

Larry W. Lee (State Bar No. 228175)

lwlee@diversitylaw.com

Kristen M. Agnew (State Bar No. 247656)

kagnew@diversitylaw.com

DIVERSITY LAW GROUP, P.C.

515 S. Figueroa Street, Suite 1250

Los Angeles, CA 90071

(213) 488-6555

(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)

bill@polarislawgroup.com

POLARIS LAW GROUP

501 San Benito Street, Suite 200

Hollister, CA 95023

(831) 531-4214

(831) 634-0333 facsimile

Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TUOLUMNE

VERONICA AGUAYO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

HEALTHCARE STAFFING
PROFESSIONALS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CV65621

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

Date: August 9, 2024

Time: 8:30 a.m.

Dept: 1

Complaint Filed: October 4, 2023

Trial Date: None

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

2 **PLEASE TAKE NOTICE** that on August 9, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Kevin M. Seibert, judge presiding, in Department 1 of
4 the above referenced Court located at 12855 Justice Center Drive, Sonora, California 95370,
5 Plaintiff Veronica Aguayo (“Plaintiff”) will seek an Order approving the concurrently filed Joint
6 Stipulation of Settlement and Release under the Private Attorneys General Act (“Agreement” or
7 “Settlement”), pursuant to the procedures set forth in Labor Code section 2698, *et seq.*

8 This motion will be based on this notice of motion, the attached memorandum of points and
9 authorities, the accompanying declarations of Kristen M. Agnew, Plaintiff Veronica Aguayo and
10 Jodey Lawrence (Phoenix Settlement Administrators), the records and file herein, and on such other
11 evidence as may be presented at the hearing of the motion.

12
13 DATED: July 15, 2024

DIVERSITY LAW GROUP, P.C.

14
15 By: _____
16 Larry W. Lee
17 Kristen M. Agnew
18 Attorneys for Plaintiff and the Aggrieved
19 Employees
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	8
II. PROCEDURAL HISTORY.....	9
A. Plaintiff's Employment with Defendant.	9
B. The PAGA Notice and Complaint.	9
C. The Parties' Investigation and Informal Discovery.....	10
1. The Security Inspection.....	10
2. Defendant's Calculation of the Regular Rate.....	11
3. Defendant's Meal and Rest Period Policies and Procedures.	11
4. Defendant Provided Pay Period Data.	12
D. The Parties Participate in Private Mediation.....	12
III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT.....	12
A. The Aggrieved Employees.....	13
B. The Maximum Settlement Amount.....	13
C. The Allocation of the PAGA Penalties Fund.....	13
D. Attorneys' Fees, Litigation Costs and Enhancement Payment.	14
E. Settlement Administration Costs.....	14
F. Scope of the Released Claims.....	15
IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED....	15
A. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims.	15
B. The Settlement is Fair and Reasonable.....	16
1. The Settlement Effectuates PAGA's Objectives.	16
2. The Settlement Recognizes the Inherent Risks of Litigation.....	17

1	a.	Plaintiff’s Claims are Contested.	17
2	b.	The Potential Recovery of Penalties Is Uncertain.....	18
3	c.	The Maximum Settlement Amount Is Reasonable.	19
4	C.	The Scope of the Release is Appropriately Limited.....	20
5	D.	The Attorneys’ Fees are Reasonable.	20
6	E.	The Settlement Administrator’s Fees Should be Approved.	26
7	F.	Plaintiff’s Enhancement Payment Should Be Approved.	26
8	G.	Notice to the LWDA Has Been Provided.....	27
9			
10	V.	CONCLUSION	27
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504, 517 (2018)	19
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43, 60 (2008)	22, 24
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	24
<i>Consumer Advocacy Group, Inc. v. Kintetsu</i> , 141 Cal. App. 4th 46, 62-63 (2006)	20
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629, 632-33 (1998)	25
<i>Frlekin v. Apple Inc.</i> , 8 Cal. 5th 1038 (Feb. 13, 2020)	12
<i>Huerta v. CSI Electrical Contractors</i> , 15 Cal.5th 908, 936 (2024)	18
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122, 1139 (2001)	25
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	22, 23
<i>Laffitte v. Robert Half Int'l</i> , 231 Cal. App. 4th at pp. 881-82 (2014)	24
<i>Lealao v. Beneficial California, Inc.</i> , 82 Cal. App. 4th 19, 29-30 (2000)	24, 25, 26
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553, 559 (1986)	25
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal.App.5th 56, 77 (2021)	17
<i>Moniz</i> , 287 Cal.Rptr.3d 107, 126, 72 Cal.App.5th 56, 77 (Cal.App. 1 Dist., 2021)	18
<i>Neary v. Regents of Univ. of Cal.</i> , 3 Cal. 4th 273, 277- 278 (1992)	20
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084, 1095 (2000)	25
<i>Price v. Starbucks Corp.</i> 192 Cal.App.4th 1136, 1147 (2011)	18
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	21, 25
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 639 (1982)	25
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal. App. 4th 495, 512 (2009)	24
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 254 (2001)	21, 24, 26

Federal Cases

<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	20
<i>Boyd v. Bank of Am. Corp.</i> , 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)	25
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	26
<i>Cazares v. Host International, Inc.</i> , 2021 WL 3667227, at *1 (9th Cir. 2021)	17

1	<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448, 470 (2d Cir. 1974).....	22
2	<i>Clarke v. AMN Services, LLC</i> , 987 F.3d 848, 856 (9th Cir. 2021).....	11
3	<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	26
4	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio	
5	1991)	26
6	<i>Fernandez v. Victoria Secret Stores LLC</i> , 2008 WL 8150856 at p. *16 n. 59 (C.D. Cal. 2008).....	21
7	<i>Fleming v. Covidien Inc.</i> , Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D.	
8	Cal. 2011).....	18
9	<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	21
10	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
11	27, 2007)	26
12	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1026 (9th Cir. 1998)	16
13	<i>Hartley v. On My Own, Inc.</i> , 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020)	19
14	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990)	26
15	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294, 306-307 (3d Cir. 2005).....	22
16	<i>Kang v. Wells Fargo Bank, N.A.</i> , 2021 WL 5826230, at *15 (N.D.Cal., 2021).....	16
17	<i>Magadia v. Wal-Mart Assocs. et al.</i> , 2019 U.S. Dist. Lexis 91792 at *87-*100.....	18
18	<i>Manzo v. McDonald's Restaurants of California, Inc.</i> , 2022 WL 4586236, at *6 (E.D. Cal., 2022) 19	
19	<i>Martin v. AmeriPride Servs.</i> , 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).....	21
20	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54, 62 (1980).....	24
21	<i>Ochoa-Hernandez</i> , 2010 WL 1340777 at*13	16
22	<i>Ramirez v. Benito Valley Farms, LLC</i> , 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017)	19
23	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> , 108 F.R.D. 237, 258 (1985)	
24		23
25	<i>Rodriguez v. W. Publ'g Corp.</i> , 563 F.3d 948, 958–59 (9th Cir. 2009)	26
26	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	26
27	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014).....	25
28	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	20

Statutes

Cal. Lab. Code § 2699(1).....	17
CCP § 1021.5	16
Lab. Code § 2699(g)(l)	21
Labor Code section 1194	9, 10, 16
Labor Code section 1197	9, 10, 16
Labor Code section 1197.1	9, 10, 16
Labor Code section 201	10, 16, 18
Labor Code section 202	10, 16, 18
Labor Code section 203	10, 16, 18
Labor Code section 204	10, 16
Labor Code section 226	16
Labor Code section 226(a).....	10, 18
Labor Code section 226.3	16
Labor Code section 226.7	9, 10, 11, 16
Labor Code section 2698 et seq.	10, 16
Labor Code section 2699(f)(2).....	19
Labor Code section 510	9, 10, 16
Labor Code section 512	9, 10, 16
Labor Code section 558	9, 10, 16

Other Authorities

4 Herbert B. Newberg, <i>Newberg on Class Actions</i> § 11.25 et seq., and § 13.64 (4th ed. 2002 and Supp. 2004)	16
<i>Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees</i> , 81 Wash U.L.Q. 653, 659 n.11 (Fall 2003)	22
Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> , 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010)	23
<i>Manual</i> , § 21.632 (4th ed. 2004).....	16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Veronica Aguayo (“Plaintiff”) filed this representative Private Attorneys General
4 Act of 2004 (“PAGA”) action on behalf of current and former non-exempt employees of Defendant
5 Healthcare Staffing Professionals, Inc. (“Defendant” or “HSP”). Plaintiff’s primary allegations are
6 that HSP: (1) failed to pay minimum, regular and/or overtime wages for all hours worked, in
7 violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1; (2) failed to pay overtime wage
8 at the correct regular rate of pay, in violation of Labor Code sections 510 and 558; and (3) failed to
9 provide off-duty meal and rest breaks, in violation of Labor Code sections 226.7 and 512. Based on
10 these alleged violations, Plaintiff also pursues derivative PAGA claims predicated on Defendant’s
11 failure to provide accurate itemized wage statements and pay all wages earned at the time of
12 termination. Plaintiff seeks civil penalties under PAGA, on behalf of herself, aggrieved employees
13 and the Labor and Workforce Development Agency (“LWDA”).

14 Plaintiff now respectfully requests that the Court approve this non-reversionary
15 representative PAGA settlement¹, in which HSP has agreed to pay \$198,912.00 (“Maximum
16 Settlement Amount”). After deducting administration costs, Plaintiff’s requested Enhancement
17 Payment, and requested attorneys’ fees and costs, the PAGA Penalties Fund of approximately
18 \$102,540.97 will be available for distribution. Consistent with PAGA, twenty-five percent of the
19 PAGA Penalties Fund will be allocated to Aggrieved Employees – that is all current and former
20 non-exempt employees of Defendant in the State of California who worked at least one shift at any
21 time from July 27, 2022, through September 30, 2023. The remaining seventy-five percent of the
22 PAGA Penalties Fund will be paid to the LWDA.

23 As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the
24 proposed settlement warrants the Court’s approval. The settlement was reached with the assistance
25 of a private mediator and after extensive investigation and informal discovery. Furthermore, the
26 _____

27 ¹ The Joint Stipulation of Settlement and Release under the Private Attorneys General Act
28 (“Agreement” or “Settlement”) is attached to the Declaration of Kristen M. Agnew as **Exhibit 1**. All
defined terms in this motion have the same definition as that in the Settlement.

1 proposed release is narrowly tailored to release only claims for civil penalties under PAGA
2 predicated on the Labor Code and IWC Wage Order violations alleged or which could have been
3 alleged based on the facts and allegations in Plaintiff's PAGA Notice and Complaint, as well as
4 attorneys' fees and costs.

5 **II. PROCEDURAL HISTORY**

6 **A. Plaintiff's Employment with Defendant.**

7 HSP is a recruiting and staffing agency that specializes in placements in the healthcare
8 industry. Plaintiff worked for HSP as a licensed vocational nurse during the approximate period of
9 December 2022 to on or about July 10, 2023. (Declaration of Veronica Aguayo ["Aguayo Decl."] ¶
10 2.) For the duration of her employment, Plaintiff was assigned to work at the Sierra Conservation
11 Center (the "Prison"), which is a correctional facility located in Tuolumne, California. (*See id.*)

12 **B. The PAGA Notice and Complaint.**

13 On July 27, 2023, Plaintiff submitted her written notice under Labor Code section 2699.3
14 (the "PAGA Notice") to the LWDA and Defendant alleging claims against HSP for violation of
15 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 2698
16 et seq. (*See* Declaration of Kristen M. Agnew ["Agnew Decl."] ¶ 3.) Plaintiff subsequently filed the
17 instant representative PAGA action predicated on the Labor Code violations set forth in the PAGA
18 Notice. (*See id.* at ¶ 4.)

19 As set forth in the PAGA Notice and Complaint, Plaintiff alleges that HSP had a corporate
20 policy, pattern, and practice of failing to pay all earned wages to Plaintiff and Aggrieved
21 Employees. In particular, Plaintiff alleges that employees were required to submit to mandatory
22 security procedures prior to clocking into Defendant's timekeeping system for the workday. (*See*
23 Agnew Decl. ¶ 7; Aguayo Decl. ¶ 3.) Plaintiff and Aggrieved Employees did not receive the
24 payment of wages for such time. (*See* Agnew Decl. ¶ 7; Aguayo Decl. ¶ 3.)

25 As a separate violation of Labor Code section 510, Plaintiff alleges HSP paid Plaintiff and
26 Aggrieved Employees overtime wages based on the incorrect regular rate of pay. (*See* Agnew Decl.
27 ¶ 9.) During workweeks when employees worked overtime and earned non-discretionary incentive
28 pay, including without limitation, per diems, HSP failed to incorporate the nondiscretionary

incentives into the calculation of the regular rate of pay. (*See id.*; Aguayo Decl. ¶ 4.) Consequently, HSP underpaid overtime wages to Plaintiff and other Aggrieved Employees.

Plaintiff further alleges that Defendant failed in its affirmative obligation to ensure that Plaintiff and Aggrieved Employees had the opportunity to take and were provided with off-duty meal and rest periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. (*See* Agnew Decl. ¶ 11.) As a pattern and practice, Plaintiff alleges employees frequently work through their entire shift without being allowed to take an off-duty meal and rest breaks. (*See* Agnew Decl. ¶ 11; Aguayo Decl. ¶ 5.) Plaintiff and Aggrieved Employees did not receive the payment of meal/rest break premiums, as required by Labor Code section 226.7. (*See* Agnew Decl. ¶ 11; Aguayo Decl. ¶ 5.)

Due to the non-payment and/or underpayment of wages and meal/rest break premiums, as identified above, Plaintiff alleges that Defendant failed to provide accurate itemized wage statements and pay all earned wages at the time of separation to Aggrieved Employees. (*See* Agnew Decl. ¶ 13.)

Based on these alleged violations of the Labor Code, Plaintiff seeks to recover PAGA penalties on behalf of all current and former non-exempt employees who worked for HSP in the State of California. (*See* Agnew Decl. ¶ 4.) HSP denies all allegations in the Action and all claims of any wrongdoing whatsoever. (*See id.* at ¶ 5.)

C. The Parties' Investigation and Informal Discovery.

Plaintiff and HSP (collectively, the "Parties") agreed to participate in an early mediation with Warren T. Jackson, a respected and experienced mediator knowledgeable of both the wage and hour laws and representative claims at issue in this Action. (*See* Agnew Decl. ¶ 6.) Prior to the mediation, the Parties extensively discussed the factual basis and merits of Plaintiff's claims and HSP's anticipated defenses. (*See id.* at ¶¶ 7-14.)

1. The Security Inspection.

Plaintiff explained the security check process in great detail. (*See* Agnew Decl. ¶ 7.) Plaintiff was required to submit to a multi-point security inspection both at the start and end of her shift. (*See id.*; Aguayo Decl. ¶ 3.) On average, Plaintiff estimates that employees spend between

1 twenty to thirty minutes submitting to the security inspections per shift, including the associated
2 wait time. (*See id.*) The time spent submitting to security inspections constitutes compensable hours
3 worked. *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (Feb. 13, 2020).

4 HSP disputes these assertions. In response to these allegations, HSP presented evidence that
5 only a very small percentage of its workforce is subject to mandatory security inspections —
6 namely, employees assigned to correctional facilities and that the time to go through security was
7 imposed by a third party outside of HSP’s control; not by HSP. HSP also denied that the time spent
8 going through security was as long as Plaintiff alleged. (*See* Agnew Decl. ¶ 8.)

9 **2. Defendant’s Calculation of the Regular Rate.**

10 Whenever aggrieved employees received incentives, such as Per Diem wages, Defendant
11 excluded this additional compensation from the calculation of the regular rate of pay used to
12 calculate overtime wages. (*See* Agnew Decl. ¶ 9.) Defendant maintains that the Per Diems are not
13 wages. (*See id.* at ¶ 10.) Instead, the Per Diems function as a reimbursement for expenses. (*See id.*).
14 As such, they may be properly excluded from the regular rate calculation. *Clarke v. AMN Services,*
15 *LLC*, 987 F.3d 848, 856 (9th Cir. 2021) (“...determining whether a per diem must be included in
16 the regular rate of pay is a case-specific inquiry that turns on whether the payments function to
17 reimburse employees for expenses or instead operate to compensate employees for hours worked”).

18 **3. Defendant’s Meal and Rest Period Policies and Procedures.**

19 The Parties also discussed HSP’s meal and rest period practices/policies. (*See* Agnew Decl.
20 ¶ 11.) Plaintiff alleges she experienced delayed and interrupted meal and rest breaks. (*See id.*;
21 Aguayo Decl. ¶ 6.) According to Plaintiff, the staffing model in the Prison’s medical facility did not
22 allow for employees to take uninterrupted breaks. (*See* Aguayo Decl. ¶ 6.) Additionally, given the
23 amount of time that the security inspections take to complete, employees cannot leave the facility
24 and return to their stations within 30 minutes. Consequently, Plaintiff alleges supervisors direct
25 employees to remain on the Prison grounds during their meal periods. (*See id.*) HSP counters that it
26 has maintained compliant written meal period policies throughout the liability period and has
27 always provided compliant meal periods in line with those policies. (*See* Agnew Decl. ¶ 12.)
28 Furthermore, as a result of the lawsuit HSP conducted an audit of its meal and rest period practices.

(*See id.*) HSP represented and Plaintiff confirmed through analysis of HSP's data that HSP's meal/rest compliance rate is over 90% and that any deviations were based on individualized unique circumstances, not due to HSP. Defendant maintains that this tends to support HSP's position that HSP's policies and procedures are compliant. (*See id.*) HSP also asserted other legal and factual reasons for why Plaintiff's claims lacked merit.

4. Defendant Provided Pay Period Data.

Defendant also produced data relevant to the potential value of the claims, including the number of Aggrieved Employees, the aggregate number of pay periods worked by all Aggrieved Employees during the PAGA Period (July 27, 2022, through September 30, 2023), the number of pay periods worked by the sub-set of Aggrieved Employees assigned to work at a correctional facility, the number of pay periods in which Aggrieved Employees earned overtime and non-discretionary incentive wages in the same workweek, and the number of separated Aggrieved Employees. (*See Agnew Decl.* ¶ 15.) Defendant confirmed that there were 1,203 Aggrieved Employees who worked approximately 20,880 pay period during the PAGA Period. (*See id.*) Defendant also provided its written wage and hour policies and a representative sampling of time records. (*See id.*) Using the data provided by Defendant, Plaintiff's Counsel performed a comprehensive damages analysis. (*See id.* at ¶ 16.)

D. The Parties Participate in Private Mediation.

On April 9, 2024, the Parties engaged in an all-day mediation session before Mr. Jackson. (*See Agnew Decl.* ¶ 17.) During mediation, the Parties vigorously debated their opposing legal positions and the legal basis for the claims and defenses. (*See id.*) After a full day of negotiation, the Parties were able to reach an agreement for settlement and the key terms. (*See id.*) The Parties thereafter worked to memorialize the terms of the settlement in Memorandum of Understanding and subsequently executed a long-form settlement agreement now before the Court. (*See id.*)

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

Based on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of Plaintiff and the

1 Aggrieved Employees, in light of all known facts and circumstances, including the risk of
2 significant delay, the uncertainty associated with litigation, the various defenses asserted by
3 Defendant, and the numerous potential appellate issues. (*See* Agnew Decl. ¶ 33.) The material terms
4 of the settlement are described below and set forth in detail in the concurrently filed Settlement
5 Agreement.

6 **A. The Aggrieved Employees.**

7 The Settlement covers “all current and former non-exempt employees of Defendant in the
8 State of California who worked at least one shift at any time from July 27, 2022, through September
9 30, 2023” (“Aggrieved Employees”). (Settlement Agreement § B-2.) Based upon Defendant’s
10 records, there are 1,203 Aggrieved Employees who worked approximately 20,880 pay period
11 during the PAGA Period. (*See id.*)

12 **B. The Maximum Settlement Amount.**

13 The Settlement Agreement requires Defendant to pay the gross amount of One Hundred
14 Ninety-Eight Thousand Nine Hundred Twelve Dollars (\$198,912.00) (the “Maximum Settlement
15 Amount”). (Settlement Agreement § B-9.) On raw average, Defendant will pay approximately
16 \$9.52 for each of the 20,880 pay periods worked by Aggrieved Employees during the PAGA Period
17 and released under the Settlement. (*See* Agnew Decl. ¶ 20.)

18 **C. The Allocation of the PAGA Penalties Fund.**

19 The balance of the Maximum Settlement Amount remaining after deduction of the approved
20 Enhancement Payment to Plaintiff, attorneys’ fees and costs and the Settlement Administration
21 Costs (the “PAGA Penalties Fund”), will be available for distribution to the LWDA and Aggrieved
22 Employees. (Settlement Agreement §§ B-10, C-4.) Plaintiff estimates that the PAGA Penalties fund
23 will total \$102,540.97. (*See* Agnew Decl. ¶ 25.) Seventy-Five percent of the PAGA Penalties Fund,
24 or approximately \$76,905.73, will be paid to the LWDA for PAGA penalties. (*See id.* at ¶ 26;
25 Settlement Agreement § C-4.) The remaining twenty-five percent, or approximately \$25,635.24,
26 will be distributed to Aggrieved Employees. (*See* Agnew Decl. ¶ 26; Settlement Agreement § C-4.)

27 Based on the number of Aggrieved Employees, employees will be entitled to recover, on
28 average, up to \$21.30 each. (*See* Agnew Decl. ¶ 28.) However, the amount that any particular

1 Aggrieved Employee will be entitled to recover will be greater or lower than this average depending
2 on the number of “Pay Period Points” assigned to the employee. (*See* Agnew Decl. ¶ 27; Settlement
3 Agreement § C-5.) In this respect, Aggrieved Employees will be credited with: (1) one point for
4 each pay period in which the employee worked at least one shift during the PAGA Period; (2) one
5 point for each pay period in which the employee worked at least one shift in a correctional facility
6 during the PAGA Period; and (3) one point for each pay period in which the employee earned both
7 overtime and Per Diem wages in the same workweek during the PAGA Period. (*See* Settlement
8 Agreement § C-5). For the reasons discussed in section II-C *supra*, it is the Parties’ intention that
9 greater weight should be given to the pay periods in which Aggrieved Employees worked in a
10 correctional facility during the PAGA Period. (*See id.*; Agnew Decl. ¶ 27.) This is fair, as it directly
11 allocates greater penalties to individual Aggrieved Employees who have allegedly suffered greater
12 harm. (Agnew Decl. ¶ 27.)

13 **D. Attorneys’ Fees, Litigation Costs and Enhancement Payment.**

14 As part of the Settlement, Defendant does not object to Plaintiff’s Counsel’s request for
15 attorneys’ fees of approximately thirty-five percent of the Maximum Settlement Amount, *i.e.*
16 Sixty-Nine Thousand Six Hundred Nineteen Dollars and Twenty Cents (\$69,619.20), plus up to
17 Fifteen Thousand Dollars (\$15,000.00) for reimbursement of litigation costs, subject to the Court
18 finally approving this Settlement.² (Settlement Agreement § C-9.) Also, as part of the Settlement
19 Agreement, Defendant does not object to Plaintiff’s request for an Enhancement Payment of
20 Seven Thousand Five Hundred Dollars (\$7,500.00). (*Id.* at §§ B-7, C-8.)

21 Any portion of the requested attorneys’ fees/litigation costs or Enhancement Payment not
22 approved by the Court shall be added to the PAGA Penalties Fund. (Settlement Agreement § C-9.)

23 **E. Settlement Administration Costs.**

24 Finally, the Settlement Agreement provides for the payment of the fees and expenses
25 reasonably incurred by the Settlement Administrator. (Settlement Agreement § C-10.) The Parties
26

27
28 ² As set forth below, Plaintiff’s Counsel seeks reimbursement for its anticipated actual litigation costs in the amount of \$9,251.83. (*See* Agnew Decl. ¶ 41.)

1 have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the
2 administration costs estimated at Ten Thousand Dollars (\$10,000.00) (*Id.* at §§ B-16, C-10.)

3 **F. Scope of the Released Claims.**

4 In exchange for the payments described above, Plaintiff, the State of California, and
5 Aggrieved Employees will release Defendant and Released Parties from:

6 all claims for civil PAGA penalties predicated on all Labor Code and
7 IWC Wage Order provisions stated in Plaintiffs PAGA letter filed
8 with the LWDA and/or alleged in the Action, including without
9 limitation Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7,
10 510, 512, 558, 1194, 1197, 1197 .1 and 2698 et seq, including but not
11 limited to costs and attorneys' fees related thereto, including under
12 CCP Section 1021.5. The claims to be released will include the
claims that were alleged or which could have been alleged based on
the facts and allegations in the PAGA letter and or that were made in
the operative Complaint filed in the Action and accrued during the
PAGA Period.

13 (Settlement Agreement §§ B-15, E-2.) The Settlement, however, does not release Defendant from
14 violations of any predicate statutes other than PAGA, and will not affect a waiver of claims by
15 Aggrieved Employees against Defendant for any of the underlying Labor Code claims. The release
16 is expressly limited to claims for civil penalties under PAGA and is limited to pay periods in which
17 the Aggrieved Employees were paid by Defendant. (*Id.* at §§ B-15, E-2.)

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

19 **A. Class Action Settlement Standards Do Not Govern the Settlement Approval**
20 **Process for PAGA Claims.**

21 In class action cases, the purpose of the Court's preliminary evaluation of the settlement is
22 to determine whether it is within the "range of reasonableness," and thus whether notice to the class
23 of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are
24 worthwhile. *See* 4 Herbert B. Newberg, *Newberg on Class Actions* § 11.25 et seq., and § 13.64 (4th
25 ed. 2002 and Supp. 2004) ("*Newberg*"). The "judge must make a preliminary determination on the
26 fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of
27 notice of the certification, proposed settlement, and date of the final fairness hearing." *Manual*, §
28 21.632 (4th ed. 2004). To make the preliminary fairness determination, courts may consider several

1 relevant factors, including “the strength of the plaintiff’s case; the risk, expense, complexity, and
2 likely duration of further litigation; the risk of maintaining class action status through trial; the
3 amount offered in settlement; the extent of discovery completed and the stage of the proceedings;
4 [and] the experience and views of counsel...” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
5 (9th Cir. 1998).

6 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the
7 Labor Code, which provides, in relevant part: “The court shall review and approve any penalties
8 sought as part of a proposed settlement agreement pursuant to this part.” The Parties are not
9 obligated to “satisfy class action requirements,” including the standards for class action settlement
10 approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that “plaintiff need not
11 satisfy class action requirements” to assert a PAGA claim). Notably, unlike the class action
12 settlement approval process, there is also no statutory mechanism for this Court to conduct a two-
13 step settlement approval review. Cal. Lab. Code § 2699(1). In addition, “[u]nnamed employees
14 need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the
15 representative PAGA claim” or “contest a settlement, if any, reached between the parties.” *Ochoa-*
16 *Hernandez*, 2010 WL 1340777 at*13.

17 **B. The Settlement is Fair and Reasonable.**

18 **1. The Settlement Effectuates PAGA’s Objectives.**

19 The Court’s focus in a PAGA case is not the amount that aggrieved employees will
20 ultimately receive as a result of a settlement. Instead, “a trial court should evaluate a PAGA
21 settlement to determine whether it is fair, reasonable, and adequate *in view of PAGA’s purposes to*
22 *remediate present labor law violations, deter future ones, and to maximize enforcement of state*
23 *labor laws.*” *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021) (emphasis added); *see*
24 *also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *15 (N.D.Cal., 2021) (evaluating a
25 PAGA settlement under the standard of whether the settlement terms “are fundamentally fair,
26 reasonable, and adequate in view of PAGA’s public policy goals”). Here, the Settlement vindicates
27 the rights of Aggrieved Employees who have experienced alleged violations of the Labor Code.
28 Additionally, the six-figure Maximum Settlement Amount acts as a deterrent to other California

1 employers.

2 **2. The Settlement Recognizes the Inherent Risks of Litigation.**

3 The Settlement is also fair and reasonable in light of the strengths and weaknesses of
4 Plaintiff's claims, the risks and uncertainty involved in further litigation and the substantial
5 recovery. *See Moniz*, 287 Cal.Rptr.3d 107, 126, 72 Cal.App.5th 56, 77 (Cal.App. 1 Dist., 2021)
6 (finding that factors including “the strength of the plaintiff's case, the risk, the stage of the
7 proceeding, the complexity and likely duration of further litigation, and the settlement amount” may
8 be “useful in evaluating the fairness of a PAGA settlement”).

9 **a. Plaintiff's Claims are Contested.**

10 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff
11 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
12 described above in Section II-C, *supra*, Defendant presented multiple legal and factual defenses to
13 the merits of Plaintiff's claims. Moreover, since Plaintiff's PAGA claims predicated on violation of
14 Labor Code sections 201, 202, 203 and 226(a) are derivative in nature, Defendant asserts the PAGA
15 claim would also fail with those claims. *See Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147
16 (2011) (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
17 fail”).

18 Additionally, even assuming that employees experienced off-the-clock security inspections
19 and mandated on-site breaks, Defendant presented legal and factual arguments that it is not legally
20 responsible for these alleged violations. The mandatory security inspections at the correctional
21 facilities were mandated by the individual facilities—not Defendant—and equally applied to
22 anyone seeking access, including visitors. Thus, arguably, Defendant's employees were not subject
23 to HSP's control during the inspection process. *See Cazares v. Host International, Inc.*, 2021 WL
24 3667227, at *1 (9th Cir. 2021) (holding that “the security check process [] mandated by federal law
25 and administered by the TSA” is not compensable). Similarly, the features of some workplaces may
26 have necessarily limited the movement of employees to the job-site during meal and rest periods.
27 *See Huerta v. CSI Electrical Contractors*, 15 Cal.5th 908, 936 (2024) (California Supreme Court
28 observed “...the fact that the features of a worksite make travel impractical in the time allotted is

not sufficient to establish employer control”). Consequently, based on the Supreme Court’s ruling, an employee’s inability to leave the jobsite would not necessarily give rise to a meal/rest period violation.

Defendant further maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s claims. (*See* Agnew Decl. ¶ 31.) Pursuant to Labor Code section 2699(f)(2) the Court can decline to award the full amount of PAGA penalties where “...if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; *see Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations).

b. The Potential Recovery of Penalties Is Uncertain.

Defendant has indicated that there were 20,880 pay periods in which Aggrieved Employees received the payment of wages during the PAGA Period. Therefore, pursuant to the PAGA, Plaintiff has calculated total exposure at \$2,088,000. (Agnew Decl. ¶ 29.) However, trial courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. Indeed, in the matter of *Magadia v. Wal-Mart Assocs. et al.*, while the trial court imposed substantial PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100. Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendant could make a compelling argument to the contrary, particularly under the legal and factual issues in this case. (*See* Agnew Decl. ¶¶ 8, 6, 10, 12, 14, 31.)

//

1 c. The Maximum Settlement Amount Is Reasonable.

2 The Maximum Settlement Amount is approximately 9.52% of the maximum amount of
3 penalties at issue.³ (See Agnew Decl. ¶ 29.) Settlement for this reduced value allows for the
4 distribution of penalties in an amount which accounts for the risk of continued litigation, and
5 Defendant's likely arguments that higher penalties would have been confiscatory. (See *id.* at ¶ 31.)
6 It also sufficiently deters Defendant from engaging in similar conduct in the future, which is one of
7 the primary goals of PAGA.

8 The amount of a PAGA settlement need not represent any particular percentage of the
9 potential penalty amount that may be recovered after trial. See *Manzo v. McDonald's Restaurants of*
10 *California, Inc.*, 2022 WL 4586236, at *6 (E.D. Cal., 2022) ("There is no express or even baseline
11 percentage of recovery required"). Consequently, trial courts routinely approve PAGA settlements
12 representing only a tiny fraction of the potential verdict value of the claim. See *id.* (approving
13 PAGA allocation that "is less than one percent (1%) of the verdict value" of the claim"); *Hartley v.*
14 *On My Own, Inc.*, 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at
15 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of \$61);
16 *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017)
17 (considering early stage of litigation, defendant's weak financial condition, and injunctive relief
18 provided by settlement, approving PAGA settlement of 4.5% of verdict value). Here, the Maximum
19 Settlement Amount exceeds both in terms of the total dollar amount and as a percentage of overall
20 settlement value, the typical PAGA settlement.⁴

21
22
23 ³ The Court's assessment of the proposed Settlement must take into account that any penalties
24 awarded may be subject to substantial reduction. When this is considered, in conjunction with the
25 history of PAGA settlements, and the fact that Plaintiff may recover nothing, the proposed
settlement is patently reasonable

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

1 **C. The Scope of the Release is Appropriately Limited.⁵**

2 The limited scope of the release also supports approval. *See* Section III-F, *supra*. The Settlement
3 only releases Defendant from civil PAGA predicated on Labor Code and IWC Wage Order
4 violations alleged or which could have been alleged based on the facts and allegations in Plaintiff's
5 PAGA Notice and Complaint, as well as attorneys' fees and costs. The Settlement would not impact
6 any other Aggrieved Employees' ability to pursue PAGA claims predicated on other Labor Code
7 violations or any Labor Claims not predicated on PAGA.

8 **D. The Attorneys' Fees are Reasonable.**

9 Plaintiff's Counsel seeks a fee award calculated as thirty-five percent of the total value of
10 the settlement for the successful prosecution and resolution of this action. Labor Code section
11 2699(g)(1) provides for the recovery of attorneys' fees and costs in any successful action brought
12 under PAGA. Although this is not a class action, in class actions California state and federal courts
13 have recognized that an appropriate method for determining award of attorneys' fees is based on a
14 percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple*
15 *Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977)
16 (*"Serrano III"*); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West,*
17 *Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust
18 enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so
19 that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F. 2d at 769.

20 Recently, the California Supreme Court issued its ruling regarding the award of attorney's
21 fees in wage and hour class action settlements. Under California law, the award of attorneys' fees in
22 common fund wage and hour class action settlements should start with the percentage method. *See*

23
24
25 ⁵ 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 but
27 also on government agencies and any aggrieved employee not a party to the proceeding." *Arias*, 46
28 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 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 *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of
2 federal and state courts in holding that when class action litigation establishes a monetary fund for
3 the benefit of the class members, and the trial court in its equitable powers awards class counsel a
4 fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
5 appropriate percentage of the fund created”). Under the percentage of the fund method, the Court’s
6 objective remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d
7 361, 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object
8 is to set it at a level that will approximate what the market will set....The judge, in other words, is
9 trying to mimic the market in legal services”).

10 An award of thirty-five percent of the fund in attorneys’ fees “mimics the marketplace” as it
11 is “supported by the fact that typical contingency fee agreements provide that class counsel will
12 recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria*
13 *Secret Stores LLC*, 2008 WL 8150856 at p. *16 n. 59 (C.D. Cal. 2008) (citing Brickman, *Effective*
14 *Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 Wash
15 U.L.Q. 653, 659 n.11 (Fall 2003)). Indeed, “empirical studies [that] show that...fee awards in class
16 actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
17 n.11 (2008).

18 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent
19 of the fund, which is similar to the percentage of fee award sought in this case. *Laffitte*, 1 Cal. 5th at
20 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* At p. 487. As
21 the Court held, only when the multiplier is “extraordinarily high or low [should] the trial court []
22 consider whether the percentage method should be adjusted so as to bring the imputed multiplier
23 within a justifiable range.” *Id.* At 505. Moreover, in the *Laffitte* intermediate court decision, the
24 court observed that “33 1/3 percent of the common fund is consistent with, and in the range of,
25 awards in other class action lawsuits.” *Id.* At 871.

26 Here, the fee award representing 35% of the fund clearly falls within that range and is
27 consistent with other comprehensive surveys of class action settlements and fee awards. *See Martin*
28 *v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that

1 “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in
2 recovery of a common fund under \$10 million”); *see also* Eisenberg & Miller, *Attorney Fees in*
3 *Class Action Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.
4 16 (2010) (independent studies of class action litigation nationwide conclude that fees in the range
5 sought here are consistent with market rates).

6 In addition, it is recognized that one of the primary factors justifying an enhanced attorney’s
7 fees reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v.*
8 *Grinnell Corp.*:

9 No one expects a lawyer whose compensation is contingent upon his
10 success to charge, when successful, as little as he would charge a client
11 who had agreed to pay for his services, regardless of success. Nor,
12 particularly in complicated cases producing large recoveries, is it just
to make a fee depend solely on the reasonable amount of time
expended.

13 495 F.2d 448, 470 (2d Cir. 1974). For Plaintiff’s Counsel, the fees here were wholly contingent in
14 nature and the case presented far more risk than the usual contingent fee case. Among the risks was
15 the cost inherent in class action litigation, as well as a potentially drawn-out battle with a corporate
16 Defendant.

17 As secondary support for the percentage of the fund method, courts have discretion to
18 “cross-check” the fees awarded through the lodestar method. However, the *Laffitte* Court
19 “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial
20 court’s primary determination of the fee as a percentage of the common fund and thus does not
21 impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at p. 505;
22 *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check
23 does not trump the primary reliance on the percentage of common fund method”).

24 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
25 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
26 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court
27 is not necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at
28 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-

1 check “undermines” one of the primary reasons for using the percentage method: aligning counsel’s
2 incentives with the benefits delivered to the class and discouraging protracted litigation. *Id.* at p.
3 506 (finding trial courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third*
4 *Circuit Task Force, Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v.*
5 *Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the
6 Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach
7 set forth in this Report are now echoed by many authorities, who have been most vocal about the
8 manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked
9 trial judge”).

10 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
11 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g.,*
12 *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
13 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
14 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland*
15 *Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate
16 court in *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
17 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at pp. 881-82. The intermediate court opinion
18 was affirmed in full by the California Supreme Court in its new decision guiding lower courts on
19 assessing fees.

20 With respect to Plaintiff’s Counsel’s lodestar, to date, at least approximately 76.10 hours
21 have been expended by Class Counsel in this matter. (*See* Agnew Decl. ¶ 42, Ex. 4.) Counsel
22 anticipates to spend an additional three hours on this matter through its final resolution, including
23 preparing for the approval hearing, conferring with Settlement Administrator regarding distribution
24 of payment to Aggrieved Employees, and fielding phone calls regarding inquiries about the
25 Settlement. (*See id.*) Ms. Agnew requests an hourly rate of \$800.00 per hour. (*See id.* at ¶ 43.) The
26 courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records
27 are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the
28 number of hours worked on a particular case is sufficient evidence to support an award of attorney

1 fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559
2 (1986).

3 Reasonable hours include, in addition to time spent during litigation, the time spent before
4 the action is filed, including time spent interviewing the clients, investigating the facts and the law,
5 and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980).
6 Further, the fee award should include fees incurred to establish and defend the attorneys’ fee claim.
7 *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Plaintiff’s Counsel requests that
8 the court find that these hours were reasonable in this litigation. A reasonable hourly rate is the
9 prevailing rate charged by attorneys of similar skill and experience in the relevant community.
10 *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors
11 when determining a reasonable hourly rate, *e.g.*, the attorney’s skill and experience, the nature of
12 the work performed, the relevant area of expertise and the attorney’s customary billing rates.
13 *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

14 Here, Plaintiff’s Counsel’s skill and experience justify the requested rate. As shown in the
15 supporting declarations, Plaintiff’s Counsel have significant experience in the area of employment
16 and wage and hour class actions. Specifically, Plaintiff’s Counsel’s practice focuses on representing
17 employees in employment matters, particularly wage and hour cases. (*See* Agnew Decl. ¶¶ 34-40,
18 43.) As such, based on the hours and applicable rate, the total lodestar to be expended by Plaintiff’s
19 Counsel through finalizing this settlement will be approximately \$63,280. (*See* Agnew Decl. ¶ 42.)

20 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier
21 in order to make an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. The pertinent factors
22 include the difficulty of the questions involved and the skill in presenting them, the contingent
23 nature of the fee award, the extent to which the litigation precluded other employment, and the
24 percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82
25 Cal.App.4th at 49. However, this list is not exhaustive and the court can consider other factors it
26 deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal.4th 1122, 1139 (2001).

27 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-
28 benefit, namely, no objections by Class Members, commendable conduct by counsel, and

1 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*, 82
2 Cal.App.4th at 51-53. As in *Lealao*, the Class Members were notified of the Settlement and
3 attorneys' fees with no objections. The extreme effort undertaken by counsel, as shown by their
4 hours and the significantly high amount of claims being paid out, shows commendable conduct.

5 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
6 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal.App.4th at 52 (the promptness of
7 settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*, courts
8 placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not
9 punished, for achieving this goal in a timely fashion. *Id.*

10 The multiplier should be enhanced by the contingent nature of counsel's fee recovery. The
11 risks in taking on a representative action case are enormous, not the least of which is time and
12 effort. Not only was there significant risk taken upon by Plaintiff's Counsel, but their ability to
13 obtain the current settlement should be seen as quite commendable.

14 Here based upon Class Counsel's lodestar of \$63,280, the requested fees result in a
15 multiplier of 1.10 [$\$69,619.20$ (requested fees) $\div$ $\$63,280$ (lodestar amount)]. This demonstrates
16 that the requested fees are reasonable and fair, particularly based on the factors described above.
17 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct. App. 2001) (noting that courts using the
18 lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the
19 range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18,
20 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class
21 action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014)
22 (awarding 33% of the common fund, based on a multiplier of 2.52).

23 As such, the requested fee award is fair and reasonable, and should be awarded in its
24 entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of expense to
25 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
26 Class Counsel's request for attorneys' fees in the amount of \$69,619.20 is fair and reasonable.

27 Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of \$9,251.83 is
28 also reasonable. (Agnew Decl. ¶ 41, Ex. 3.) The costs were all directly incurred in the prosecution

of this action, including filing fees, postage and copying. (*Id.*) As such, the requested costs should be awarded as fair and reasonable.

E. The Settlement Administrator’s Fees Should be Approved.

The Parties have agreed to pay the actual costs of administration of Ten Thousand Dollars (\$10,000.00) to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. (Settlement Agreement § B-16.) The Parties believe that the administration fee is reasonable and should be approved. (Agnew Decl. ¶ 24.)

F. Plaintiff’s Enhancement Payment Should Be Approved.

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

Here, Plaintiff seeks \$7,500 for her service award, which is intended to compensate Plaintiff for the time spent on this case, the potential for retaliation, and for executing a general release, including for all known and unknown claims under Civil Code § 1542. (*See* Aguayo Decl. ¶ 8.) This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 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).

//

1 **G. Notice to the LWDA Has Been Provided**

2 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the
3 LWDA's website. (Agnew Decl. ¶ 44.)

4 **V. CONCLUSION**

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

6
7 DATED: July 15, 2024

DIVERSITY LAW GROUP, P.C.

8
9 By: _____

Larry W. Lee

Kristen M. Agnew

10 Attorneys for Plaintiff and the Aggrieved
11 Employees
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28