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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

BERENISE CABALLERO, as an individual and on behalf of all others similarly situated, Plaintiff, vs. NATIONAL LABS INC., a Nevada corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV083753 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORTS** Date: November 20, 2025 Time: 9:00 a.m. Dept.: 24 Reservation ID. 668887836845 Complaint Filed: July 17, 2024 Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 20, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Rebekah Evenson, judge presiding, in Department 24 of the above referenced Court located at 1221 Oak Street, Oakland, California 94612, Plaintiff Berenise Caballero ("Plaintiff") will seek an Order approving the concurrently filed Settlement Agreement and Release of PAGA Claims (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 Kristen M. Agnew, Plaintiff Berenise Caballero, and Jodey Lawrence, the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: October 28, 2025

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By:______________________________

Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the 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 section 2698, *et seq*., Plaintiff Berenise Caballero (“Plaintiff”) hereby moves the Court for an order approving the non-reversionary PAGA settlement as set forth in the concurrently filed Settlement Agreement and Release of PAGA Claims (the “Agreement” or “Settlement Agreement”). As demonstrated below and in the accompanying declaration of Kristen M. Agnew, the proposed settlement warrants the Court’s approval. This settlement was reached after extensive investigation and informal discovery, including Defendant National Labs Inc.’s (“Defendant”) production of a signed declaration from its Payroll Administrator and data relating to the number of aggrieved employees during the applicable liability period.

Pursuant to the terms of the proposed Agreement, Defendant will pay the gross amount of $20,000.00 (the “Total Settlement Payment”), which includes an estimated payment of approximately $9,551.24 in civil penalties to the California Labor and Workforce Development Agency (“LWDA”) and PAGA Settlement Members. The proposed release is narrowly tailored to release only claims for civil penalties under PAGA predicated on Labor Code section 226(a) and accomplishes the goals of the PAGA. Accordingly, Plaintiff requests that the Court grant this Motion.

II. PROCEDURAL HISTORY

A. The PAGA Notice and Complaint

On May 10, 2024, Plaintiff filed a notice with the LWDA alleging that Defendant violated Labor Code section 226 (the “PAGA Notice”). Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 4, Exhibit A. In the PAGA Notice, Plaintiff alleges that Defendant violated Labor Code section 226(a) by failing to identify the applicable hourly rate of pay and hours worked for regular wages paid on its wage statements. In addition, the wage statements failed to identify the total hours worked due to the same violations set forth above. *See id*.

On July 17, 2024, Plaintiff filed a Representative Action Complaint (the “Complaint”) in this Action. *See* Agnew Decl. ¶ 5. Plaintiff alleged a single cause of action for violation of PAGA predicated on Defendant's alleged violation of Labor Code section 226(a). *See id*.

B. The Parties Engage in Informal Discovery Regarding Defendant's Wage Statement Policies.

Shortly after the Complaint was served, Plaintiff and Defendant (collectively, the "Parties") met and conferred regarding the merits of the Action and Defendant's anticipated defenses. In connection with these discussions, Defendant provided a signed declaration from its Payroll Administrator (the "Sullivan Declaration").[1] As explained in the Sullivan Declaration, in 2024, Defendant discovered a payroll classification error affecting employees in its Billing Department. *See* Sullivan Decl. ¶ 3. Although these employees were intended to be hourly nonexempt, they had been incorrectly designated in the payroll system as salaried nonexempt. *See id.* As a result, they were paid a fixed number of regular hours based on an annual total of 2,080 hours—equating to 86.67 regular hours per semi-monthly pay period—rather than being paid for the actual hours they worked. *See id*. at ¶¶ 3, 4. Employees, however, still received overtime compensation. *See id.* at ¶ 3.

Upon being notified of the issue by Plaintiff, Defendant conducted an internal review and determined that the misclassification was caused by an incorrect configuration in the Paychex payroll software. *See* Declaration of Bernise Caballero ("Caballero Decl.") ¶ 3; Sullivan Decl. ¶ 6. Defendant promptly corrected the classification by changing the affected employees from "salary" to "hourly," effective February 1, 2024. *See* Sullivan Decl. at ¶ 7.

In total, there were 23 employees whose itemized wage statements were affected by this issue during a total of 415 pay periods. *See* Sullivan Decl. ¶¶ 11, 12.

C. The Parties Engage in Informed Settlement Negotiations

In light of the nature of the wage statement violation and the risks associated with continued litigation, the Parties agreed to explore the possibility of settlement through direct settlement negotiations. *See* Agnew Decl. ¶ 10. On or about May 27, 2025, the Parties reached an agreement on the material terms of the settlement. *See id.* The Parties subsequently negotiated the terms of

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[1] The Sullivan Declaration is attached to the Agnew Declaration as Exhibit B.

the Settlement Agreement and Release of PAGA Claims. *See id.* All settlement negotiations were conducted at arm's length in an adversarial position. *See id.*

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the settlement are described below and set forth in detail in the concurrently filed Settlement Agreement and Release of PAGA Claims, a true and correct copy of which is attached as **Exhibit C** to the Declaration of Kristen M. Agnew.

A. The PAGA Settlement Members

The settlement covers a narrow group of employees. The PAGA Settlement Members consist of Plaintiff and the following nonexempt employees of Defendant who were affected by the clerical error on their itemized wage statements: Shana Allen, Nancy Alvarez, Crystel Burgess, Eva Damian, Jeremiah Diaz, Karina Esparza, Courtney Fox, Generosa Francisco, Renee Jones, Alisha Khelwawan, Jose Leal, Kaili Liao, Mariana Mendez, Zuhal Popal, Vanessa Ray-Vera, Sara Samok, Asia Scott, Miriama Togiai, Yolanda Ulep, Sandy Vega, Herbert Wade III, and Melinda Webb. *See* Agreement ¶ I-I. There are 23 PAGA Settlement Members. *See id*.

B. The Total Settlement Payment

The Settlement Agreement requires Defendant to pay the total amount of Twenty Thousand Dollars ($20,000.00) (the "Total Settlement Payment"). *See* Agreement ¶ IV-A. The Total Settlement Payment was calculated with, and is premised on, Defendant's representation that there are approximately 415 pay periods during the PAGA Period (May 10, 2023 through January 31, 2024) in which PAGA Settlement Members received a wage statement. *See* Agnew Decl. ¶ 13. Thus, the approximate dollar value for each pay period being released by the Settlement is roughly $48.19. *See id.*

C. The Net PAGA Settlement Fund

The balance of the Total Settlement Payment remaining after deduction of the approved settlement administration fees and costs, Fees and Cost award to Plaintiff's Counsel and the Service Award (the "Net PAGA Settlement Fund") will be available for distribution to the LWDA and PAGA Settlement Members. *See* Settlement ¶ IV-E. The Net PAGA Settlement Fund will total approximately $9,551.24. Agnew Decl. ¶18. Seventy-five percent (75%) of the Net PAGA

Settlement Fund, or approximately $7,163.43, will be paid to the LWDA for PAGA penalties. *See* Agreement ¶ IV-E-2; Agnew Decl. ¶ 18. The remaining twenty-five percent (25%), or approximately $2,387.81, will be distributed to PAGA Settlement Members ("PAGA Settlement Members Payment"). *See* Agreement ¶ IV-E-3; Agnew Decl. ¶ 18.

Each PAGA Settlement Member will receive a pro rata share of the PAGA Settlement Member Fund based on the number of pay periods that he or she received a wage statement during the PAGA Period (May 10, 2023 through January 31, 2024). *See* Agreement ¶¶ I-H, V-B. The Individual Settlement Payments made to PAGA Settlement Members shall be considered income representing the payment of penalties, and not subject to any withholdings. *See id.* at ¶ V-C-10.[2]

D. Attorneys Fees and Costs

Defendant does not object to a request by Plaintiff's Counsel for attorneys' fees of approximately one-third of the Total Settlement Payment, *i.e.*, Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($6,666.66), plus up to One Thousand Five Hundred Dollars ($1,500.00) in actual litigation costs and expenses ("Fee and Expense Award"), subject to the Court finally approving this settlement.[3] Agreement ¶ IV-C. Any portion of the Fees and Costs Award not awarded to Plaintiff s Counsel shall be allocated to the Net PAGA Settlement Fund. *See id*.

E. Service Award to Plaintiff

The Settlement Agreement permits Plaintiff to request a Service Award in the amount of One Thousand Five Hundred Dollars ($1,500.00). *See* Agreement ¶ IV- D. Any portion of the Service Award not awarded to Plaintiff shall be allocated to the Net PAGA Settlement Fund. *See id*.

F. Settlement Administration Fees and Costs

[2] PAGA Settlement Members will have 180 calendar days to cash the settlement checks. The funds represented by uncashed settlement checks will be remitted to the California Controller's Unclaimed Property Fund in the name of the PAGA Settlement Member. *See* Agreement ¶ V-C-9.

[3] As set forth below, Plaintiff's Counsel seeks reimbursement for its litigation costs in the amount of $832.10. Agnew Decl. ¶ 37, Exhibit E.

The Settlement Agreement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. Agreement ¶ IV-B. The Parties have agreed to utilize Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be One Thousand Four Hundred Fifty Dollars ($1,450.00). *See id*. at ¶ IV-B; Declaration of Jodey Lawrence ("Admin. Decl.") ¶ 15, Exhibit B.

G. Scope of the Released Claims

Upon the payment of the Total Settlement Payment, Plaintiff, the PAGA Settlement Members, and the LWDA will release the Released Parties from all Released Claims. *See* Agreement VI-A. The Agreement defines "Released Claims" to encompass:

> [A]ny and all claims, whether known or unknown, to recover civil penalties under PAGA, which were asserted or which could have reasonably been asserted in the Action based on the facts and theories pleaded therein, including, but not limited to, those relating to failure to provide accurate itemized wage statements and violations of California Labor Code §§ 226(a) and 2699 et seq., and the applicable Industrial Welfare Commission Wage Orders, that accrued during the PAGA Period.

See id. at ¶ I-M. The Settlement Agreement does not release Defendant from violations of any predicate statutes other than PAGA, and will not affect a waiver of claims by PAGA Settlement Members against Defendant for any of the underlying Labor Code claims. *See* 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 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)(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)[4]; *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").

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

[4] 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.

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.

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. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate *in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state* *labor laws*." *See Moniz v. Adecco USA, Inc*., 72 Cal.App.5th 56, 77 (2021) (emphasis added), ,disapproved on other grounds by *Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024); *see also Kang v. Wells Fargo Bank, N.A*., 2021 WL 5826230, at *15 (N.D.Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals"). Here, the Settlement vindicates the rights of PAGA Settlement Members who have experienced alleged violations of the Labor Code. Additionally, although the Total Settlement Payment is relatively modest, it represents a meaningful recovery under the circumstances and equates to an approximate penalty of $48.19 per pay period, which acts as a deterrent to other California employers. *See* Agnew Decl. ¶ 13.

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

The Settlement is fair and reasonable in light of the strengths and weaknesses of Plaintiff's claims, the risks and uncertainty involved in further litigation and the substantial recovery. *See Moniz*, 72 Cal.App.5th at 77 (finding that factors including "the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount" may be "useful in evaluating the fairness of a PAGA settlement").

1. Plaintiff's Claims are Contested and the Award of PAGA Penalties Is Uncertain

Plaintiff's theory of recovery is based on the allegation that Defendant violated Labor Code section 226(a). During pay periods when regular wages are paid, the wage statements furnished to Plaintiff and PAGA Settlement Members fail to identify the applicable rate of pay and number of hours worked for regular wages. Additionally, as a result of the missing number of hours worked for regular wages, the wage statements display inaccurate total hours worked.

Defendant maintains that the alleged wage statement violation resulted from a clerical error by its third-party payroll processor, which Defendant promptly investigated and corrected upon discovery. *See* Section II-A *supra*. Given its good faith defense, 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").

Indeed, trial courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. 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).

2. 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, assuming the Court were to award $100 penalty for every pay period, Plaintiff estimates that the maximum amount of PAGA civil penalties is approximately $41,500.00 (415 pay periods x $100 per pay period).[5] Agnew Decl. ¶ 21. The Total Settlement Payment is approximately 48.19% of the maximum amount of penalties at issue. *See id.* 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.

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.

Given Defendant's potential complete defense to the alleged violations at issue, the risks

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[5] 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 $2,075, which is far less than this settlement provides.

and costs of continued litigation, Plaintiff and her attorneys believe that the settlement is fair and reasonable. Agnew Decl. ¶¶ 26. The settlement proposes a payment of approximately $7,163.43 in penalties to the LWDA and approximately $2,387.81 in penalties to the PAGA Settlement Members, which is an outstanding result in a PAGA only case with significant hurdles to liability. Agnew Decl. ¶ 18.

Furthermore, as set forth in the accompanying Declaration of Kristen M. Agnew, the LWDA has been provided notice of this motion and the PAGA settlement. Agnew Decl. ¶ 38, Exhibit F. The decision of the LWDA to accept the settlement and not oppose the motion should be given considerable weight.

E. The Attorneys' Fees are Reasonable

Labor Code section 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 the Agnew Declaration, Plaintiff's attorneys have spent approximately ten hours litigating this current action. Agnew Decl. ¶ 35, Exhibit D. Based thereon and counsel's hourly rate, the lodestar equates to $8,000 which requires a *negative* .83 multiplier when compared to the common fund approach. Agnew Decl. ¶ 36. This supports the reasonableness of the requested $6,666.66 attorneys' fee award.

Additionally, Plaintiff's Counsel's cost reimbursement request in the amount of $832.10 is also reasonable. Agnew Decl. ¶ 37, Exhibit E. The costs were all directly incurred in the prosecution of this action, including filing fees, service of process costs, postage, and other litigation costs. *Id*. As such, the requested costs should be awarded as fair and reasonable.

F. The Settlement Administration Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or $1,450.00, to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. *See* Agreement ¶ IV-B. The Parties believe that the administration costs are reasonable and should be approved.

G. 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 $1,500.00 for a Service Award. The Service Award is intended to compensate her for initiating the Action, performing work in support of the Action and undertaking the risk of liability for Defendant's expenses. *See* Agreement ¶ I-O. Plaintiff dedicated a substantial amount of time and resources in this case, including time spent: (1) participating in telephonic meetings with her attorneys and their staff to discuss the case and review documents prepared on her behalf; (2) providing counsel with information and documents relevant to the content and format of the wage statements; (3) reviewing and executing the Settlement Agreement; and (6) reviewing and signing the declaration submitted to this Court in support of the settlement. *See* Caballero Decl. ¶ 5. In addition to the invaluable services that Plaintiff provided, she also took significant risks, both professionally and monetarily, in acting as the named plaintiff in a representative PAGA Action. *See id.* at ¶ 4. Because the claims alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the fees and costs of Defendant, had Plaintiff not prevailed in this action. *See id.*

Further, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff took this risk upon himself. *See* Caballero Decl. ¶ 4. Employees did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

This requested Service Award 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).

H. 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. Agnew Decl. ¶ 38, Exhibit F.

V. CONCLUSION

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

DATED: October 28, 2025

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By:______________________________

Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Aggrieved Employees

Court Reservation Receipt

Reservation

Reservation ID:
668887836845

Status:
RESERVED

Reservation Type:
Motion to Confirm Settlement

Number of Motions:
1

Case Number:
24CV083753

Case Title:
CABALLERO vs NATIONAL LABS INC.

Filing Party:
Berenise Caballero (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 24

Date/Time:
November 20th 2025, 9:00AM

Confirmation Code:
CR-PJHMPWHVRKU7XMQDB

Fees

Description	Fee	Qty	Amount
Motion to Confirm Settlement	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			**$1.00**

Payment

Amount:
$1.00

Type:
Visa

Account Number:
XXXX3359

Authorization:
00175G

Payment Date:
2025-09-19

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