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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ELISA RECODER, as an individual and on behalf of all others similarly situated, Plaintiff, vs. ADECCO USA, INC., a Delaware corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: CGC-23-610955 **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 18, 2025 Time: 9:00 a.m. Dept.: 301 Action Filed: December 8, 2023 Trial Date: September 8, 2025

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 18, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Christine Van Aken, judge presiding, in Department 301 of the above referenced Court located at 400 McAllister Street, San Francisco, California 94102, Plaintiff Elisa Recoder ("Plaintiff") will seek an Order approving the concurrently filed PAGA Settlement Agreement (the "Agreement" or "Settlement Agreement"), pursuant to the procedures set forth in Labor Code § 2698, *et seq*.

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Larry W. Lee, Max W. Gavron, William L. Marder, and Plaintiff Elisa Recoder, the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: July 23, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________
Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiff and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq*., Plaintiff Elisa Recoder ("Plaintiff") hereby moves the Court for an order approving the non-reversionary PAGA settlement as set forth in the concurrently filed PAGA Settlement Agreement (the "Agreement" or "Settlement Agreement").

As demonstrated below and in the accompanying declaration of Max W. Gavron, the proposed settlement warrants the Court's approval. This settlement was reached after extensive investigation and informal discovery, including Defendant's production of relevant policy documents and data relating to the number of aggrieved employees during the applicable liability period. The Parties also participated in a mediation with Michael J. Loeb, Esq., after which the Parties were able to arrive at the proposed settlement.

Pursuant to the terms of the proposed Agreement, Defendant Adecco USA, Inc. ("Defendant") (together with Plaintiff, the "Parties") will pay the gross amount of $127,760.00 (the "Gross Settlement Amount"), which includes an estimated payment of approximately $20,185.00 in civil penalties to the California Labor and Workforce Development Agency ("LWDA"). The proposed release is narrowly tailored to release only claims for civil penalties under PAGA predicated on Labor Code §§ 201, 201.3, 202, and 203. Given the nature of Defendant's business as a temporary services employer, Plaintiff faced unique challenges to the claims asserted in this case, and thus the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and aggrieved employees, and accomplishes the goals of the PAGA. Accordingly, Plaintiff requests that the Court grant this Motion.

II. PROCEDURAL HISTORY

A. Summary of the Litigation and Settlement

1. The History of the Key Pleadings

On September 20, 2023, Plaintiff filed a notice with the LWDA alleging that Defendant violated Labor Code §§ 201-203 (the "PAGA Notice"). Declaration of Max W. Gavron ("Gavron Decl.") ¶ 3, Ex. A.

On November 9, 2023, Plaintiff filed a class action complaint against Defendant in the Superior Court of California, County of San Francisco (the "Class Action"). Gavron Decl. ¶ 4. Plaintiff alleged that Defendant failed to timely pay wages to employees upon separation of employment, in violation of Labor Code §§ 201, 202, and 203, and the applicable IWC Wage Orders. *Id*.

Following the filing of the complaint, the Parties met and conferred regarding an arbitration agreement containing a class action waiver that was signed by Plaintiff. *Id*. ¶ 5. On February 22, 2024, the Court dismissed the Class Action without prejudice upon Plaintiff's motion to dismiss. *Id*.

On December 8, 2023, Plaintiff filed this related representative action complaint against Defendant in the Superior Court of California, County of San Francisco (the "Action"). Gavron Decl. ¶ 7. The Complaint alleges a single cause of action for violation of Labor Code § 2698, *et seq*., predicated on Defendant's alleged violation of Labor Code §§ 201-203. *Id.* ¶ 7. More specifically, Plaintiff alleges that she and other aggrieved employees were not timely paid wages upon separation of employment. *Id*. As a result, Plaintiff alleges that she and all aggrieved employees are owed penalties under the PAGA for Defendant's alleged failure to timely pay wages upon separation of employment. *Id*.

2. The Parties Participate in Private Mediation

Plaintiff served written discovery upon Defendant, including requests for production of documents and special interrogatories. Gavron Decl. ¶ 9. The Parties subsequently agreed to stay Defendant's deadline to respond pending private mediation and exchange of information informally. *Id.* ¶ 9.

In connection with the anticipated mediation, Defendant informally produced documents and data, including the number of former non-exempt employees employed by Defendant in California during the relevant period and relevant written policies. Gavron Decl. ¶ 10. Using the data provided by Defendant, Plaintiff's counsel performed a comprehensive analysis regarding the maximum amount of penalties that could be recovered at trial under the PAGA. *Id*. Given that Defendant contends it is a temporary services employer subject to Labor Code § 201.3, Plaintiff's claims were highly disputed as more detailed below.

On January 21, 2025, the Parties participated in private mediation with experienced neutral Michael J. Loeb, Esq. Gavron Decl. ¶ 11. During the mediation, the Parties spoke at length about the strengths and weaknesses of each side's claims and defenses and the scope of Defendant's liability. *Id.* After a full day of negotiation, the Parties reached a settlement in principle. *Id.* After further arm's-length negotiations, the Parties entered into the PAGA Settlement Agreement. *Id*. ¶ 11, Ex. B.

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 PAGA Settlement Agreement, a true and correct copy of which is attached as **Exhibit B** to the Declaration of Max W. Gavron.

A. The Aggrieved Employees (or PAGA Group Members)

The settlement covers "all non-exempt employees of Defendant in the State of California who had an assignment that ended during the PAGA Period and who did not start any additional assignments during the PAGA Period" ("PAGA Group Members" or "Members"). Agreement ¶ 2.18. The PAGA Period is the period from September 20, 2022, up to and including January 24, 2025. *Id*. ¶ 2.20. Based upon Defendant's records, Defendant represented that there are approximately 15,250 PAGA Group Members *Id*. ¶ 2.12. Because of the nature of the violation alleged, there are at most 15,250 pay periods at issue in this proposed Settlement.

B. Settlement Terms, Sum, and Allocation

The Settlement Agreement requires Defendant to pay the total amount of One Hundred Twenty-Seven Thousand Seven Hundred Sixty Dollars ($127,760.00) (the "Gross Settlement Amount"). Agreement ¶ 2.12. The balance of the Gross Settlement Amount remaining after deduction of the approved General Release Payment to Plaintiff, Service Payment to Plaintiff, attorneys' fees and costs ("Fee and Expense Award"), and Settlement Administration Costs (the "Net Settlement Amount"), will be available for distribution to the LWDA and PAGA Group Members. *Id*. ¶¶ 2.15, 2.29, 3.2-3.4.

The Net Settlement Amount will total approximately $26,913.33. Gavron Decl. ¶ 22.

Seventy-five percent (75%) of the Net Settlement Amount, or approximately $20,185.00, will be paid to the LWDA for PAGA penalties. Agreement ¶ 2.14; Gavron Decl. ¶ 22. The remaining twenty-five percent (25%), or approximately $6,728.33, will be distributed to PAGA Group Members ("PAGA Group Members Payment"). Agreement ¶ 2.19; Gavron Decl. ¶ 22.

The Gross Settlement Amount results in approximately $8.38 allocated per pay period/aggrieved employee. (127,760 / 15,250 pay periods or 15,250 aggrieved employees[1]). The aggrieved employees will receive 25% of the Net Settlement Amount, of which each employee will receive an equal share given each employee allegedly suffered one violation of the Labor Code subject to a PAGA penalty. *Id.*; Agreement ¶ 4.3.2.

As part of the settlement, Defendant does not object to Plaintiff's Counsel's request for attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Forty-Two Thousand Five Hundred Eighty-Six Dollars and Sixty-Seven Cents ($42,586.67), plus up to Seventeen Thousand Five Hundred Dollars ($17,500.00) in actual litigation costs and expenses ("Fee and Expense Award"), subject to the Court finally approving this settlement.[2] Agreement ¶ 3.2. Also, as part of the Settlement Agreement, Defendant does not object to Plaintiff's request for a Service Payment of Five Thousand Dollars ($5,000.00) and a General Release Payment of Five Thousand Seven Hundred Sixty Dollars ($5,760.00) in exchange for signing a general release and in exchange for settling her individual Labor Code claims, which would be subject to arbitration. Agreement ¶¶ 3.3, 3.4.

The Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. Agreement ¶ 2.29. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be Thirty Thousand Dollars ($30,000.00). *Id.* ¶¶ 2.29, 2.30. Most of the cost associated with this bid is the cost of mailing the settlements to the aggrieved employees.

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[1] Because the theory of liability alleged in this case pertains to the final payment of wages to an employee from Defendant, the number of aggrieved employees and allegedly violative pay periods are the same.

[2] As set forth below, Plaintiff's Counsel seeks reimbursement for its litigation costs in the amount of $13,508.16. Gavron Decl. ¶ 45, Ex. C.

Phoenix Decl. ¶ 16.

Settlement payments to PAGA Group Members shall be categorized as IRS Form 1099-MISC income and the Settlement Administrator shall provide the form as required by law. Agreement ¶ 4.4.2. If any checks from the settlement remain uncashed after 180 days, the Settlement Administrator will remit the checks to the following *cy pres* recipient: Legal Aid at Work. *Id.* ¶ 4.5.3. Counsel has no relationship with nor conflicts of interest with Legal Aid at Work. Gavron Decl. ¶ 21.

C. Scope of the Released Claims

In exchange for the payments described above, Plaintiff, the PAGA Group Members, and the State of California will release the Released Parties from:

> all claims under PAGA that are alleged in the Complaint, or that could have been reasonably alleged based on the facts alleged in the Complaint, based on alleged violations of Labor Code sections 201, 201.3, 202, and 203 that arose during the PAGA Group Members' final pay period at his or her assignment during the PAGA Period ("Released Claims").

Agreement ¶ 2.25, 2.26, 5.1. The settlement, however, does not release Defendant from violations of any predicate statutes other than PAGA, and will not affect a waiver of claims by PAGA Group Members against Defendant for any of the underlying Labor Code claims. *Id*. The release is expressly limited to claims for civil penalties under PAGA, with the exception of Plaintiff who has also agreed to resolve her individual Labor Code claims. *Id.*

IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

In 2004, California enacted PAGA, which allows aggrieved employees, on behalf of the LWDA and other aggrieved employees, to bring suit against their employers for alleged violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-*

Hernandez v. Cjaders Foods, Inc., 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action" [citations omitted].)

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

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

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[3] The PAGA statute was recently amended to revise this percentage such that 35% is distributed to the aggrieved employees and 65% to the LWDA. However, because the PAGA notice in this case was filed prior to the amendment, the old statute and distribution apply.

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

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

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

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

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C. The Settlement is Reasonable and Effectuates PAGA's Objectives

The court's focus in a PAGA case is not the amount that aggrieved employees will ultimately receive as a result of a settlement, but instead, on whether the total settlement amount achieves PAGA's objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for education and enforcement purposes. *See* Lab. Code § 2699(i). Here, the settlement represents a fair, adequate, and reasonable recovery for the aggrieved employees and the State, when considering the risks in moving forward, and thus the settlement certainly effectuates PAGA's purpose.

The settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is 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)).

D. The Scope of the Release is Appropriately Limited

If approved, the settlement would release Defendant and other releasees from all PAGA claims predicated on the specific Labor Code violations identified in the Complaint – namely, Labor Code §§ 201, 201.3, 202, and 203 – and nothing more. Agreement ¶ 2.25. The settlement would not impact any aggrieved employee's ability to pursue PAGA claims predicated on other Labor Code violations or any Labor Claims not predicated on PAGA. Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at 987; *see also*, Lab. Code § 2699(g)(l) (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").

Accordingly, the PAGA Group Members (or aggrieved employees) will be subject to only a limited release strictly confined to the civil penalties available under PAGA for violation of Labor Code §§ 201, 201.3, 202, and 203. Therefore, the limited scope of the release also supports approval.

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

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

1. Plaintiff's Claims are Contested

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc*., 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant"). Plaintiff's PAGA claim is based on the allegation that Defendant had a state-wide policy that resulted in late payment of final wages to separated employees. This novel theory of liability was heavily contested by Defendant for several reasons. Gavron Decl. ¶ 23.

First, Defendant argued that Plaintiff's theory of liability was completely foreclosed by the application of Labor Code § 201.3 and *Young v. RemX Specialty Staffing*, 91 Cal. App. 5th 427 (2023), which govern the payment of final wages by temporary service employers, like Defendant. While the general rule is that an employer must pay all wages on the last day of work, Section 201 is superseded by Section 201.3, which establishes that the end of a temporary assignment does not constitute a discharge or termination of employment. In the context of a temporary services employer, "a 'discharge'—the end of an employment relationship—can only occur when an employee is terminated from work with the temporary services employer, not when the employee is terminated from an assignment with a client." *Young*, 91 Cal. App. 5th at

433.

Defendant argued that where Section 201.3 applies, the temporary services provider is not required to comply with the final pay requirement, and can instead pay the worker on a regular scheduled payday in the week after the assignment ends. Indeed, the Court of Appeal granted summary judgment to the employer in *RemX* because the plaintiff received her wages on the next scheduled payday, even though this was after the day that the assignment ended. Defendant argued that its standard payroll practice was to pay wages on a weekly basis, typically on Thursday. Consistent with Section 201.3 and *RemX*, an Adecco employee whose assignment ends will thus receive their wages the following week on the next scheduled payday. Gavron Decl. ¶ 25.

On the other hand, Plaintiff argued that other forms of remuneration, like vacation pay, were not timely paid upon separation of employment, and also highlighted the tension where an employee leaves a particular client site and isn't placed again until several months later, or isn't placed again at all, like Plaintiff's case. Plaintiff argued that in these circumstances Defendant knew or should have known that Plaintiff's employment with the temporary services employer ended and thus was required to pay final wages on the date of the end of the assignment. Defendant heavily contested these arguments and, with respect to vacation paid, provided information demonstrating that 99% of its employees were exclusively paid on an hourly basis and thus did not accrue any vacation wages. Gavron Decl. ¶ 26. Defendant also argued that any late payment made to Plaintiff was an isolated incident related to Plaintiff's failure to timely submit her hours such that payment could be made. Defendant argued that this defeated liability with respect to Plaintiff's individual claim and would thus preclude her ability to act as the representative for the aggrieved employees. These defenses presented a serious risk to the PAGA claim and the potential that all of the PAGA penalties sought may not be awarded. *Id*.

2. Recovery of Penalties After Trial

Even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Under PAGA, trial courts have considerable discretion to reduce the penalty award. Pursuant to Labor Code § 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 and affirmed a judgment which only provided for a PAGA penalty of $5 per pay period. *Id*. at 539; *see O'Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to $1 billion, such award "could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

Courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. Recently, 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 (N.D. Cal. May 31, 2019). Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit reversed the trial court's ruling, which demonstrates the significant risk presented in moving forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

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

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

Indeed, Plaintiff estimates that the maximum amount of PAGA civil penalties is approximately $1,525,000 based on 15,250 pay periods/aggrieved employees (15,250 pay periods x $100 per pay period).[4] Gavron Decl. ¶ 30. Assuming the Court were to award $100 penalty for every pay period, the penalties are being assessed at a rate equivalent to 8.4% of the potential value of the claims in the case. *See* Gavron Decl. ¶ 31 ($127,760.00 ÷ $1,525,000 = 8.4%).

Settlement for this value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendant's likely arguments that higher penalties would have been confiscatory. *Id.* ¶ 33. Pursuant to *Young*, Defendant had strong legal arguments against liability and likely would have moved for summary judgment. It also sufficiently deters Defendant from engaging in similar alleged conduct in the future, which is one of the primary goals of PAGA.

Significantly, the proposed settlement sum in this case is on par with the typical PAGA settlement – including those that provide for less than the one percent allocation to PAGA penalties. *See, e.g., Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA allocation that was .49% of $408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL 5439000, *8 (N.D. Cal. Aug. 4, 2015) (approving total PAGA allocation that was 0.5% of $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). For example, in *Cotter v. Lyft, Inc.*, the plaintiff alleged that drivers who use Lyft were misclassified as independent contractors. 2016 WL 3561742 (N.D. Cal. June 23, 2016). The parties settled all Labor Code and PAGA claims for $27 million, with a PAGA allocation of $1 million – or 3.7% of the total settlement. *Id.* at *2. In granting preliminary approval to the proposed settlement in *Cotter*, the court noted that the PAGA allocation "might seem low when compared to the maximum PAGA penalties," but acknowledged that it was in fact "quite high compared to the typical amount apportioned to claims for PAGA penalties in wage and hour settlements." *Id*. at *5.

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[4] By comparison, if the amount of $5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be only $76,250.00, which is far less than this settlement provides.

Given Defendant's potential complete defense to the alleged violations at issue, the risks and costs of continued litigation, Plaintiff and her attorneys believe that the settlement is fair and reasonable. Gavron Decl. ¶¶ 23-34; Declaration of Larry W. Lee ("Lee Decl.") ¶ 3; Declaration of William L. Marder ("Marder Decl.") ¶ 5. The settlement proposes a payment of approximately $20,185.00 in penalties to the LWDA and approximately $6,728.33 in penalties to the PAGA Group Members, which is an outstanding result in a PAGA only case with significant hurdles to liability. Gavron Decl. ¶ 22. When accounting for the costs incurred compared to what was allocated in the Settlement Agreement, the estimated Net Settlement Amount is approximately $30,905.17, of which $23,178.88 will be distributed to the LWDA, and $7,726.29 will be distributed to the aggrieved employees. Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and they believe this result is appropriate given the facts and law impacting this action. *Id.* ¶ 34.

Furthermore, as set forth in the accompanying Declaration of Max W. Gavron, the LWDA has been provided notice of this motion and the PAGA settlement. Gavron Decl. ¶ 51. The decision of the LWDA to accept the settlement and not oppose the motion should be given considerable weight.

F. The Attorneys' Fees are Reasonable

Labor Code § 2699(g)(1) provides for the recovery of attorneys' fees and costs in any successful action brought under PAGA. Although this is not a class action, in class actions 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) ("*Serrano III*"); *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 III*, 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.").

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

Here, as set forth in their declarations and their respective lodestars, Plaintiff's attorneys have spent over 76.5 hours litigating this current action, and anticipate spending at least another

5 hours following approval to address the administration of the settlement. Gavron Decl. ¶ 46; Lee Decl. ¶ 8; Marder Decl. ¶ 14. Based thereon, and based on each of the Plaintiff's attorneys' hourly rates, the lodestar equates to $64,050.00 which requires a *negative* 0.66 multiplier when compared to the common fund approach, which supports the $42,586.67 fee request. Gavron Decl. ¶ 50. Thus, the requested fee amount of $42,586. 67 is fair and reasonable.

Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of $13,508.16 is also reasonable. Gavron Decl. ¶ 45, Ex. C. The costs were all directly incurred in the prosecution of this action, including filing fees, service of process costs, postage, mediation, and other litigation costs. *Id*. As such, the requested costs should be awarded as fair and reasonable.

G. The Settlement Administration Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or $30,000.00, to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. Agreement ¶ 2.29. The Parties believe that the administration costs are reasonable and should be approved. This case presents unique considerations for the administration of the settlement because of how many employees are included as compared to the number of pay periods giving rise to the alleged violation. Gavron Decl. ¶ 18.

H. Plaintiff's Service 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 $5,000.00 for her service award ("Service Payment"), which is intended to compensate Plaintiff for the time spent on this case, including searching for and reviewing relevant documents, making herself available during the mediation, and the potential for retaliation. Declaration of Elisa Recoder ¶ 4. 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).[5]

I. Notice to the LWDA Has Been Provided

As discussed above, and concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. Gavron Decl. ¶ 51.

V. CONCLUSION

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

DATED: July 23, 2025

DIVERSITY LAW GROUP, P.C.

By:______________________________

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

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[5] While a separate amount of consideration associated with Plaintiff's individual claims, she discloses to the court for the sake of transparency that she will also receive a General Release Payment of $5,760, which is a settlement to compensate Plaintiff for executing a general release, including for all known and unknown claims under Civil Code § 1542, and foregoing pursuing her individual Labor Code claims in arbitration. In contrast, the aggrieved employees do not release these claims through the proposed settlement.