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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

CHARLES BARRANTES, as a proxy for
the State of California,

Plaintiff,

v.

BEVERAGES & MORE, INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. C24-00320

*Assigned for All Purposes to the
Honorable Charles S. Treat, Dept. 12*

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

Date: _____
Time: 9:00 a.m.
Dept.: 12

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PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE THE PARTIES' SETTLEMENT
AGREEMENT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004; AND
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT - 2

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

PLEASE TAKE NOTICE that on _____, at 9:00 a.m., or as soon thereafter as the matter be heard in Department 12 of the Superior Court of the State of California for the County of Contra Costa located at 725 Court Street, Martinez, CA 94553, Plaintiff CHARLES BARRANTES (“Plaintiff”) will, and hereby does, move the Court for entry of an order approving the PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”) entered into in the above-captioned civil action between Plaintiff and Defendant BEVERAGES & MORE, INC. (“Defendant”) (Plaintiff and Defendant shall collectively be referred to as the “Parties”) under the Labor Code Private Attorneys General Act of 2004 (the “PAGA”).

This motion is made pursuant to California Labor Code § 2699(l)(2), which requires trial courts to “review and approve any settlement of any civil action filed pursuant to [PAGA],” see Cal. Lab. Code § 2699(l)(2), and on the grounds that the parties’ settlement is fundamentally fair, adequate, and reasonable in light of the PAGA’s policies and purposes. As set forth in the concurrently filed declaration of Larry W. Lee, a copy of the Parties’ proposed Settlement Agreement and this motion was electronically submitted to the Labor and Workforce Development Agency in accordance with California Labor Code §§ 2699(l)(2) and 2699(l)(4) concurrent with the filing of this motion.

This motion is based on this notice of motion and motion for approval of the Parties’ Settlement Agreement concurrently filed herewith; the attached memorandum of points and authorities in support of this motion; the concurrently filed declarations of Larry W. Lee, Edward W. Choi, Christine S. Lee, David J. Lee, Plaintiff Charles Barrantes, and Jodey Lawrence in support of this motion; all pleadings, records, and files in this action; and upon such other matters as may be properly presented to, or received by, the Court at or before the hearing on this motion.

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1 Dated: December 9, 2024

DIVERSITY LAW GROUP, P.C.

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3 By: 

Larry W. Lee

4 Attorneys for Plaintiff Charles Barrantes and
5 the Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion Plaintiff CHARLES BARRANTES (“Plaintiff”) respectfully
4 requests the Court’s approval of the PAGA Settlement Agreement¹ (the “Settlement Agreement”
5 or “Settlement”) with Defendant BEVERAGES & MORE, INC. (“Defendant”). Although not
6 specifically required under this department’s “Handy Guide to Department 39”, the Parties have
7 utilized the Model PAGA Settlement Agreement developed by the Los Angeles Superior Court.

8 The settlement was reached after an informal exchange of discovery, including
9 Aggrieved Employee data, and a full-day mediation with mediator Jeffrey Fuchsman. As part of
10 the privileged settlement negotiations, Defendant produced data regarding the Aggrieved
11 Employees and the number of pay periods at issue for each of Plaintiff’s claims from which
12 Plaintiff’s counsel calculated the maximum PAGA penalty exposure. Declaration of Larry W.
13 Lee (“Lee Decl.”) ¶¶8, 15. Based on this information, the Parties have settled this case on a
14 representative PAGA basis for \$700,000.00. *Id.* at ¶¶9-10, Ex. B.

15 The Settlement Agreement allocates one-third of the Gross Settlement Amount for
16 attorneys’ fees, or \$233,333.33, up to \$20,000.00 in litigation costs incurred by Plaintiff’s
17 Counsel, \$10,000.00 to Plaintiff in exchange for a general release, and up to \$21,000.00 for
18 settlement administration costs. Settlement Agreement ¶¶3.2.1-3.2.3. For the remainder, the
19 “PAGA Penalties” is allocated to the payment of civil penalties under PAGA, of which 75% is to
20 be distributed to the Labor and Workforce Development Agency (the “LWDA”) and 25% of
21 which is to be distributed to the “Aggrieved Employees” on whose behalf Plaintiff filed this
22 action as required by PAGA. *Id.* ¶ 3.2.4.

23 Under PAGA, the Court must review and approve the proposed settlement. *See* Cal. Lab.
24 Code §2699 (l)(2). Accordingly, Plaintiff brings this motion to request approval of the
25 Settlement Agreement on the grounds it is fundamentally fair, adequate, and reasonable in light
26 of PAGA’s policies and purposes, and the facts and circumstances discussed in detail below.

27 _____
28 ¹ A true and correct copy of the fully executed Settlement Agreement is attached as Exhibit B to the Lee Decl.

1 **II. PROCEDURAL BACKGROUND**

2 On December 4, 2023, Plaintiff CHARLES BARRANTES sent notice to the LWDA
3 giving notice of his intent to pursue a representative PAGA action, on behalf of himself and the
4 State of California as well as on behalf of other aggrieved employees (the “PAGA Notice”). Lee
5 Decl. ¶ 2, Ex. A. On October 15, 2024 and October 28, 2024, Plaintiff sent amendments to his
6 December 4, 2023 alleging further violations of the Labor Code. *Id.*, Ex. A.

7 On February 6, 2024, Plaintiff filed a Representative Action Complaint for Violation of
8 Labor Code §2698, *et seq.* (the “PAGA”) for violation of Labor Code §§201-203, 226, 226.3,
9 226.7, 246 and 512. *Id.* ¶3. On March 18, 2024, Defendant filed its Answer to the Complaint.
10 *Id.* ¶4.

11 On October 8, 2024, the Parties participated in a mediation before mediator Jeffrey P.
12 Fuchsman after undertaking an investigation and exchange of information and documents
13 pertaining to Plaintiff and the Aggrieved Employees. *Id.* ¶ 6. After engaging in a full day
14 mediation, the Parties ultimately agreed to fully and finally resolve the Action and the Released
15 Claims as to Plaintiff, the State of California, and the Aggrieved Employees by accepting the
16 mediator’s proposal. *Id.* ¶5.

17 **III. FACTUAL BACKGROUND**

18 In connection with the mediation, Defendant’s Counsel provided Plaintiff’s Counsel with
19 Excel spreadsheets containing the time and pay records for 6,384 aggrieved employees. Lee
20 Decl. ¶12. Plaintiff retained an expert witness to calculate the potential exposure for Plaintiff’s
21 claims. *Id.* Based on this information, the Parties conducted settlement negotiations. *Id.* The
22 Parties subsequently executed the Settlement Agreement. *Id.*

23 The Gross Settlement Amount is \$700,000.00. Settlement Agreement ¶1.10. Settlement
24 Agreement allocates one-third of the Gross Settlement Amount for attorneys’ fees, or
25 \$233,333.33, up to \$20,000.00 in litigation costs incurred by Plaintiff’s Counsel, \$10,000.00 to
26 Plaintiff in exchange for a general release, and up to \$21,000.00 for settlement administration
27 costs. *Id.* ¶ 3.2.1-3.2.3. The remainder, or the Net PAGA Settlement Amount, is allocated to the
28 payment of civil penalties under PAGA, of which 75% (\$311,750.00) is to be distributed to the

1 LWDA and 25% (\$103,916.67) of which is to be distributed to the Aggrieved Employees on
2 whose behalf Plaintiff filed this action as required by PAGA. *Id.* at ¶ 3.2.4. However, based on
3 the actual costs being sought by PAGA counsel, the actual amount to be allocated to the payment
4 of civil penalties under PAGA, is 75% of PAGA Penalties (\$319,500.01) is to be distributed to
5 the LWDA and 25% of PAGA Penalties (\$106,500.00) which is to be distributed to the
6 Aggrieved Employees on whose behalf Plaintiff filed this action as required by PAGA.

7 The Settlement Agreement provides the following Release by Aggrieved Employees:

8 “Upon Court approval of the Settlement, the State of California and
9 the Labor and Workforce Development Agency, as well as from the
10 Aggrieved Employees are deemed to release, on behalf of
11 themselves and their respective former and present representatives,
12 agents, attorneys, heirs, administrators, successors, and assigns, the
13 Released Parties, of all claims for penalties pursuant to Labor Code
14 section 2698 et seq. (PAGA), based on the factual allegations in
15 operative Complaint and the December 4, 2023 letter to the LWDA
16 and the October 15, 2024 amendment thereto. This release shall also
17 include, but not be limited to, a release from any and all claims for
18 penalties under PAGA for alleged violations under Labor Code §§
96, 98.6, 200, 201-204, 204a, 205, 205.5, 210, 212, 218.5, 221, 222,
222.5, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 245, 246, 432,
432.3, 432.5, 432.7, 432.8, 510, 512, 551, 552, 558, 1102.5, 1174,
1182.12, 1194, 1197.1, 1197.5, 1198, 1198.5, 1527, 2800, 2802,
3366, 3457, 8397.4, and the applicable IWC Wage Orders that
accrued at any time during the PAGA Period from all claims for
PAGA penalties that were alleged, or reasonably could have been
alleged, based on the PAGA Period facts stated in the Complaint
and the PAGA Notices.”

19 *Id.* ¶ 5.2. The Released Claims are effective during the PAGA Period (February 6, 2023 through
20 October 15, 2024). *Id.* ¶1.19. The Released PAGA Claims only cover those civil penalties which
21 are recoverable under PAGA, and do not otherwise cover individual, underlying claims or causes
22 of action that Aggrieved Employees may have under the law against Released Parties for
23 violations of the California Labor Code. *Id.* ¶5.2.

24 Each Aggrieved Employee will receive an Individual PAGA Payment proportionate to the
25 number of pay periods worked during the PAGA Period. *Id.* ¶1.11. Each Individual PAGA Payment
26 will be treated as nonwage income with no tax withholdings to be made, and will be reported, if
27 required, by applicable tax laws, by the Settlement Administrator on IRS Form 1099s. *Id.* ¶3.2.4.2.

28 ///

1 **IV. STANDARD OF REVIEW**

2 In *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76-77 (2021), the Court of Appeal
3 noted that in approving PAGA settlements, “the trial court conducts an ‘independent assessment
4 of the adequacy of the settlement terms,’ which requires that the court have before it a record
5 from which it can discern sufficient information about the amount in controversy and the realistic
6 range of outcomes.” *Id.* In so noting, the Court of Appeal cited *Kullar v. Foot Locker Retail,*
7 *Inc.*, 168 Cal. App. 4th 116, 130, 133 (2008). Although *Kullar* is a class action case, to the
8 extent that it applies, the *Kullar* Court noted that a class action settlement should be approved
9 when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of
10 the strengths of the plaintiff’s claims. Here, Plaintiff addresses both *Kullar* factors.

11 **A. Plaintiff’s Discovery and Investigation Prior to Settlement**

12 Here, Plaintiff propounded written discovery, including special interrogatories and
13 request for production of documents related to the PAGA claims. Lee Decl. ¶11. Prior to the
14 mediation, Defendant produced data for each of Plaintiff’s claims, which permitted Plaintiff to
15 analyze Defendant’s potential exposure and liability. Lee Decl. ¶ 12. Defendant produced the
16 time and pay records for 6,384 employees. *Id.* The total number of pay periods worked was
17 approximately 95,760. *Id.*

18 First, there were 982 instances where meal and rest break premiums and non-
19 discretionary remuneration were paid during the same pay period, but Defendant failed to
20 calculate the non-discretionary remuneration into the regular rate of pay. *Id.* ¶12.a. The total
21 maximum PAGA penalty exposure of \$98,200 (982 X \$100 = \$98,200). *Id.*

22 Second, there were approximately 7,547 pay periods in which a meal break was not
23 provided within the first 5 hours worked, or was less than 30 minutes in length. *Id.* ¶12.b. There
24 were a total of 2,478 meal break premiums paid. *Id.* Thus, there was a total of 5,069 pay periods
25 without a payment of meal break premiums. *Id.* This amounts to a total maximum PAGA
26 penalty exposure of \$506,900.00 (5,069 X \$100). *Id.*

27 Third, for rest break penalties, although there is no data to calculate the actual penalties
28 since rest breaks are not recorded, based on the number of meal break violations, Plaintiff

1 assumed that there were an equal amount of rest break violations. *Id.* ¶12.c. This amounts to a
2 total maximum PAGA penalty exposure of \$754,700.00. *Id.*

3 Third, there were a total of 185 pay periods where sick pay wages were paid without
4 factoring in non-discretionary remuneration. *Id.* ¶12.d. This amounts to a total maximum PAGA
5 penalty exposure of \$18,500.00 (185 X \$100). *Id.*

6 Fourth, there were a total of \$100 per pay period for waiting time penalties (554 X \$100
7 = \$55,400), and \$100 penalty for each pay period a wage statement that included a meal or rest
8 break premiums that were not paid at the regular rate (10,365 X \$100 = \$1,036,500). *Id.* ¶12.e.

9 Fifth, there were a total of 13,783 pay periods with at least one of the above violations.
10 *Id.* ¶12.f. Thus, derivative Labor Code §226 PAGA penalties amounts to a total maximum
11 PAGA penalty exposure of \$1,378,300.00 (13,783 X \$100). *Id.*

12 Finally, Plaintiff alleged that each of the employees were not reimbursed all of their
13 business-related expenses, such as utilizing their cell phones to discharge duties for Defendant.
14 *Id.* ¶12.f. There were approximately 95,760 pay periods worked by the aggrieved employees.
15 This amounts to a total maximum PAGA penalty exposure of \$9,576,000.00 (95,760 X \$100).
16 *Id.*

17 Based on the above, the total maximum PAGA exposure *without* taking into any of the
18 defenses amounts to \$13,424,500.00.

19 As set forth herein, the settlement is reasonable in light of Defendant's defenses.

20 **B. The Settlement Is Reasonable In Light of the Strength of Plaintiff's Claims**

21 Plaintiff believes that the claims have merit, but Defendant could have various defenses.

22 The PAGA is a *qui tam* action which seeks recovery of penalties on behalf of the State.
23 As explained by the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles,*
24 *LLC*, 59 Cal. 4th 348, 387 (2014):

25 75 percent of [the penalties] will go to the state's coffers. We emphasized in *Arias*
26 that "an action to recover civil penalties 'is fundamentally a law enforcement
27 action designed to protect the public and not to benefit private parties'"; that "[i]n
28 a lawsuit brought under the [PAGA], the employee plaintiff represents the same
legal right and interest as state labor law enforcement agencies"; and that "an
aggrieved employee's action under the [PAGA] functions as a substitute for an
action brought by the government itself.

1 *Id.* at 387; *see also* *Provost v. YourMechanic, Inc.*, 55 Cal. App. 5th 982, 991 (2020), review
2 denied (Jan. 20, 2021) (“The Legislature provided two financial incentives for aggrieved
3 employees to pursue the recovery of civil penalties under PAGA. First, when a civil penalty is
4 recovered under PAGA, 75 percent goes to LWDA and the remaining 25 percent goes to the
5 aggrieved employees. [Citation]. Second, any employee who prevails in an action is entitled to
6 his or her reasonable attorney fees and costs.”) (Citing Labor Code §2699(g) & (l)).

7 The PAGA does not permit employees to seek unpaid wages, or damages; rather, the only
8 remedy available to employees is the civil penalty, which again, 75% of which must be paid to
9 the State. *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 193 (2019) (“If it were in the ambit of the
10 Legislature’s purpose for PAGA plaintiffs to recover unpaid wages as civil penalties, it
11 presumably would have addressed this apparent conflict directly. But our holding today makes
12 clear the conflict is illusory, because unpaid wages are not recoverable as civil penalties under
13 the PAGA in the first place.”).

14 Accordingly, Plaintiff settled this action under the PAGA only, which requires 75% of
15 the net recovery of penalties to go to the State of California and 25% to be divided amongst the
16 aggrieved employees.

17 Additionally, the strongest of Plaintiff’s claim is based on Defendant’s failure to pay
18 meal and rest break premiums and sick pay wages at the regular rate of pay. Lee Decl. ¶ 13.
19 Defendant would have argued that the actual amount of unpaid wages was minimal amounting to
20 a few dollars per employee, such that a reduction in the PAGA penalties were warranted. *Id.*
21 This is because in every regular rate of pay action, the actual unpaid wages are generally
22 minimal. *Id.* To illustrate, say for example that a worker earned a monthly bonus of \$100 and
23 worked 160 regular hours that month at the base rate of \$10 per hour and 10 hours of overtime.
24 *Id.* This employee’s overtime rate taking the bonus into account would be calculated as follows:
25 $\$100 \div 160 = \$0.625 \times 1.5 = \$0.9375$. *Id.* The employee would ordinarily be paid \$15 per hour
26 in overtime, but the additional overtime in this instance would be \$9.375 (10 hours of overtime x
27 \$0.9375). (*Id.*) Defendant could have argued that even assuming that Plaintiff’s claims have
28 merit, the actual loss in wages is minimal, such that awarding 100% of the PAGA penalties

1 would be “unjust, arbitrary and oppressive, or confiscatory.” See Cal. Lab. Code §2699(e)(2);
2 Lee Decl. ¶13.

3 With respect to the highest potential penalties that could have been awarded based on
4 Defendant’s failure to reimburse for business related expenses, Defendant argued that it
5 maintained policies and procedures that clearly stated that employees are not to utilize their
6 personal cell phones for work related purposes. *Id.* ¶14. Further, Defendants maintained that
7 employees could have used company devices to discharge all of their duties and therefore are not
8 entitled to any damages for unreimbursed business expenses. *Id.*

9 Moreover, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*,
10 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial
11 court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith
12 attempt at complying with the law. *Id.* at 517; Lee Decl. ¶ 14. Upon review, the Court of Appeal
13 found such reduction to be proper. *Id.* at 539.

14 With respect to the wage statement claim, Defendant argued that derivative penalties
15 would should not be awarded as it would result in stacking of penalties. Moreover, Defendant
16 argued that wage statement penalties are not available for regular rate violations based on the
17 same “good faith” argument that was recently ruled on by the Supreme Court in *Naranjo v.*
18 *Spectrum Security Services, Inc.* *Naranjo v. Spectrum Security Services, Inc.* 15 Cal. 5th 1056,
19 1069-1070 (2024); Lee Decl. ¶ 17. Based on the *Naranjo* ruling, the court could have awarded
20 nothing for the derivative wage statement claim. *Id.*

21 Finally, PAGA penalties for waiting time penalties also are subject to “good faith”
22 defenses. See *Naranjo v. Spectrum Security Services, Inc.* 15 Cal. 5th at 1065; Lee Decl. ¶ 18. In
23 *Naranjo*, based on Defendant’s good faith defense, nothing was awarded for derivative waiting
24 time penalties. *Id.*

25 Further, courts have discretion to reduce PAGA penalties. See *Carrington v. Starbucks*
26 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
27 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal. App. 5th
28 809 (2018); Lee Decl. ¶ 19. If the Court in this case were to reduce penalties to \$5 a pay

1 period, as was approved in *Carrington*, the potential exposure amounts to approximately
2 \$671,225.00 (5% of \$13,424,500.00). *Id.*

3 Under the circumstances of this case, the payment of \$700,000.00 in civil penalties is
4 fair, adequate, and reasonable. The payment of \$700,000.00 in exchange for a release of only
5 those claims for civil penalties that are pleaded in the Action or that could have been pleaded
6 based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the
7 Action will have a substantial deterrent effect on Defendant and other California employers and
8 will confer benefits on the Aggrieved Employees, who will each receive a portion of the
9 settlement.

10 **C. The Court Should Approve the Settlement Agreement**

11 **1. The Settlement Agreement is Entitled to a Presumption of Fairness**

12 In class actions, judicial review of a settlement's fairness is designed to protect class
13 members who had no say in the negotiation of the settlement by ensuring that the settlement is
14 not the product of "fraud," "overreaching," or "collusion" by the negotiating parties and that
15 "due regard" was given to the rights and interests of absent class members subject to the
16 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Although
17 PAGA actions and class action have certain "fundamental" differences (*see Sakkab v. Luxottica*
18 *Retail North America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)), PAGA settlements are also
19 subject to Court approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing
20 the scope of a judgment in a PAGA action); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d
21 1110, 1134 (N.D. Cal. 2016).

22 Against this backdrop, California courts have identified a set of circumstances entitling
23 class action settlements to a "presumption of fairness." *See Dunk*, 48 Cal. App. 4th at 1802. In
24 particular, a presumption of fairness arises where "(1) the settlement is reached through arm's-
25 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
26 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
27 objectors is small." *See Id.*

28 All of the factors that would give rise to a presumption of fairness in the context of a

1 class action settlement are present in this PAGA action. After this lawsuit was commenced, the
2 Parties agreed to engage in arm's length negotiations between highly experienced counsel. The
3 Parties also participated in a full-day mediation with mediator, Jeffrey P. Fucshman, Esq. Lee
4 Decl. ¶ 5. As part of their privileged settlement negotiations, Defendant produced data regarding
5 the number of pay periods at issue for each of the claims, from which Plaintiff's Counsel
6 calculated the maximum PAGA penalties and analyzed Defendant's potential liability. Lee Decl.
7 ¶¶ 12-19. Both Plaintiff's and Defendant's counsel have significant experience in litigating wage
8 and hour class and PAGA actions, which further supports the reasonableness of the settlement.
9 Lee Decl. ¶¶ 31-33; Declaration of Edward W. Choi ("Choi Decl.") ¶¶ 4-5; Declaration of
10 Christine S. Lee ("C. Lee Decl.") ¶¶ 5-7; Declaration of David J. Lee ("DJL Decl.") ¶¶ 4-10.
11 Therefore, the Settlement Agreement is entitled to a presumption of fairness.

12 **2. The Settlement Agreement Apportions Civil Penalties Between the**
13 **LWDA and the Aggrieved Employees as Required by PAGA**

14 Except when civil penalties are recovered from a defendant who did not have any
15 employees at the time of an alleged violation, civil penalties recovered under PAGA must be
16 distributed so that 75% of the civil penalties are paid to the LWDA and 25% are paid to the
17 "aggrieved employees" on whose behalf the PAGA action was brought. *See* Cal. Lab. Code
18 §2699(i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net
19 Settlement Amount to be paid to the LWDA and 25% of the PAGA Payment to be paid to the
20 Aggrieved Employees. Settlement Agreement ¶ I.19. The Aggrieved Employees will receive
21 penalties based on the number of pay periods they worked during the applicable period using a
22 pro rata distribution formula. *Id.* ¶ III.3.a.

23 **3. The Settlement Agreement Allocates a Fair, Adequate, and**
24 **Reasonable Amount to the Payment of Attorneys' Fees**
25 **a. Percentage of the Fund**

26 PAGA allows a prevailing plaintiff to recover reasonable attorneys' fees. *See* Cal. Lab.
27 Code §2699 (g). In recognition of this, the Settlement Agreement allows Plaintiff's Counsel to
28 request up to 33 and 1/3 percent (\$233,333.33) in attorneys' fees. *See* Settlement Agreement ¶

3.2.1. This amount is fair, adequate, and reasonable for two reasons.

First, in class actions, state and federal courts have held that when a class action establishes a monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created." *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (affirming a fee award representing 33 1/3 percent of the fund and joining "the overwhelming majority of federal and state courts" in approving the "percentage method" as a reasonable means for determining attorney fee awards in class actions). While different from class action settlements in important ways, PAGA settlements also involve the establishment of a common fund for the benefit of persons other than the named plaintiff, so the reasons for utilizing the percentage method are the same. *See id.* (noting that the percentage method provides "ease of calculation," "alignment of incentives between counsel and the class," "a better approximation of market conditions in a contingency case," and the "encouragement...to seek an early settlement"). The \$233,333.33 requested by Plaintiff's Counsel represents one-third of the Gross Settlement Amount, which is consistent with awards usually approved in class actions. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008) ("[F]ee awards in class actions average around one-third of the recovery"); *see also Laffitte*, 1 Cal. 5th at 506 (upholding the approval of a fee award equal to one-third of the total settlement amount). As previously approved in writing by the named Plaintiff, Plaintiff's counsel will be splitting the attorney's fees as follows: 40% to the Diversity Law Group, P.C.; 40% to the Law Offices of Choi & Associates, P.C.; and 20% to David Lee Law, P.C. Lee Decl. ¶35; Choi Decl. ¶9; DJL Decl. ¶13; Barrantes Decl. ¶11.

b. Lodestar Cross-Check

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to "cross-check" the amount of fees calculated by way of percentage. The *Laffitte* Court emphasized, however, that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on

1 the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs.*
2 *Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the
3 primary reliance on the percentage of common fund method”).

4 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means
5 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
6 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
7 range, but the court is not necessarily required to make such an adjustment.” *Id.* (emphasis
8 added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-
9 checks are not required; in many cases, performing a cross-check “undermines” one of the
10 primary reasons for using the percentage method: aligning counsel’s incentives with the benefits
11 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain
12 the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court*
13 *Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29-30 (citing
14 the recommendations of the Third Circuit Task Force with approval and observing that “[t]he
15 criticisms of the lodestar approach set forth in this Report are now echoed by many authorities,
16 who have been most vocal about the manner in which it exacerbates the problem of ‘cheap
17 settlements’ and burdens already overworked trial judge.”).

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

28 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees

1 awarded by the percentage method showing that the majority of multipliers awarded are “in the
2 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming
3 a multiplier of 3.65 in an employment class action case and analyzing the multiplier awarded in
4 over 30 cases). Federal district courts applying California law have likewise routinely approved
5 cross-check multipliers between 2 and 3 in employment cases. *See, e.g., Willner v. Manpower*
6 *Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (affirming a
7 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank,*
8 *N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar
9 multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
10 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code
11 violations). Other courts have found even higher multipliers to be reasonable by comparison to
12 other cases. *See Craft v. County of San Bernardino*, 624 F. Supp. 2d 1113, 1125-26 (C.D. Cal.
13 2008) (approving a 5.2 multiplier on a cross-check after surveying a large body of cases
14 affirming a higher multiplier).

15 With respect to Plaintiff’s Counsel’s lodestar, Plaintiff’s Counsel will have expended
16 approximately 247.90 hours litigating this case, which includes approximately 20 hours of
17 anticipated time spent after approval responding to correspondence and phone calls from
18 Aggrieved Employees, the Settlement Administrator, and Defendant’s Counsel. Lee Decl. ¶ 29;
19 Choi Decl. ¶ 7; C. Lee Decl. ¶ 9; DJL Decl. ¶12. Plaintiff’s Counsel Larry W. Lee and Edward
20 W. Choi request an hourly rate of \$900.00 per hour. Lee Decl. ¶28; Choi Decl. ¶ 6. Plaintiff’s
21 Counsel David J. Lee and Christine S. Lee request hourly rates of \$500.00 and \$400.00 per hour,
22 respectively. DJL Decl. ¶12; C. Lee Decl. ¶ 8. The courts are quite liberal in the evidence
23 required to prove an attorney’s hours. Detailed time records are not required. An attorney’s
24 testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a
25 particular case is sufficient evidence to support an award of attorney fees, even in the absence of
26 detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986) .

27 Reasonable hours include, in addition to time spent during litigation, the time spent
28 before the action is filed, including time spent interviewing the clients, investigating the facts and

1 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
2 62 (1980). The fee award should also include fees incurred to establish and defend the attorneys’
3 fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff’s Counsel
4 seek compensation involve only these types of tasks. Thus, the number of hours for which fees
5 are sought is reasonable.

6 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
7 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
8 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
9 attorney’s skill and experience, the nature of the work performed, the relevant area of expertise
10 and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
11 4th 629, 632-33 (1998).

12 Plaintiff’s Counsel’s skill and experience justify the requested rates. As shown in the
13 supporting declarations, Plaintiff’s Counsel have significant experience in the area of
14 employment and wage and hour class and representative actions. Their practices focus on
15 representing employees in employment matters, particularly wage and hour cases on a
16 contingency basis. Lee Decl. ¶¶ 31-33; Choi Decl. ¶ 5; C. Lee Decl. ¶¶ 6-7; DJL Decl. ¶ 8-10. As
17 such, based on the hours and applicable rate, Plaintiff’s Counsel’s lodestar amount through the
18 finalization of this settlement – without a multiplier – will be approximately \$185,000, which
19 results in a 1.26 multiplier which is far less than the 2.13 multiplier in *Laffitte*. *Laffitte*, 231 Cal.
20 App. 4th at 881-82.. Accordingly, the cross-check supports the fee requested.

21 **4. The Settlement Agreement Allocates a Fair, Adequate, and**
22 **Reasonable Amount to the Payment of Litigation Costs**

23 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code
24 §2699(g). Accordingly, the Settlement Agreement allows Plaintiff’s Counsel to request up to
25 \$20,000.00 in litigation costs. Settlement Agreement ¶ III.4.

26 Plaintiff’s Counsel request \$9,666.66 for the reimbursement of litigation costs. As set
27 forth in accompanying declarations of Plaintiff’s Counsel, these costs were all directly incurred
28 in the prosecution of this action, including, but not limited to, filing fees, service fees, and

1 mediation fees. Lee Decl. ¶ 30, Ex. D; Choi Decl. ¶ 8, Ex. B. As such, Plaintiff's Counsel's
2 request for costs in the amount of \$9,666.66 is fair, adequate, reasonable, and consistent with
3 PAGA's policies.

4 **5. The Payments to Plaintiff Should Be Approved**

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

11 Here, Plaintiff respectfully requests \$10,000.00, which is intended to compensate
12 Plaintiff for the time spent on this case. Plaintiff estimates he spent over 40 hours litigating this
13 action. Declaration of Charles Barrantes ("Barrantes Decl.") ¶6. In particular, Plaintiff spoke
14 with his attorneys on several occasions to discuss the facts supporting the theories of liability in
15 this action, and continually apprised his attorneys of his understanding of Defendant's policies
16 and practices as it related to the payment of meal/rest period premium and sick pay wages. *Id.*
17 Plaintiff also provided documents to his attorneys to evaluate the claims in the case, including,
18 but not limited to, wage statements he received throughout his employment with Defendant. *Id.*
19 Plaintiff also conferred with his attorneys regarding the terms of the proposed settlement,
20 reviewed the proposed settlement agreement, and assisted in reviewing, drafting, and revising his
21 declaration in support of the PAGA Approval. *Id.* This requested enhancement is consistent with
22 awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.
23 Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet*
24 *Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of
25 \$55,000, and three incentive awards of \$35,000).

26 Plaintiff also took the risk of bringing the lawsuit, which was a matter of public record.
27 Barrantes Decl. ¶7. Given that future employers are less likely to hire individuals who have filed
28 suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in

1 the future from other potential employers. Further, Plaintiff understood that he could have been
2 liable for Defendant's costs had Defendant prevailed. *Id.* ¶8. Plaintiff took this risk upon
3 himself and the Aggrieved Employees benefited from these risks taken by Plaintiff. *Id.*
4 Aggrieved Employees did not have to file individual lawsuits and bear the risks of payment of
5 costs if they did not prevail, nor did they have to face the potential retaliation and not getting
6 future employment had they filed a public lawsuit. *Id.* In light of Plaintiff's efforts, the service
7 award should be awarded to Plaintiff for his commitment, dedication, and risks taken for this
8 litigation.

9 **6. The Settlement Agreement Allocates a Fair, Adequate, and**
10 **Reasonable Amount to the Payment of Settlement Administration**
11 **Costs**

12 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff's
13 Counsel, and the LWDA, but also to Defendant's current and former employees, significant time
14 and effort will be required to administer the Settlement if it is approved by this Court. Among
15 other things, the Settlement Administrator will calculate each PAGA Settlement Employee
16 Individual PAGA Payment; issue appropriate tax forms to all parties who receive payments
17 under the Settlement Agreement; mail payments to Plaintiff, Plaintiff's Counsel, the LWDA, and
18 each Aggrieved Employee; and void any checks not cashed by Aggrieved Employees so that the
19 unclaimed amount can be forwarded to the California Controller's Unclaimed Property Fund in
20 the name of the Aggrieved Employee. *See* Settlement Agreement ¶4.4.3. The Parties submit that
21 transmission to the Unclaimed Property Fund is more equitable than a *cy pres* because there are
22 many instances where aggrieved employees may not have received their Individual PAGA
23 Payment and find out after 180 days have elapsed that they may be entitled to payment from this
24 Settlement.

25 In contemplation of these expenses, the parties will engage Phoenix Settlement
26 Administrators to act as a third-party settlement administrator and have allocated up to \$21,000.00
27 to cover the cost of settlement administration. Settlement Agreement ¶ 3.2.3; Declaration of Jodey
28 Lawrence ¶ 16, Ex. B).

1 **V. NOTICE OF THE SETTLEMENT AGREEMENT HAS BEEN GIVEN TO THE**
2 **LWDA PURSUANT TO LABOR CODE § 2699(L)(2)**

3 When enacting PAGA, the Legislature intended to ensure that the LWDA retained
4 “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end,
5 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the
6 proposed settlement to the LWDA online “at the same time that it is submitted to the court,” to
7 give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code
8 §§2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the
9 Settlement Agreement and this motion to the LWDA through the LWDA’s online filing system
10 in conjunction with filing this motion. *See* Lee Decl. ¶ 34, Ex. E.

11 **VI. CONCLUSION**

12 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
13 Agreement pursuant to Labor Code §2699(l)(2).
14

15 Dated: December 9, 2024

DIVERSITY LAW GROUP, P.C.

16
17 By: _____

Larry W. Lee

Attorneys for Plaintiff Charles Barrantes and
the Aggrieved Employees