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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

JUSTIN BUI, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

THE RANCH STEAKHOUSE AND SALOON,
INC., a California corporation; RGB SYSTEMS,
INC., a California corporation; and DOES 1
through 50, inclusive,

Case No. 24CV439149

**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: March 20, 2025

Time: 1:30 p.m.

Dept.: 7

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

2 **PLEASE TAKE NOTICE** that on March 20, 2025, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard, in Department 7 of the above-referenced Court located at 191 N. First Street, San
4 Jose, California 95113, Plaintiff Justin Bui (“Plaintiff”) will seek an Order approving the concurrently
5 filed PAGA Settlement Agreement and Release (“Agreement” or “Settlement”), pursuant to the
6 procedures set forth in Labor Code § 2698, *et seq.*

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

11
12 DATED: February 7, 2025

DIVERSITY LAW GROUP, P.C.

13 By: _____

Larry W. Lee

Kristen M. Agnew

14 Attorneys for Plaintiff and the Aggrieved Employees
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1 **I. INTRODUCTION**

2 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et*
3 *seq.*, Plaintiff Justin Bui (“Plaintiff”) hereby moves the Court for an order approving the non-reversionary
4 settlement with Defendants The Ranch Steakhouse and Saloon, Inc. (“The Ranch”) and RGB Systems,
5 Inc. dba Extron Electronics (“Extron”) (together, the “Company” or “Defendants”) as set forth in the
6 concurrently filed Joint Stipulation of Settlement and Release (“Agreement” or “Settlement Agreement”).¹

7 As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the proposed
8 settlement warrants the Court’s approval. This settlement was reached after extensive investigation and
9 informal discovery, including Defendant’s production of payroll data, as well as information pertaining to
10 the number of pay periods worked by alleged aggrieved employees. Furthermore, pursuant to the terms of
11 the Settlement, Defendant will pay the gross amount of \$330,250.00 (the “Gross Settlement Amount”),
12 which includes an estimated payment of approximately \$196,662.51 in civil penalties to aggrieved
13 employees and the California Labor and Workforce Development Agency (“LWDA”). The proposed
14 release is also narrowly tailored to release only claims for civil penalties under PAGA predicated on the
15 specific Labor Code violations alleged in the PAGA Notice and Complaint.

16 The proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the
17 LWDA and aggrieved employees, and accomplishes the goals of the PAGA.

18 **II. PROCEDURAL HISTORY**

19 **A. Pre-Litigation Investigation**

20 Prior to initiating the Action, counsel for Plaintiff thoroughly investigated the factual and legal
21 bases for the claims alleged in this lawsuit. Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶¶ 3 - 5.
22 Counsel reviewed Plaintiff’s time and payroll records provided by Defendants. *See id.* at ¶¶ 4, 5. The
23 records demonstrated that Defendants captured the time entries to the minute, but consistently rounded
24 the daily total hours worked to the nearest quarter hour. *See id.* at ¶ 4. As a result, counsel determined that
25 Defendants failed to pay for every minute that Plaintiff worked. *See id.* Counsel estimated that the
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27 ¹ A true and correct copy of the Settlement Agreement is attached to the Declaration of Kristen M. Agnew as Exhibit 1.
28

1 rounding resulted in the loss of compensable hours worked. *See id.*

2 **B. The PAGA Notice**

3 On March 13, 2024, Plaintiff submitted written notice under Labor Code section 2699.3 to the
4 LWDA and Defendants alleging that Defendants violated Labor Code sections 201, 202, 203, 226(a), 510,
5 558, 1194, 1197, and 1197.1 (the “PAGA Notice”). *See Agnew Decl.* ¶ 6, Exhibit 2. As set forth in the
6 PAGA Notice, Plaintiff contends that, as matter of policy and practice, Defendants: (1) failed to pay for
7 all hours worked due to the unlawful rounding of employee time; (2) failed to provide accurate, itemized
8 wage statements; and (3) failed to pay all wages to employees upon separation of employment, as a result
9 of the underpayment of wages due to Defendants’ unlawful rounding policy. *See id.*

10 **C. The Operative Complaint**

11 On May 17, 2024, Plaintiff filed the instant representative PAGA action against Defendants. *See*
12 *Agnew Decl.* ¶ 8. Plaintiff asserts a single cause of action for violation of PAGA predicated on the alleged
13 Labor Code violations set forth in the PAGA Notice. *See id.* Plaintiff seeks civil penalties under PAGA,
14 as well as attorneys’ fees, and costs. *See id.* Defendants dispute and deny Plaintiff’s allegations and claims
15 asserted in the operative Complaint. *See id.* at ¶ 9.

16 **D. The Parties Engage in Informal Discovery and Investigation**

17 Shortly after Plaintiff served the Complaint, Plaintiff and Defendants (collectively, the “Parties”)
18 agreed to participate in private mediation with Michael Mandel, an experienced wage and hour class
19 action mediator. *See Agnew Decl.* ¶¶ 10, 11. The Parties also agreed to the informal exchange of
20 information leading up to mediation. *See id.* at ¶ 11. Defendants provided data points regarding the
21 number of non-exempt employees who worked for Defendants during the period of March 13, 2023 to
22 October 29, 2023, the number of pay periods worked by employees during this period of time, and the
23 number of non-exempt employees who separated employment. *See id.* Defendants also produced a
24 sampling of time and payroll records for non-exempt employees. *See id.* The records confirmed that
25 Defendants ceased their rounding practices, as of October 29, 2023. *See id.* Based on the information
26 provided by Defendant, Plaintiff’s Counsel conducted a full penalties analysis as to the value of the
27 PAGA claims. *See id.*

1 **E. The Reach a Settlement Through Arm’s Length Negotiations at Mediation.**

2 On September 19, 2024, the Parties engaged in mediation with Mr. Mandel. *See* Agnew Decl. ¶
3 12. After the exchange of further information and extended negotiations following mediation, the Parties
4 reached the present settlement. *See id.* The Parties subsequently negotiated the terms of Settlement
5 Agreement. *See id.* at ¶ 13. The mediation and all settlement negotiations were conducted at arms’
6 length. *See id.*

7 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

8 The material terms of the Settlement are described below and set forth in detail in the concurrently
9 filed Settlement Agreement, a true and correct copy of which is attached as **Exhibit 1** to the Declaration
10 of Kristen M. Agnew.

11 **A. The PAGA Employees**

12 The current Action is being settled on behalf of “PAGA Employees,” which is defined to mean all
13 current and former non-exempt employees of Defendants in the State of California who worked at least one
14 shift at any time from March 13, 2023, through October 30, 2023 (“PAGA Period”). *See* Settlement
15 Agreement (“SA”) §§ A-15, B-13. Defendants have determined that there are 590 PAGA Employees who
16 collectively worked approximately 13,210 pay periods during the PAGA Period. *See id.* at § B-15.

17 **B. The Gross Settlement Amount**

18 The Settlement Agreement requires Defendants to pay the gross amount of Three Hundred Thirty
19 Thousand Two Hundred-Fifty Dollars (\$330,250.00) (the “Gross Settlement Amount”). *See* SA § B-9.
20 Based on the number of pay periods released by the Settlement, Defendant will pay approximately \$25.00
21 per pay period to resolve the claims in this case. *See* Agnew Decl. ¶ 15.

22 **C. The Allocation of the Net Settlement Amount**

23 The balance of the Gross Settlement Amount remaining after deduction of the approved attorneys’
24 fees and litigation costs, Settlement Administration Costs, and Enhancement Payment (the “Net PAGA
25 Pool”), will be available for distribution to the LWDA and PAGA Employees. *See* SA § C-7. Assuming
26 that the Court awards the requested attorneys’ fees (\$110,083.33), actual litigation costs (\$6,554.16),
27 Settlement Administration Costs (\$6,950.00), and the Enhancement Payment (\$10,000.00), the Net PAGA
28

1 Pool will total approximately \$196,662.51. *See* Agnew Decl. ¶ 20. Seventy-five percent (75%) of the Net
2 PAGA Pool, or approximately \$147,496.88, will be paid to the LWDA for PAGA penalties (“LWDA
3 Payment”). *See* SA § C-7; Agnew Decl. ¶ 20. The remaining twenty-five percent (25%), or approximately
4 \$49,165.63, will be distributed to PAGA Employees on a pro rata basis based on the number of pay periods
5 in which employees worked during the PAGA Period. *See* SA § C-7; Agnew Decl. ¶¶ 20, 21.

6 On raw average, PAGA Employees will be entitled to recover, on average, up to \$83.33 each. *See*
7 Agnew Decl. ¶ 21. However, the amount that any particular PAGA Settlement Member will be entitled to
8 recover will be greater or lower than this average depending on the number of pay period in which the
9 individual worked during the PAGA Claim Period. *See* SA § C-8. This is fair, as it directly allocates
10 greater penalties to PAGA Employees who have allegedly suffered greater harm. *See* Agnew Decl. ¶ 21.

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

12 As part of the Settlement, Defendants do not object to a request by Plaintiff’s Counsel for an award
13 of Attorneys’ Fees of up to one-third (1/3) of the Gross Settlement Amount, *i.e.*, the sum of One Hundred
14 Ten Thousand Eighty-Three Dollars and Thirty-Three Cents (\$110,083.33), and reimbursement for actual
15 litigation costs in an amount up to Twenty Thousand Dollars (\$20,000.00) (“Attorneys’ Fees and Costs”),
16 subject to Court approval. *See* SA § C-5.² Any portion of the Enhancement Payment that is not approved
17 by the Court shall become part of the Net PAGA Pool. *See id.*

18 Defendants also do not object to Plaintiff’s request for an Enhancement Payment of up to Ten
19 Thousand Dollars (\$10,000.00) in recognition for the work Plaintiff has done on behalf of the State of
20 California and the PAGA Employees. *See* SA § C-4. Any portion of the Enhancement Payment that is not
21 approved by the Court shall become part of the Net PAGA Pool. *See id.*

22 **E. Settlement Administration Costs**

23 The Settlement provides for the payment of the fees and expenses reasonably incurred by the
24 Settlement Administrator. *See* SA § C-6. The Parties have agreed to utilize Phoenix Settlement
25 Administrators to administer the settlement, with the Settlement Administration Costs estimated to be Six
26

27 ² At the time the Parties negotiated the Settlement Agreement, Plaintiff’s Counsel did not have a final tally of the litigation
28 costs incurred to date. As such, the Parties included a maximum amount that could be attributed to costs under the settlement.
Plaintiff’s Counsel requests reimbursement of \$6,554.16 for litigation related expenses. *See* Agnew Decl. ¶ 44.

Thousand Nine Hundred Fifty Dollars (\$6,950.00). *See* SA §§ B-22; C-6; Declaration of Jodey Lawrence (“Admin. Decl.”) ¶ 16, Exhibit B.

F. The *Cy Pres* Recipient.

Any uncashed checks will be paid out pursuant to California Code of Civil Procedure section 384 to the *cy pres* recipient, Legal Aid at Work. *See* SA § D-5. Legal Aid at Work, is a 501(c)(3) nonprofit legal services organization that provides services to working families with low-incomes. The Parties warrant and represent that they do not have a relationship, financial or otherwise, with the *cy pres* recipient. *See* Agnew Decl. ¶ 22.

G. The Scope of the Released Claims

Upon the Effective Date of the Settlement, Plaintiff and PAGA Employees will release Defendants and Released Parties from the Released Claims. *See* SA § E-2. As defined in the Agreement, the term “Released Claims” means:

All claims for civil PAGA penalties, including attorneys’ fees and costs related thereto, that were alleged, or reasonably could have been alleged, based on the facts stated in the PAGA Notice and Complaint for violation of Labor Code sections 201, 202, 203, 226(a), 510, 558, 1194, 1197 and 1197.1 during the PAGA Period.

See id. at § B-20. The Settlement is not intended to release does not extend to violations of any predicate statutes other than PAGA. The Settlement also does not affect a waiver of claims by PAGA Employees against the Released Parties for any individual wage and hour claims. *See* Agnew Decl. ¶ 32.

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); *Kim v. Reins International California, Inc.*, 9 Cal.5th 73,

81 (2020) (“The Labor Commissioner and other agencies were likewise hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. [] To facilitate broader enforcement, the Legislature enacted PAGA, authorizing “aggrieved employees” to pursue civil penalties on the state's behalf”); *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 section 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)(1). 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); *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”).

//

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

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

16 By contrast, court approval of PAGA settlements is governed by section 2699(1) of the Labor
17 Code, which provides, in relevant part: “The court shall review and approve any penalties sought as part
18 of a proposed settlement agreement pursuant to this part.” The parties are not obligated to “satisfy class
19 action requirements,” including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at
20 980-988 (affirming lower court’s holding that “plaintiff need not satisfy class action requirements” to
21 assert a PAGA claim). Notably, unlike the class action settlement approval process, there is also no
22 statutory mechanism for this Court to conduct a two-step settlement approval review. Cal. Lab. Code §
23 2699(i). In addition, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
24 have the ability to opt-out of the representative PAGA claim” or “contest a settlement, if any, reached
25 between the parties.” *Ochoa-Hernandez*, 2010 WL 1340777 at *13.

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

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

10 The Settlement is also consistent with the State’s public policy favoring resolution of disputes.
11 “California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is
12 efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best
13 positioned to understand their interests and resolve a dispute in a mutually beneficial manner without
14 court intervention into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th
15 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277- 278 (1992).

16 **D. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
17 **Litigation**

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

21 **1. Plaintiff’s Claims are Contested**

22 **a. Unpaid Minimum and Overtime Wages**

23 Plaintiff seeks civil PAGA penalties based on Defendants’ rounding policy. There is no dispute
24 that Defendants utilized a common rounding practice to calculate and pay wages to PAGA Employees.
25 *See Agnew Decl.* ¶ 25. Despite capturing an employee’s precise work time to the minute, Defendants
26 took the additional step of rounding the daily hours worked to the nearest quarter hour. The Parties
27 sharply dispute whether this rounding policy violates California law and, if so, the extent to which it
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1 resulted in the underpayment of wages to individual PAGA Employees.

2 Plaintiff maintains that rounding practices that result in unpaid wages are inconsistent with
3 California law and regulatory scheme. In *Camp v. Home Depot U.S.A., Inc.*, the California Court of
4 Appeal reversed summary judgment for an employer on a nearly identical rounding claim. 84
5 Cal.App.5th 638 (2022). Similar to here, Home Depot accurately recorded the hours worked by
6 employees to the minute. Home Depot argued that its rounding policy “was neutral on its face, neutral as
7 applied, and otherwise lawful under *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th
8 889, 148 Cal.Rptr.3d 690 (*See's Candy*).” *Camp*, 84 Cal. App. 5th at 643. The *Camp* Court
9 unequivocally rejected this argument: if an employer “can capture and has captured the exact amount of
10 time an employee has worked during a shift, the employer must pay the employee for ‘all the time’
11 worked.” *See id.* at 660.

12 Defendants, however, argue that a split of authority exists amongst appellate courts on the
13 question of whether the standard articulated in *Sees Candy* remains good law. Compare *AHMC*
14 *Healthcare Inc.*, 24 Cal. App. 5th 1014 (2018) (following *See's Candy*) and *David v. Queen of Valley*
15 *Medical Center*, 51 Cal. App. 5th 653 (2020) (following *See's Candy*) and *Camp*, 84 Cal. App. 5th 638
16 (2022), hmg. granted (rejecting *See's Candy*) and *Woodworth v. Loma Linda University Medical Center*,
17 93 Cal. App. 5th 1038 (2023) (rejecting *See's Candy*). Defendants further argue that the Company’s
18 rounding policies did not result in the underpayment of wages to PAGA Employees. Defendants
19 maintain that overall a significant number of PAGA Employees were “overpaid” as a result of the
20 rounding that occurred during the PAGA Period. *See* Agnew Decl. ¶ 26. Accepting Defendants’
21 arguments as true, Plaintiff can still prove that each PAGA Employee experienced at least one
22 underpayment of wages during the PAGA Period, and is therefore an “aggrieved employee” under the
23 statute. *See id.*

24 **b. Wage Statement Violations**

25 Plaintiff seeks civil PAGA penalties based on Defendants’ violations of Labor Code section
26 226(a). Plaintiff alleges that Defendants’ wage statements failed to identify the legal entity that is the
27 employer. *See* Agnew Decl. ¶¶ 5, 27. On different occasions, the wage statements have identified two
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different entities as the employer: The Ranch Steakhouse & Saloon and RGB Systems, Inc. *See* Agnew Decl. ¶ 5. It is confusing which, if any, of these entities is/are the actual legal entity that is the employer. *See id.* Numerous cases have held that a defendant is liable for violating Section 226(a)(8), as matter of law, where the employer fails to properly list its name and/or address. *See, e.g., Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 961 (2005) (employer violated Section 226(a)(8) by listing “SUMMIT” on its wage statements furnished to employees, as opposed to its full legal name, “Summit Logistics, Inc.”); *Noori v. Countrywide Payroll & HR Sols., Inc.*, 43 Cal. App. 5th 957 (2019) (holding that acronym of fictitious business name violated § 226(a)(8), notwithstanding employer’s listing of its actual name on paycheck itself because paycheck is not part of wage statement); *Willner v. Manpower Inc.*, 35 F. Supp. 3d 1116, 1129 (N.D. Cal. 2014) (“Section 226(a)(8) expressly requires the name and address of the employer to be written on the wage statement itself. Anything less fails to comply with Section 226(a)(8)”).

Defendants contend there is no merit to this claim. As argued by Defendants, The Ranch Steakhouse & Saloon and RGB Systems, Inc are two separate employers, and not one joint employer, with Plaintiff having worked for both companies in two different stints but never at the same time. *See* Agnew Decl. ¶ 27. The two entities have common ownership, but separate management and separate payroll. *See id.*

Plaintiff also alleges a separate derivative violation of Section 226(a). As a result of the alleged underpayment and/or non-payment of wages to PAGA Employees, Plaintiff contends that the wage statements omit information required by Labor Code 226, including all applicable hourly rates and the total hours worked. As argued by Defendants, Plaintiff’s derivative wage statement violation is vulnerable to a motion for summary judgment based on the weaknesses of the underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage statement cause of action was derived from an underlying wage and hour violation for overtime).

2. Recovery of Civil PAGA Penalties Is Uncertain

However, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential

1 recovery is uncertain. Defendants contend that the Company made a good faith effort to comply with the
2 law. As argued by Defendants, in deciding whether to award the maximum penalty amount, courts may
3 focus on whether the employer made a good faith effort to follow the law. For example, in *Thurman v.*
4 *Bayshore Transit Management, Inc.*, the Court of Appeal upheld the trial court’s significant reduction of
5 PAGA penalties by 30% because the employer was not initially on notice that it was in violation of the
6 law and because it would have been unfair to award penalties where the employer was unaware of the
7 violations. 203 Cal. App. 4th 1112, 1136 (2012). When the employer made aware of the violations, it
8 timely took steps to come into compliance. *Id.* By contrast, the imposition of full penalties was justified
9 when an employer took a “cavalier approach to fulfilling its contractual and statutory obligations” and
10 demonstrated “reckless disregard.” *Id.* Furthermore, as the California Court of Appeal has affirmed, trial
11 courts are well within their discretion to reduce PAGA penalties “for technical violations that cause no
12 injury,” especially where the “violation was inadvertent.” *Raines v. Coastal Pac. Food Distributors,*
13 *Inc.*, 23 Cal. App. 5th 667, 681 (2018). Similarly, in the matter of *Magadia v. Wal-Mart Assocs. et al.*,
14 while the trial court imposed substantial PAGA penalties upon the defendant, such amount still
15 represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis
16 91792 at *87-*100.

17 In this case, Defendant asserted that a substantial reduction in potential PAGA penalties was
18 warranted because: (1) even assuming that Plaintiff could establish the predicate violations, the alleged
19 violations were inadvertent; (2) prior to the 2022 *Camp* decision, state and federal courts endorsed
20 rounding practices for over sixty years; (3) PAGA Employees did not suffer substantial economic harm
21 as a result of the alleged rounding; and (4) Defendants voluntarily discontinued its rounding practices
22 prior to the submission of the PAGA Notice. *See* Agnew Decl. ¶ 30. Thus, Defendants contend that no
23 PAGA penalties were needed to punish or deter Defendants for their inadvertent behavior, much less to
24 deter it from committing any future violations that were completely foreclosed by its new payroll
25 practices. *See id.*

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1 **3. The Settlement Is Reasonable When Compared to the Realistic Amount of**
2 **PAGA Civil Penalties At Issue**

3 In evaluating the fairness of a PAGA settlement, “there is no express or even baseline
4 percentage of recovery required.” *See Manzo v. McDonald's Restaurants of California, Inc.*, 2022 WL
5 4586236, at *6 (E.D. Cal., 2022). Trial courts routinely approve PAGA settlements representing only a
6 tiny fraction of the potential verdict value of the claim. *See id.* (approving PAGA allocation that “is less
7 than one percent (1%) of the verdict value” of the claim”); *Hartley v. On My Own, Inc.*, 2020 WL
8 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA
9 penalty, resulting in average payment per employee of \$61); *Ramirez v. Benito Valley Farms, LLC*, 2017
10 WL 3670794, *4 (N.D. Cal. Aug. 25, 2017) (considering early stage of litigation, defendant's weak
11 financial condition, and injunctive relief provided by settlement, approving PAGA settlement of 4.57%
12 of verdict value).

13 Here, the Gross Settlement Amount exceeds both in terms of the total dollar amount and as a
14 percentage of overall settlement value, the typical PAGA settlement. Defendants have determined that
15 PAGA Employees worked approximately 13,210 pay periods during the PAGA Period. *See* SA § B-15.
16 Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the standard penalty
17 of \$100 per pay period yields \$1,321,000 in potential liability. *See* Agnew Decl. ¶ 23. Thus, without
18 stacking, the Gross Settlement Amount is approximately 25% of the maximum amount of penalties at
19 issue. In the alternative, if the Court were to “stack” penalties, (*ie*, award multiple PAGA penalties for
20 different Labor Code violations in the same pay period), the potential PAGA penalties could total as
21 high as \$2,648,100. *See* Agnew Decl. ¶ 23. Thus, with stacking, the Gross Settlement is approximately
22 12.47% of the maximum penalties.

23 **E. The Attorneys’ Fees are Reasonable**

24 Plaintiff’s Counsel seeks a fee award calculated as one-third of the total value of the settlement
25 for the successful prosecution and resolution of this action. Labor Code section 2699(g)(1) provides for
26 the recovery of attorneys’ fees and costs in any successful action brought under PAGA. Although this is
27 not a class action, in class actions California state and federal courts have recognized that an appropriate
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1 method for determining award of attorneys' fees is based on a percentage of the total value of benefits to
2 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001);
3 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
4 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this
5 equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally
6 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*,
7 557 F. 2d at 769.

8 The award of attorneys' fees in common fund wage and hour class action settlements should start
9 with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the
10 overwhelming majority of federal and state courts in holding that when class action litigation establishes
11 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
12 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
13 an appropriate percentage of the fund created"). Under the percentage of the fund method, the Court's
14 objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d
15 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to
16 set it at a level that will approximate what the market will set....The judge, in other words, is trying to
17 mimic the market in legal services").

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

26 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the
27 fund, which is similar to the percentage of fee award sought in this case. *Laffitte*, 1 Cal. 5th at 506. And
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1 this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at p. 487. As the Court held,
2 only when the multiplier is “extraordinarily high or low [should] the trial court [] consider whether the
3 percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range.”
4 *Id.* at 505. Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent
5 of the common fund is consistent with, and in the range of, awards in other class action lawsuits.” *Id.* at
6 871.

7 Here, the fee award representing one-third of the Gross Settlement Amount is consistent with
8 other comprehensive surveys of class action settlements and fee awards. *See Martin v. AmeriPride*
9 *Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that “courts may award
10 attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery of a common
11 fund under \$10 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An*
12 *Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn. 16 (2010) (independent studies
13 of class action litigation nationwide conclude that fees in the range sought here are consistent with
14 market rates).

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

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

22 495 F.2d 448, 470 (2d Cir. 1974). For Plaintiff’s Counsel, the fees here were wholly contingent in nature
23 and the case presented far more risk than the usual contingent fee case. Among the risks was the cost
24 inherent in class action litigation, as well as a potentially drawn-out battle with corporate Defendants.

25 As secondary support for the percentage of the fund method, courts have discretion to “cross-
26 check” the fees awarded through the lodestar method. However, the *Laffitte* Court “emphasize[d] [that]
27 the lodestar calculation, when used in this manner, does not override the trial court’s primary
28 determination of the fee as a percentage of the common fund and thus does not impose an absolute
maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at p. 505; *In re Rite Aid Corp.*

1 *Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the
2 primary reliance on the percentage of common fund method”).

3 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar cross-
4 check is extraordinarily high or low, the trial court should consider whether the percentage used should
5 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
6 necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at
7 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check
8 “undermines” one of the primary reasons for using the percentage method: aligning counsel’s incentives
9 with the benefits delivered to the class and discouraging protracted litigation. *Id.* at p. 506 (finding trial
10 courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force,*
11 *Court Awarded Attorney Fees*, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82
12 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with
13 approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now
14 echoed by many authorities, who have been most vocal about the manner in which it exacerbates the
15 problem of ‘cheap settlements’ and burdens already overworked trial judge”).

16 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
17 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g., Sutter*
18 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
19 cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 60 (2008)
20 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App.
21 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after
22 finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier.
23 *Laffitte*, 231 Cal. App. 4th at pp. 881-82. The intermediate court opinion was affirmed in full by the
24 California Supreme Court in its new decision guiding lower courts on assessing fees.

25 With respect to Plaintiff’s Counsel’s lodestar, to date, at least approximately 97.90 hours have
26 been expended by counsel in this matter. *See* Agnew Decl. ¶ 42, Exhibit 3; Lee Decl. ¶ 7, Exhibit 1. Ms.
27 Agnew requests an hourly rate of \$800.00 per hour. *See* Agnew Decl. ¶ 43. Mr. Lee requests an hourly
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1 rate of \$900. Lee Decl. ¶ 8. The courts are quite liberal in the evidence required to prove an attorney's
2 hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of
3 an attorney as to the number of hours worked on a particular case is sufficient evidence to support an
4 award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App.
5 3d 553, 559 (1986).

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

17 Here, Plaintiff's Counsel's skill and experience justify the requested rate. As shown in the
18 supporting declaration, Plaintiff's Counsel has significant experience in the area of employment and
19 wage and hour class actions. *See* Agnew Decl. ¶ 34-41; Lee Decl. ¶ 6. Specifically, Plaintiff's Counsel's
20 practice focuses on representing employees in employment matters, particularly wage and hour cases.
21 *See* Agnew Decl. ¶¶ 34, 39-41; Lee Decl. ¶ 6. As such, based on the hours and applicable rate, the total
22 lodestar to be expended by Plaintiff's Counsel through finalizing this settlement will be approximately
23 \$81,340.00. *See* Agnew Decl. ¶ 43; Lee Decl. ¶ 8.

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

4 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-
5 benefit, namely, no objections by Class Members, commendable conduct by counsel, and significant
6 recoveries by Class Members, all of which were previously detailed above. *Lealao*, 82 Cal.App.4th at
7 51-53. As in *Lealao*, the Class Members were notified of the Settlement and attorneys' fees with no
8 objections. The extreme effort undertaken by counsel, as shown by their hours and the significantly high
9 amount of claims being paid out, shows commendable conduct.

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

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

19 Here based upon Plaintiff's Counsel's lodestar of \$81,340, the requested fees result in a
20 multiplier of approximately 1.35337 [$\$110,083.33$ (requested fees) $\div$ $\$81,340$ (lodestar amount)]. This
21 demonstrates that the requested fees are reasonable and fair, particularly based on the factors described
22 above. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct. App. 2001) (noting that courts using
23 the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the
24 range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)
25 (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action
26 settlement); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (awarding
27 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action on behalf of all Class Members. For such reasons, Plaintiff's Counsel's request for attorneys' fees in the amount of \$110,083.33 is fair and reasonable.

Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of \$6,554.16 is also reasonable. *See* Agnew Decl. ¶ 44, Exhibit 4. The costs were all directly incurred in the prosecution of this action, including filing fees, mediation costs, postage and copying. *See id.* As such, the requested costs should be awarded as fair and reasonable.

F. The Settlement Administrator's Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or Six Thousand Nine Hundred Fifty Dollars (\$6,950.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this Settlement. *See* SA §§ C-6. The Parties believe that the administration fee is reasonable and should be approved.

G. 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 \$10,000 as an Enhancement Payment, which is intended to compensate Plaintiff for the time spent on this case, including reviewing pleadings, the potential for hesitation from later prospective employers that might find out he brought this claim. *See* SA § C-4; Declaration of Justin Bui ¶¶ 6, 7. 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).

The Enhancement Payment is further justified because Plaintiff was a catalyst for Defendants ceasing the rounding practices. Bui Decl. ¶ 4. Prior to resigning his employment in September 2023, Plaintiff complained to both human resources and his supervisor that the rounding of his daily hours worked was illegal and deprived employees of daily overtime. *See id.* Shortly after Plaintiff made his complaint, Defendants discontinued the rounding and began paying employees to the minute based on their actual time entries. *See Agnew Decl.* ¶ 11.

H. Notice to the LWDA Has Been Provided

Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the LWDA's website. *See Agnew Decl.* ¶ 45, Exhibit 5.

V. CONCLUSION

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

DATED: February 7, 2025

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Kristen M. Agnew

Attorneys for Plaintiff and the Aggrieved Employees