ 80, Ex. E. Because these costs are reasonable and were
13 necessarily incurred during the case’s pendency, they should be reimbursed to Plaintiff’s Counsel.

14 **I. The Court Should Appoint the Administrator and Approve the Settlement**
15 **Administration Costs**

16 As noted, the Parties have agreed to use ILYM to administer the settlement. SA, ¶ 7.1. ILYM
17 agreed to conduct the administration for the capped costs of \$4,000.00. Custis Decl., ¶ 81. The
18 Settlement provides that the Court will appoint the Administrator and approve the Settlement
19 Administration Costs when it rules on this Motion. Plaintiff, thus, requests that the Court appoint
20 ILYM as the Administrator, and approve Settlement Administration Costs in the amount of
21 \$4,000.00.

22 **J. The Court Should Approve The PAGA Payment Letter**

23 Although PAGA does not require notice to the Aggrieved Employees of the Settlement, the
24 Parties prepared, and now present for the Court’s consideration and approval, a cover letter for
25 transmission to Aggrieved Employees along with their payments, substantially in the form attached
26 as Exhibit 1 to the Settlement Agreement (the “PAGA Payment Letter.”) SA, ¶ 4.5; *see also* Custis
27 Decl., Ex. A, Ex.1. The PAGA Payment Letter accurately informs the Aggrieved Employees about
28 this action and the Settlement. The Administrator will provide the PAGA Payment Letter to the

1 Aggrieved Employees in both English and Spanish. SA, ¶ 4.5. Accordingly, Plaintiff respectfully
2 requests that the Court approve the PAGA Payment Letter.

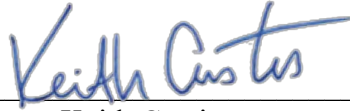
3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion in
5 its entirety and adopt the [Proposed] Order Granting PAGA Settlement Approval and [Proposed]
6 Judgment lodged concurrently with this Motion.

7 Respectfully submitted,

8 **CUSTIS LAW, P.C.**

9
10 Dated: December 4, 2024

11 By: 

12 Keith Custis

13 Attorneys for Plaintiff

14 KENIA CASTRO
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2121 Avenue of the Stars, Suite 800, Los Angeles, California 90067.

On December 4, 2024, I served the foregoing document(s) described as:

**PLAINTIFF'S NOTICE OF MOTION AND *UNOPPOSED* MOTION
FOR APPROVAL OF PAGA ACTION SETTLEMENT**

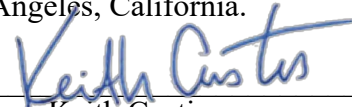
on the interested parties in this action,

Kurt Bockes
KBockes@littler.com
Emily Mertes
EMertes@littler.com
Littler Mendelson P.C.
101 Second Street, Suite 1000
San Francisco, California 94105

by sending a true copy thereof to the interested parties as follows:

- ☐ **(BY PERSONAL SERVICE)** By causing the document(s) listed above to be personally delivered on the date set forth above to the person(s) at the address(es) set forth above.
- ☒ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from kcustis@custislawpc.com to the email addresses set forth above pursuant Code of Civil Procedure Section 1010.6(e) and Rule 2.251 of the California Rules of Court.
- ☐ **(BY U.S. MAIL)** In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California, that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 4, 2024 in Los Angeles, California.



Keith Custis



Make a Reservation

KENIA CASTRO, AS A PRIVATE ATTORNEY GENERAL AND PROXY FOR THE STATE OF CALIFORNIA vs FRED LEEDS PROPERTY MANAGEMENT, INC., A CALIFORNIA CORPORATION, et al.

Case Number: 23STCV21642 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-09-08 Location: Stanley Mosk Courthouse - Department 37

Reservation

Case Name:

KENIA CASTRO, AS A PRIVATE ATTORNEY GENERAL
AND PROXY FOR THE STATE OF CALIFORNIA vs FRED
LEEDS PROPERTY MANAGEMENT, INC., A
CALIFORNIA CORPORATION, et al.

Case Number:

23STCV21642

Type:

Motion for Order (MOTION FOR APPROVAL OF PAGA
ACTION SETTLEMENT)

Status:

RESERVED

Filing Party:

Kenia Castro, as a private attorney general and proxy for
the State of California (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 37

Date/Time:

01/17/2025 8:30 AM

Number of Motions:

1

Reservation ID:

135370417337

Confirmation Code:

CR-WCKMIZDJEVEJEZMQ5

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:

\$0.00

Type:

NOFEE

Account Number:

n/a

Authorization:

n/a

Payment Date:

n/a

Chat