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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

GLORIA ARISTONDO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

PROSPERA MANAGEMENT INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 30-2023-01334274-CU-OE-CXC

[Assigned for all purposes to the Hon. Layne H.
Melzer, Dept. CX102]

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

Date: July 10, 2025

Time: 2:00 P.M.

Dept.: CX102

Action Filed: June 30, 2023

Trial Date: None Set

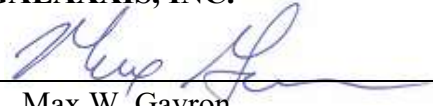
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 10, 2025, at 2:00 P.M., or as soon thereafter as the
3 matter may be heard before the Honorable Layne H. Melzer, in Department CX102, of the Superior
4 Court of the State of California for the County of Orange, located at 751 W. Santa Ana Blvd.,
5 Santa Ana, California 92701, Plaintiff Gloria Aristondo (“Plaintiff”) will and hereby does move
6 the Court for entry of an order approving the proposed PAGA Settlement Agreement
7 (“Agreement,” “Settlement,” or “Settlement Agreement”) entered into in the above-captioned civil
8 action between Plaintiff Gloria Aristondo and Defendants Prospera Management Inc., HP
9 Anaheim, LP, NPL Anaheim Investments, LLC, HI Anaheim, LLC, HH Corner, LLC, Prospera
10 Properties II, LP, and Bayside 765, LLC (collectively, “Defendants”) (Plaintiff and Defendants
11 shall collectively be referred to as the “Parties”) under the Labor Code Private Attorneys General
12 Act of 2004 (the “PAGA”).

13 This motion is based on this notice of motion, the attached memorandum of points and
14 authorities, the accompanying declarations of Max W. Gavron, Nazgole Hashemi, and Gloria
15 Aristondo, the records and file herein, and on such other evidence as may be presented at the
16 hearing of the motion.

17
18 DATED: June 11, 2025

**DIVERSITY LAW GROUP, P.C. and
LEGALAXXIS, INC.**

19
20 By: 

21 Max W. Gavron
22 Nazgole Hashemi
23 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et*
4 *seq.*, Plaintiff Gloria Aristondo (“Plaintiff”) moves the Court for an order approving the non-
5 reversionary settlement as set forth in the concurrently filed PAGA Settlement Agreement
6 (“Agreement,” “Settlement,” or “Settlement Agreement”). The operative Second Amended
7 Complaint in this case alleges that Defendants Prospera Management, Inc., HP Anaheim, LP, NPL
8 Anaheim Investments, LLC, HI Anaheim, LLC, HH Corner, LLC, Prospera Properties II, LP, and
9 Bayside 765, LLC (collectively, “Defendants”) (Defendants and Plaintiff referred to as the
10 “Parties”) violated the Labor Code as a result of Defendants’ alleged failure to provide duty-free
11 meal and rest breaks, failure to properly calculate the regular rate of pay for the purposes of paying
12 overtime and sick pay, failure to pay all wages owed upon separation of employment, failure to
13 provide accurate itemized wage statements, and failure to reimburse business expenses, pursuant
14 to Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 2802, and 2698, *et seq.* Plaintiff
15 alleges that employees were obliged to work through meal and rest breaks to meet work demands.
16 Plaintiff also alleges that Defendants failed to incorporate non-discretionary remuneration, such as
17 incentive pay, into the calculation of the regular rate for the purposes of paying overtime and sick
18 pay, and Defendants failed to reimburse employees for the costs of using personal cell phones for
19 work purposes. As a result of the underpayment and/or nonpayment of wages, Plaintiff alleged
20 that the wage statements issued by Defendants failed to identify accurate hourly rates of pay and
21 gross and net wages earned.

22 As demonstrated below and in the accompanying declaration of Max W. Gavron, the
23 proposed settlement warrants the Court’s approval. This settlement was reached after extensive
24 investigation, discovery, and litigation, including reviewing Defendants’ production of documents
25 and analyzing data regarding the number of allegedly aggrieved employees and pay periods at
26 issue.

27 Pursuant to the terms of the Parties’ proposed Settlement Agreement, Defendants will pay
28 the total amount of Two Hundred Forty-Five Thousand Dollars (\$245,000.00) (the “Gross

Settlement Amount”), which includes a payment of approximately \$98,125.00 in civil penalties to the California Labor and Workforce Development Agency (“LWDA”) and approximately \$32,708.33 to the allegedly aggrieved employees. The proposed release is narrowly tailored to release only claims for civil penalties under PAGA predicated on Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, and 2802. The proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and allegedly aggrieved employees, and accomplishes the goals of PAGA.

II. PROCEDURAL HISTORY

A. Litigation

On June 5, 2023, Plaintiff provided written notice to the LWDA and Defendant Prospera Management, Inc. (“Prospera”) 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”). Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 3, Ex. B. Plaintiff’s PAGA Notice alleged claims for violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, and 2802. *Id.* ¶ 3.

On June 30, 2023, Plaintiff filed a class action complaint against Prospera asserting claims for violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, and 2802, and Business and Professions Code § 17200, *et seq.* (the “Action”). Gavron Decl. ¶ 4. The complaint alleged that Prospera failed to provide off-duty meal and rest breaks, properly calculate the regular rate of pay for the purposes of paying overtime and sick pay, pay all wages owed upon separation of employment, provide accurate itemized wage statements, and reimburse business expenses to employees. Because of an arbitration agreement containing a purported class action waiver, Plaintiff subsequently filed a first amended representative action complaint on September 7, 2023, alleging a single cause of action for violation of Labor Code § 2698, *et seq.*, predicated on underlying violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, and 2802. *Id.* ¶ 5.

In January 2024, Prospera filed a motion to compel arbitration of Plaintiff’s individual PAGA claims and stay the Action. Gavron Decl. ¶ 6. On April 5, 2024, the Court granted

Prospera's motion. *Id.* ¶ 6. The Court stayed the Action pending resolution of Plaintiff's claims in arbitration. *Id.* ¶ 6.

On April 17, 2024, Plaintiff filed a demand for arbitration of her individual PAGA claims against Prospera before JAMS. *Id.* ¶ 7.

B. Discovery and Mediation

After the filing of the amended complaint, the Parties engaged in formal and informal discovery. In the Superior Court action, Plaintiff served Requests for Production of Documents and Special Interrogatories. Among other things, the discovery called for Prospera to identify their California employees and produce documents regarding Defendants' pay, meal and rest break, time keeping, overtime, sick pay, wage statement, and final pay policies. Gavron Decl. ¶ 8. Prospera objected that the discovery is premature and improper due to the existence of an enforceable arbitration agreement. *Id.* ¶ 8. Following meet and confer efforts initiated by Plaintiff, Prospera then filed its motion to compel arbitration, which the Superior Court granted. *Id.* ¶ 8. In the arbitration, Plaintiff served Requests for Production of Documents and Special Interrogatories. *Id.* ¶ 8. Prospera provided responses to the discovery, but also objected to various requests, requiring Plaintiff to initiate and the parties thereafter to engage in meet and confer efforts. *Id.* ¶ 8.

Thereafter, the parties agreed to engage in a global mediation before the Honorable Amy D. Hogue (Ret.). Gavron Decl. ¶ 9. In connection with the mediation, Prospera provided Plaintiff and her counsel with information and data to analyze Defendants' potential liability, including the number of aggrieved employees, number of pay periods at issue, relevant policies, and a sampling of the time and pay records of the aggrieved employees. *Id.* ¶ 9. Prospera also provided information regarding its joint employer partner entities HP Anaheim, LP, NPL Anaheim Investments, LLC, HI Anaheim, LLC, HH Corner, LLC, Prospera Properties II, LP, and Bayside 765, LLC. *Id.* ¶ 9. Based on this information, the Parties conducted settlement negotiations. *Id.* ¶ 10.

The Parties mediated on February 18, 2025. Gavron Decl. ¶ 11. The Parties spoke at length about the strengths and weaknesses of each side's claims and defenses and the scope of each

Defendants’ liability. *Id.* Continued negotiations post-mediation resulted in an agreement in principle and the signing of a memorandum of understanding between the Parties. *Id.* ¶ 11. The Parties subsequently entered into the PAGA Settlement Agreement to resolve Plaintiff’s PAGA claims in their entirety. *Id.* ¶ 12. A true and correct copy of the PAGA Settlement Agreement is attached to the Declaration of Max W. Gavron as **Exhibit A**. Plaintiff’s individual Labor Code claims pending in the arbitration were resolved in a separate confidential settlement agreement.¹ *Id.*

C. Operative Complaint

In connection with the Parties’ settlement, on March 5, 2025, Plaintiff filed a supplemental PAGA Notice with the LWDA, naming HP Anaheim, LP, NPL Anaheim Investments, LLC, HI Anaheim, LLC, HH Corner, LLC, Prospera Properties II, LP, and Bayside 765, LLC as additional employers against whom Plaintiff alleges the above-referenced Labor Code claims. Gavron Decl. ¶ 14, Ex. C.

On May 22, 2025, Plaintiff filed the operative Second Amended Representative Action Complaint (“Operative Complaint”), naming HP Anaheim, LP, NPL Anaheim Investments, LLC, HI Anaheim, LLC, HH Corner, LLC, Prospera Properties II, LP, and Bayside 765, LLC as additional defendants. *Id.* ¶ 15.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the settlement are described below and set forth in detail in the concurrently filed Settlement Agreement.

A. The Aggrieved Employees

The settlement covers “non-exempt employees of Defendants who worked in California during the PAGA Period” (“Aggrieved Employees”). Agreement ¶ 1.4. Based upon Defendants’ records, there are an estimated 609 Aggrieved Employees who worked an estimated 22,144 pay periods during the period of June 5, 2022 through February 18, 2025. *Id.* ¶¶ 1.18, 4.1. The PAGA

¹ Plaintiff is prepared to submit the confidential individual settlement agreement for the Court’s review, in camera, if requested to do so.

Period is defined as “the period from June 5, 2022 through the date of entry of order for approval of the Settlement by the court or April 19, 2025, whichever is earlier.” *Id.* ¶ 1.19.²

B. Gross Settlement Amount and Allocation

The Settlement Agreement requires Defendants to pay the total amount of Two Hundred Forty-Five Thousand Dollars (\$245,000.00) (the “Gross Settlement Amount”). Agreement ¶ 1.10. The balance of the Gross Settlement Amount remaining after deduction of the approved PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment – the “Net Settlement Amount” or “PAGA Penalties” – will be available for distribution to the LWDA (“LWDA PAGA Payment”) and Aggrieved Employees. *Id.* ¶¶ 3.2, 3.2.1, 3.2.2, 3.2.3. Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$98,125.00, will be paid to the LWDA. *Id.* ¶ 3.2.3. The remaining twenty-five percent (25%), or approximately \$32,708.33, will be distributed to the Aggrieved Employees. *Id.*

Aggrieved Employees will receive an average payment of approximately \$53.71. Gavron Decl. ¶ 21. The amount any particular Aggrieved Employee will receive will be more or less than this average depending on the number of pay periods he or she worked during the PAGA Period, with some entitled to receive more, and others less. *Id.* This is fair, as it directly allocates greater payments to individual Aggrieved Employees who worked for Defendants for a longer period of time and therefore who have allegedly suffered greater harm. *Id.*

As part of the Settlement Agreement, Defendants do not object to PAGA Counsel’s request for attorneys’ fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Eighty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$81,666.67), plus up to Twenty-Five Thousand Dollars (\$25,000.00) for reimbursement of litigation costs, subject to the Court finally approving this settlement.³ Agreement ¶ 3.2.1.

Finally, the Settlement Agreement provides for the payment of the costs reasonably

² Pursuant to the Agreement, Defendants confirmed that the number of pay periods within the PAGA Period, which ends April 19, 2025, does not trigger the escalator provision. Gavron Decl. ¶ 16; Agreement ¶ 8.

³ As set forth below, PAGA Counsel seeks reimbursement of its actual litigation costs in the amount of \$13,957.82, which is less than originally allocated by the Parties.

1 incurred by the Settlement Administrator. *Id.* ¶ 3.2.2. The Parties have agreed to utilize Phoenix
2 Settlement Administrators to administer the Settlement, with the administration costs estimated to
3 be \$7,500.00. *Id.* ¶¶ 1.2, 3.2.2; Gavron Decl. ¶ 47; Ex. F (Phoenix Bid).

4 **C. Scope of the Released Claims**

5 In exchange for the payments described above, Plaintiff, Aggrieved Employees, and the
6 LWDA will release the Released Parties from:

7 any and all claims for civil penalties under PAGA which Plaintiff
8 and/or the Aggrieved Employees had, or may claim to have, against
9 Released Parties, reasonably arising out of the facts alleged in the
10 Second Amended Complaint or the PAGA Notices submitted in
11 connection with the Action, including failure to pay all wages and
12 hours worked, failure to provide meal periods, failure to provide rest
13 breaks, failure to provide accurate itemized wage statements, failure
14 to maintain accurate records, waiting time penalties, failure to
reimburse necessary business expenditures, and failure to timely pay
wages (i.e., Labor Code sections 201, 202, 203, 204, 210, 226,
226.3, 226.7, 246, 510, 512, 558, 1194, and 2802) (the “Released
PAGA Claims”).

15 Agreement ¶¶ 1.25, 5. The Released Parties are “Defendants Prospera Management, Inc., HP
16 Anaheim, LP, NPL Anaheim Investments, LLC, HI Anaheim, LLC, HH Corner, LLC, Prospera
17 Properties II, LP, and Bayside 765, LLC as named by Plaintiff in the Amended PAGA Letter and
18 Second Amended Complaint, and all their past, present and/or future, direct and/or indirect,
19 officers, directors, members, managers, employees, agents, representatives, attorneys, insurers,
20 partners, investors, shareholders, predecessors, successors, and assigns.” *Id.* ¶ 1.26. The Settlement
21 does not release Defendants from any of the underlying Labor Code claims. The release is
22 expressly limited to claims, rights, demands, liabilities, and causes of action for civil penalties
23 under PAGA. *Id.* ¶ 5.

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

25 **A. PAGA Overview**

26 In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the
27 LWDA and other aggrieved employees, to bring suit against their employers for alleged violations
28 of the California labor laws and to obtain penalties that previously could only be obtained by the

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

10 Labor Code § 2699(a) states that any Labor Code provision “that provides for a civil
11 penalty to be assessed and collected by the [LWDA] may, as an alternative, be recovered through
12 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
13 or former employees pursuant to the procedures specified in Section 2699.3.” An “aggrieved
14 employee” means “any person who was employed by the alleged violator and against whom one
15 or more of the alleged violations was committed.” Lab. Code § 2699(c). Prior to commencing an
16 action, the allegedly aggrieved employee must provide notice to the LWDA and the employer
17 setting forth the “specific provisions of [the Labor Code] alleged to have been violated, including
18 the facts and theories to support the alleged violation.” Lab. Code § 2699.3(a)(1). If the LWDA
19 decides not to investigate the allegations or issue a citation to the employer, the proposed
20 representative plaintiff is entitled to commence a PAGA action after 65 days. Lab. Code §
21 2699.3(a)(2).

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

1 class”).

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

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

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

24 Notably, unlike the class action settlement approval process, there is also no statutory
25 mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
26 2699(1). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
27 they have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if any,
28 reached between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

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

2 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
3 ultimately receive as a result of a settlement, but instead, on whether the total settlement amount
4 achieves PAGA’s objectives. Under PAGA, the penalties recovered are meant to supplement
5 agency funding for education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the
6 settlement represents an extraordinary recovery for the Aggrieved Employees and the State, and
7 thus the settlement certainly effectuates PAGA’s purpose.

8 The settlement is also consistent with the State’s public policy favoring resolution of
9 disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[].
10 Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The
11 parties are best positioned to understand their interests and resolve a dispute in a mutually
12 beneficial manner without court intervention into the settlement.” *Consumer Advocacy Group, Inc.*
13 *v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal.
14 4th 273, 277- 278 (1992)).

15 **D. The Scope of the Release is Appropriately Limited**

16 If approved, the settlement would release Defendants and other releasees only from all
17 PAGA claims predicated on the violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,
18 226.7, 246, 510, 512, 558, 1194, and 2802, and nothing more. The settlement would not impact
19 Aggrieved Employees’ ability to pursue PAGA claims predicated on other Labor Code violations
20 or any Labor Claims not predicated on PAGA. Therefore, the limited scope of the release also
21 supports approval. Because an aggrieved employee’s PAGA action is a substitute for an action
22 brought by the government, “judgment in [a PAGA] action is binding not only on the named
23 employee plaintiff but also on government agencies and any aggrieved employee not a party to the
24 proceeding.” *Arias*, 46 Cal. 4th at 986. However, “the nonparty employees, because they were not
25 given notice of the action or afforded any opportunity to be heard, would not be bound by the
26 judgment as to remedies other than civil penalties.” *Id.* at 987; *see also*, Lab. Code § 2699(g)(1)
27 (non-party aggrieved employees retain all rights “to pursue or recover other remedies available
28 under state or federal law, either separately or concurrently with an action taken under this part”).

1 Accordingly, the Aggrieved Employees will be subject to only a limited release strictly
2 confined to the statutory penalties, attorneys' fees, and costs available under PAGA for violation
3 of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, and 2802.
4 The release is therefore appropriately tailored.

5 **E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
6 **Litigation**

7 Though Plaintiff is reasonably confident that she would prevail at trial, proceeding in
8 litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the
9 still-developing law under PAGA.

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

11 Plaintiff asserts that her representative PAGA claim is based on the allegation that
12 Defendants failed to provide duty-free meal and rest breaks, properly calculate the regular rate of
13 pay for the purposes of paying overtime and sick pay, pay all wages owed upon separation of
14 employment, provide accurate itemized wage statements, and reimburse business expenses.
15 Gavron Decl. ¶ 24.

16 Defendants disputed Plaintiff's claims. For one, Defendants argued that the allegations of
17 regular rate violations only applied to the pay periods where an employee was provided some form
18 of non-discretionary remuneration and also earned overtime, meal period premiums, and/or sick
19 pay. *Id.* ¶ 25. This necessarily limited the potential exposure on this claim because the number of
20 pay periods applicable to this theory of liability was limited to approximately 1,296 of the
21 applicable pay periods (or approximately 6%), according to Plaintiff's analysis of the records.
22 Thus, for these claims, if the Court were to award \$100 per pay period with a violation, the
23 exposure could be as high as \$129,600 [1,296 x \$100]. This, of course, does not contemplate any
24 defenses regarding whether the remuneration actually should have been included in the regular
25 rate of pay, or the Court's discretion to reduce penalties, as discussed below.

26 Defendants argued that Plaintiff's claims for meal and rest periods more broadly failed for
27 a number of reasons. First, Defendants argued that they had facially compliant policies. *See Brinker*
28 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand,

1 the employer is not obligated to police meal breaks and ensure no work thereafter is performed.”).
2 Defendants argued that they had legally compliant written policies, which satisfied *Brinker* and
3 that any failure to take a legally compliant meal or rest period by employees was the result of
4 individual choice and thus not capable of resolution through a representative action. Defendants
5 also disputed that they controlled employees during meal or rest periods. Moreover, analysis of
6 the time records produced by Defendants demonstrated a high level of compliance and low meal
7 period facial violation rate of approximately 432 pay periods out of the total at issue, which further
8 limited the potential chances of success on these claims.

9 Defendants also argued that the waiting time penalties are subject to a complete defense.
10 Defendants argued that a good faith dispute exists as to whether the allegedly underpaid wages
11 were due to Plaintiff and the Aggrieved Employees considering Defendants’ legally compliant
12 policies. If Defendants were successful on the good faith defense, the Court may not have awarded
13 waiting time penalties at all. *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL
14 1979980, at *1 (Cal. May 6, 2024); *Hill v. Walmart, Inc.*, 32 F.4th 811 (9th Cir. 2022) (upholding
15 good faith defense because defendant reasonably believed wages were not due and owing at time
16 of separation of employment); *Chavez v. Converse, Inc.*, 2020 WL 1233919 at *1 (N.D. Cal. 2020)
17 (holding that an employer’s failure to pay is not willful where there is uncertainty in the law or a
18 “good faith mistaken belief that wages are not owed”).

19 The California Supreme Court also recently approved a good faith defense to the
20 imposition of Section 226 penalties, which further undermines the certainty of recovering these
21 damages even if Plaintiff prevailed on liability. *Id.* On Plaintiff’s wage statement claim, Plaintiff
22 would face the additional burden of demonstrating that any alleged omission of information from
23 the wage statements was a “knowing and intentional failure” by Defendant to comply with Labor
24 Code § 226(a). *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)
25 (granting summary judgment in favor of employer and finding its conduct was not “knowing and
26 intentional”).

27 Plaintiff argued that employees were required to use their cell phones for work-related
28 tasks. Gavron Decl. ¶ 28. Defendant vehemently denied this contention. Defendant disputes the

1 existence of a common policy that requires employees to use personal cell phones for work-related
2 purposes because it maintained compliant written reimbursement policies, which rendered this
3 claim difficult, too. *Id.* ¶ 28.

4 If Plaintiff was successful in demonstrating at least one Labor Code violation per pay
5 period, the maximum exposure could be as high as approximately \$2,214,400. Gavron Decl. ¶ 29.
6 However, the likelihood of this is low given the difficulties faced above and the Court’s inherent
7 discretion to reduce penalties awarded even where there is a proven violation. *Id.* Defendants also
8 argued more broadly that any regular rate violations were the result of its payroll provider’s
9 calculations, as opposed to a policy of Defendants. *Id.* ¶ 29.

10 **2. Recovery of Penalties After Trial**

11 Defendants have indicated that there were approximately 22,144 pay periods at issue
12 during the time encompassed by this settlement. Agreement ¶ 4.1. Therefore, pursuant to the
13 PAGA, Plaintiff has calculated maximum exposure to be \$2,214,400.00 if the Court were to award
14 a \$100 penalty for each pay period encompassed by a violation. Gavron Decl. ¶ 30. However, even
15 if Plaintiff was to prevail on the merits of the PAGA claim, the potential recovery is uncertain.
16 Pursuant to Labor Code § 2699(e)(2) the Court can decline to award the full amount of PAGA
17 penalties where “if, based on the facts and circumstances of the particular case, to do otherwise,
18 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown
19 in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed
20 on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by
21 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th 504,
22 517 (2018). Upon review, the Court of Appeal found such a reduction to be proper. *Id.* at 539; *see*
23 *O’Connor*, 2016 WL 4398271 at *17 (noting that even if PAGA penalties amounted to \$1 billion,
24 such award “could well be reduced, as a court may reduce the penalty when to do otherwise would
25 result in an award that is unjust, arbitrary and oppressive, or confiscatory”).

26 Courts routinely award far less than the statutory maximum amount of civil penalties, even
27 where an underlying violation of the Labor Code is found. In *Magadia v. Wal-Mart Assocs., et al.*,
28 while the trial court imposed substantial PAGA penalties upon the defendant, such amount still

1 represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist.
2 Lexis 91792 at *87-*100. Moreover, this was only after the plaintiff in *Magadia* had prevailed
3 after trial.

4 Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties.
5 However, Plaintiff is aware that Defendants could make a compelling argument to the contrary.

6 **3. Settlement is Reasonable When Compared to the Value of the**
7 **Underlying Labor Code Claim**

8 The Court's assessment of the proposed settlement must take into account that any
9 penalties awarded may be subject to substantial reduction. When this is considered, in conjunction
10 with the history of PAGA settlements, and the fact that Plaintiff may recover nothing, the proposed
11 settlement is reasonable. Indeed, the Gross Settlement Amount is approximately 11% of the
12 maximum amount of penalties at issue (\$245,000.00 ÷ \$2,214,400). Gavron Decl. ¶ 33. Settlement
13 for this reduced value allows for the distribution of penalties in an amount which accounts for the
14 risk of continued litigation, and Defendants' likely arguments that higher penalties would have
15 been confiscatory. It also sufficiently deters Defendants from engaging in similar conduct in the
16 future, which is one of the primary goals of PAGA.

17 The proposed settlement exceeds PAGA settlements that courts have approved in other
18 cases, when considered as a percentage of the overall settlement value of the case. The proposed
19 settlement, in fact, far exceeds other PAGA settlements approved by courts – including those that
20 provide for less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v.*
21 *Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA
22 allocation that was 0.49% of \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL
23 5439000 *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of
24 \$10,000,000 gross settlement); *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013)
(approving total PAGA allocation that was 0.67% of \$750,000 gross settlement).

25 **F. The Attorneys' Fees are Reasonable**

26 Labor Code § 2699(g)(1) provides for the recovery of attorneys' fees and costs in any
27 successful action brought under PAGA. Although this is not a class action, in class actions
28 California state and federal courts have recognized that an appropriate method for determining

award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

The common fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id.*

Indeed, most recently, the California Supreme Court has also held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.").

1 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
2 of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
3 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high
4 or low [should] the trial court [] consider whether the percentage method should be adjusted so
5 as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

6 Here, as set forth in their declarations and their respective lodestars, Plaintiff’s attorneys
7 will have spent approximately 145.7 hours litigating this current action and anticipate spending an
8 additional 5 hours on post-approval communications with Defendant, the administrator and
9 Aggrieved Employees. Based thereon, and based on PAGA Counsel’s hourly rates, the lodestar
10 equates to \$113,025.00, which is results in a negative multiplier of 0.72, as compared to the
11 \$81,666.67 fee requested. Gavron Decl. ¶ 43, Ex. D; Declaration of Nazgole Hashemi (“Hashemi
12 Decl.”) ¶ 6 Ex. A. Thus, the requested fee amount of \$81,666.67 is fair and reasonable and requires
13 a negative multiplier.

14 Additionally, PAGA Counsel’s cost reimbursement request in the amount of \$13,957.82 is
15 also reasonable. Gavron Decl. ¶ 46, Ex. E. The costs were all directly incurred in the prosecution
16 of this action, including filing fees, mediation fees, service of process costs, postage, and copy
17 costs. Gavron Decl. ¶ 46, Ex. E. As such, the requested costs should be awarded as fair and
18 reasonable.

19 **G. The Settlement Administration Procedure & Costs Should be Approved**

20 The Parties have agreed to pay actual costs of administration, or \$7,500.00, to the
21 Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement.
22 Agreement ¶¶ 1.2, 3.2.2. The Parties believe that the administration fee is reasonable and should
23 be approved based on experience in similar settlements. Gavron Decl. ¶ 47. The Settlement
24 Administrator will distribute the monies to the appropriate stakeholders as set forth in the
25 Agreement. Agreement ¶ 4.4. The Settlement Administrator will distribute a letter, attached as
26 Exhibit C to the Agreement, to Aggrieved Employees and use reasonable efforts to remail notices
27 that are returned. *Id.* ¶¶ 4.4.1, 4.4.2. Any checks distributed to Aggrieved Employees that are not
28 cashed within 180 days shall be sent to the California State Controller’s Unclaimed Property Fund

1 in the name of the Aggrieved Employee. *Id.* ¶ 4.4.3.

2 **H. Notice to the LWDA Has Been Provided**

3 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the
4 LWDA's website. Gavron Decl. ¶ 48.

5 **V. CONCLUSION**

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

7
8 DATED: June 11, 2025

**DIVERSITY LAW GROUP, P.C. and
LEGALAXXIS, INC.**

9
10 By: _____

11 Max W. Gavron
12 Nazgole Hashemi
13 Attorneys for Plaintiff
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