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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO TUBALINAL, as an individual and on behalf of all others similarly situated, Plaintiff, vs. GRIFFITH PARK REHABILITATION CENTER, LLC, a California limited liability company; CPE HR, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 25STCV03256 (Assigned to the Hon. Samantha Jessner, Dept. 7) **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 17, 2025 Time: 10:00 a.m. Dept.: 7 Action Filed: February 5, 2025 Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 17, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Samantha Jessner, Judge presiding in Department 7 of the above-referenced Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Francisco Tubalinal ("Plaintiff") will seek an Order approving the concurrently filed PAGA Settlement Agreement ("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 Kwanporn "Mai" Tulyathan, Elwina Grigoryan, Nick Galadzhyan, Plaintiff Francisco Tubalinal, and Jodey Lawrence of Phoenix Settlement Administrators, the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: November 17, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff and Aggrieved Employees

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I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq*., Plaintiff Francisco Tubalinal (“Plaintiff”) hereby moves the Court for an order approving the non-reversionary settlement entered into with Defendants Griffith Park Rehabilitation Center, LLC and CPE HR, Inc. (together, “Defendants”) (collectively with Plaintiff, the “Parties”). The settlement was reached after investigation and exchange of informal discovery, including Defendants’ production of time and payroll records for the PAGA group, as well as pertaining to Defendants’ payroll policies and practices. Furthermore, pursuant to the terms of PAGA Settlement Agreement[1] (“Settlement Agreement” or “SA”), Defendants will pay the total amount of $100,000.00 (“Gross Settlement Amount”), encompasses a settlement of PAGA claims asserted in this lawsuit, an enhancement award to Plaintiff in the amount of $5,000.00, attorneys’ fees to Plaintiff’s counsel (“PAGA Counsel”) in the amount of $33,333.33, PAGA Counsel’s litigation costs of up to $30,000.00[2], and settlement administration costs in an amount not to exceed $4,000.00.

Assuming the Court grants the foregoing amounts in full, the Net PAGA Settlement Amount is estimated to be approximately $37,172.11. Tulyathan Decl. ¶ 24. Pursuant to the PAGA[3], 65% of the Net PAGA Settlement Amount, or $24,161.87, will be paid to the Labor & Workforce Development Agency (“LWDA”), and 35% of the Net PAGA Settlement Amount, or $13,010.24, will be paid to Aggrieved Employees[4]. The proposed release is also narrowly

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[1] The Settlement Agreement is attached to the Declaration of Mai Tulyathan (Tulyathan Decl.) as Exhibit B.

[2] As further discussed below, PAGA Counsel seeks reimbursement of the actual litigation costs of $20,494.56. Tulyathan Decl. at ¶ 20.

[3] Plaintiff filed the PAGA notices on November 1, 2024, and thus the amended version of the PAGA (applicable to civil actions brought on or after June 19, 2024) governs the PAGA claims asserted in this Action. Labor Code § 2699(v)(1).

[4] The term “Aggrieved Employee” means all current and former employees of Defendant Griffith Park Rehabilitation Center, LLC who were employed in the State of California at any time during the period of November 1, 2023, through July 10, 2025. SA §§ 1.2, 1.22.

tailored to release only claims for civil penalties under PAGA reasonably arising out of the facts alleged in the Action and PAGA Notice predicated on Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1, arising during the PAGA Period only. SA § 5.

As further demonstrated below and in the accompanying declarations of counsel, the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the LWDA and Aggrieved Employees, and accomplishes the goals of the PAGA. Thus, the Court should grant approval of the settlement.

II. PROCEDURAL HISTORY

A. PAGA Notice

On November 1, 2024, Plaintiff submitted written notices under Labor Code § 2699.3 to the California Labor and Workforce Development Agency ("LWDA") and Defendants, alleging that Defendants violated Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1 (the "PAGA Notices"). As set forth in the PAGA Notices, Plaintiff alleged that Defendants failed to pay all wages owed for off-the-clock work, failed to provide off-duty meal and rest breaks or pay premium compensation in lieu thereof, and failed to provide accurate itemized wage statements. Tulyathan Decl. ¶ 4, Ex. A.

B. The Complaint

On February 5, 2025, Plaintiff filed a class[5] and representative action complaint ("Complaint" or "Operative Complaint") against Defendants in the Superior Court of California, County of Los Angeles (the "Action"). *See* Tulyathan Decl. ¶ 5. The Complaint alleged causes of action for: (1) failure to pay wages; (2) violation of Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 226.7; (4) violation of Labor Code § 226; (5) violation of Business & Professions Code § 17200, *et seq.*; and (6) violation of Labor Code § 2698, *et seq.* (the "Action"). *Id*.

As alleged in the Complaint, Plaintiff and other employees were regularly required to

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[5] On September 9, 2025, the Court dismissed the class claims in this action pursuant to the Parties' stipulation. As such, only the PAGA claim under the Sixth Cause of Action remains in the action. Tulyathan Decl. at ¶ 10.

perform work while off-the-clock. Specifically, Plaintiff alleges that Defendants required Plaintiff and other employees to perform work after clocking out for work for lunch and at the end of their shifts due to staffing issues. Furthermore, Plaintiff alleges that employees were required to undergo Covid-19 and/or temperature screenings conducted off-the-clock. Plaintiff alleges that employees were not paid for this time. *Id*. ¶ 6.

With respect to the meal and rest break violations, Plaintiff alleges that Defendants failed to provide proper, timely off-duty meal and rest breaks to Plaintiff and employees. Instead, Plaintiff alleges that employees were regularly required to remain on duty and continue working throughout their breaks as a result of staffing issues. Furthermore, Plaintiff alleges that Defendants deducted 30 minutes of time for meal breaks regardless of whether a proper break was taken. *Id*. ¶ 7.

Lastly, Plaintiff alleges derivative wage statement violations as a result of the violations above. Plaintiff alleges that the wage statements issued by Defendants failed to list accurate number of hours worked at each rate of pay, gross and net wages earned, and premium pay for missed meal and rest breaks. *Id*. ¶ 8.

C. The Parties Participate in Mediation

Following the filing of the Action, Defendants informed Plaintiff's counsel of the existence of an arbitration agreement containing a class action waiver signed by Plaintiff. Tulyathan Decl. ¶ 9. After review of the arbitration agreement and meet and confer discussions with Defendants, the Parties agreed to mediate on a PAGA basis. *Id*. In connection with mediation, Defendants provided Plaintiff with time and payroll records for all of the aggrieved employees during the applicable period, as well as pertinent payroll policies and other documents. *Id.* ¶ 12. Plaintiff subsequently retained an expert who analyzed the time and payroll records and data produced by Defendants. *Id.* ¶ 13. Based on the information provided by Defendants and the expert's analysis, Plaintiff's counsel conducted the exposure analysis for penalties. *Id.* Thus, Plaintiff's counsel entered mediation with a clear understanding of Defendants' maximum exposure. *Id*.

On July 10, 2025, the Parties engaged in a full-day mediation with experienced neutral

Michael J. Loeb, Esq. *See* Tulyathan Decl. ¶ 14. As a result of the mediation and arm's length negotiations, the Parties reached the present settlement. *Id*. The terms of the settlement have been memorialized in the Settlement Agreement. *Id.*, Ex. B.

In light of the arbitration agreement containing the class action waiver, the Parties filed a stipulation to dismiss Plaintiff's class claims from the Action. The Parties' stipulation was granted by the Court on September 9, 2025. *Id.* ¶ 10.

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, a true and correct copy of which is attached as **Exhibit B** to the Declaration of Mai Tulyathan.

A. The Aggrieved Employees

The current Action is being settled on behalf of the following employees: all current and former non-exempt employees of Defendant Griffith Park Rehabilitation Center, LLC[6] who were employed in the State of California at any time during the PAGA Period ("Aggrieved Employees" or the "PAGA Group"). *See* SA § 1.2. The PAGA Period is defined to mean the period of November 1, 2023, through July 10, 2025. SA § 1.22. Based on Defendants' records, there are approximately 210 Aggrieved Employees who worked approximately 4,672 pay periods during the PAGA Period. *Id.* § 8.

B. Gross Settlement Amount and Allocation

The Settlement Agreement requires Defendants to pay the Gross Settlement Amount of One Hundred Thousand Dollars ($100,000.00). *See* SA § 3.1. Based on the Gross Settlement Amount and number of pay periods, Defendants will pay approximately $21.40 per pay period to resolve the PAGA claims alleged in this Action. Tulyathan Decl. ¶ 23.

The balance of the Gross Settlement Amount remaining after deduction of the approved

[6] Defendant Griffith Park Rehabilitation Center, LLC was the employer of the Aggrieved Employees. Defendant CPE HR, Inc. did not employ any Aggrieved Employees and only provided outsourced human resources services to Defendant Griffith Park Rehabilitation Center, LLC. Tulyathan Decl. ¶ 15.

Enhancement Award to Plaintiff, PAGA Counsel's Fees Payment and Litigation Expenses Payment, and Settlement Administration Costs (the "Net PAGA Settlement Amount"), will be available for distribution to the LWDA and Aggrieved Employees. *See* SA §§ 1.16, 3.2.4. The Parties estimate that the Net PAGA Settlement Amount will total $37,172.11. Tulyathan Decl. ¶ 24. Pursuant to the PAGA, sixty-five percent (65%) of the Net PAGA Settlement Amount, or approximately $24,161.87, will be paid to the LWDA for PAGA penalties. *See* SA § 3.2.4; Tulyathan Decl. ¶ 24. The remaining thirty-five percent (35%), or approximately $13,010.24, will be distributed to Aggrieved Employees. *See* SA § 3.2.4; Tulyathan Decl. ¶ 24.

Based on the number of Aggrieved Employees, employees will be entitled to recover, on average, approximately up to $61.95 each. Tulyathan Decl. ¶ 25. The amount any particular Aggrieved Employee will be entitled to recover will depend on the number of pay periods worked by the employee during the PAGA Period. *See* SA § 3.2.4.1. This is fair, as it directly allocates greater penalties to individuals who have allegedly suffered greater harm. Tulyathan Decl. ¶ 25. Any uncashed checks will escheat to the Unclaimed Property Fund administered by the California State Controller's Office in the name of the Aggrieved Employee. *See* SA § 4.4.3.

As part of the settlement, Defendants do not object to Plaintiff's counsel's request for attorneys' fees of approximately one-third of the Gross Settlement Amount, *i.e.*, Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($33,333.33), and reimbursement for litigation costs up to the amount of Thirty Thousand Dollars ($30,000.00), subject to the Court finally approving this settlement. *See* SA § 3.2.1. As set forth below, Plaintiff's counsel requests reimbursement of their anticipated litigation costs in the amount of $20,494.56. *See* Tulyathan Decl. ¶ 20, 57. Any portion of the requested attorneys' fees and/or costs not approved by the Court shall be added to the Net PAGA Settlement Amount. *See* SA § 3.2.1.

As part of the settlement, Defendants do not object to Plaintiff's request for an Enhancement Award in the amount of Five Thousand Dollars ($5,000.00). *See* SA § 3.2.3.

Finally, the settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *See* SA § 3.2.2. The Parties have agreed to utilize

Phoenix Settlement Administrators to administer the settlement, with the administration costs estimated to be Four Thousand Dollars ($4,000.00). *See* SA §§ 3.2.2, 7.1; Declaration of Jodey Lawrence of Phoenix Settlement Administrators ("Admin. Decl.") ¶ 15, Ex. B.

C. The Scope of the Released Claims is Appropriately Limited

Upon funding of the Gross Settlement Amount, Plaintiff and Aggrieved Employees will release the Released Parties from all Released PAGA Claims. *See* SA § 5. As defined in the Settlement Agreement, the term "Released PAGA Claims" means:

> [A]ny and all claims for civil penalties under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have, against Released Parties, reasonably arising out of the facts alleged in the Action or the PAGA Notices submitted in connection with the Action, including alleged violation of Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, and 11971.1.

See SA §§ 1.25, 5. The release is also expressly limited to said claims arising during the PAGA Period only. *Id.* The settlement is not intended to release, and does not extend to violations of, any predicate statutes other than PAGA. The settlement also does not affect a waiver of claims by Aggrieved Employees against the Released Parties for any individual wage and hour claims.[7] The release is expressly limited to claims for civil penalties under the PAGA pertaining to the violations of Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, and 11971.1, that accrued during the PAGA Period.

IV. <u>THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED</u>

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

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[7] Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 986. However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Id.* at 987; *see also*, Lab. Code § 2699(k)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").

violations of the California labor laws and to obtain penalties that previously could only be obtained by the State. The PAGA was enacted because the Legislature determined that it was "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations," since the State had not been able to fully or adequately enforce its labor laws. *Arias v. Superior Court*, 46 Cal. 4th 969, 980 (2009); *Ochoa-Hernandez v. Cjaders Foods, Inc*., 2010 WL 1340777, *4 (N.D. Cal. April 2, 2010) ("The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." [citations omitted].)

Labor Code § 2699(a) states that any Labor Code provision "that provides for a civil penalty to be assessed and collected by the [LWDA] … may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3." An "aggrieved employee" means "any person who was employed by the alleged violator and personally suffered each of the violations alleged…" Lab. Code § 2699(c)(1). 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)(A). 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, 65 percent goes to the LWDA, and the remaining 35 percent goes to the "aggrieved employees" for collecting the penalties on behalf of the State. Lab. Code § 2699(m); *see also 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 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* Alba Conte & Herbert B. Newberg, *4 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(s)(2) of the Labor Code, which provides, in relevant part: "The superior court shall review and approve any settlement of any civil action filed 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. *See generally*, Cal. Lab. Code § 2699. 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, but instead, on whether the Gross Settlement Amount achieves PAGA's objectives. Under PAGA, the penalties recovered are meant to supplement agency funding for "education" and "enforcement" purposes. *See* Lab. Code § 2699(m). Here, the settlement represents a great recovery for the Aggrieved Employees and the State, and thus the settlement certainly effectuates PAGA's purpose. The settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal*., 3 Cal. 4th 273, 277- 278 (1992)).

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

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

1. Plaintiff's Claims are Contested

Plaintiff asserts that his representative PAGA claim is based on the allegation that Defendants failed to pay all wages owed for off-the-clock work, failed to provide off-duty meal and rest breaks or pay premium compensation in lieu thereof, and failed to provide accurate itemized wage statements. Tulyathan Decl. ¶ 30.

Defendants have denied violation of any applicable laws and liability for any claims asserted in the Action. Specifically, on the meal and rest claims, Defendants contend that they maintained facially compliant policies. *See Brinker Rest. Corp. v. Superior Ct*., 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). Defendants further argued that any missed or short meal or rest periods resulted from employees' individual choices, and therefore the claims are not amenable to representative resolution. Even assuming that Plaintiff was able to establish that some Aggrieved Employees experienced a meal and/or rest period violation, Defendants assert that premiums were automatically paid. Tulyathan Decl. ¶ 32.

For the off-the-clock claims, Defendants contend that any alleged off-the-clock work was *de minimis* and non-compensable. Defendants further asserts that employees were free to engage in personal activities during the periods at issue, which further limits the likelihood that such time is compensable. In addition, Defendants maintain that Plaintiff cannot establish widespread, uniform practices, as any alleged off-the-clock work would vary between each employee's tasks and timing. *Id*. ¶ 33.

2. Recovery of Civil PAGA Penalties is Uncertain

If Plaintiff was to prevail on the merits of the PAGA claim, the potential recovery remains uncertain. As argued by Defendants, in deciding whether to award the maximum penalty amount, courts may focus on whether the employer made a good faith effort to follow the law. For example, in *Thurman v. Bayshore Transit Management, Inc*., the Court of Appeal upheld the trial court's significant reduction of PAGA penalties by 30% because the employer was not initially on notice that it was in violation of the law and because it would have been unfair to award penalties where the employer was unaware of the violations. 203 Cal. App. 4th 1112, 1136 (2012). When the employer made aware of the violations, it took timely steps to come into compliance. *Id.* By contrast, the imposition of full penalties was justified when an employer took a "cavalier approach to fulfilling its contractual and statutory obligations" and demonstrated "reckless disregard." *Id*. Furthermore, as the California Court of Appeal has affirmed, trial courts are well within their discretion to reduce PAGA penalties "for technical violations that cause no injury," especially where the "violation was inadvertent." *Raines v. Coastal Pac. Food Distributors, Inc*., 23 Cal. App. 5th 667, 681 (2018).

In this case, Defendants asserted that a substantial reduction in potential PAGA penalties was warranted because they acted in good faith, maintained policies that were facially compliant, and took reasonable steps to ensure that employees were properly compensated. Moreover, Defendants argued that the imposition of maximum penalties would be unjust and disproportionate under the circumstances, given that they automatically paid meal and rest period premiums.

E. The Settlement is Reasonable When Compared to the Realistic Amount of PAGA Civil Penalties at Issue

Defendants represent that Aggrieved Employees worked approximately 4,672 pay periods during the PAGA Period. *See* SA § 8. Assuming that Plaintiff was to prevail on the merits of the PAGA claim, applying the standard penalty of $100 per pay period yields $467,200.00 in potential liability. *See* Tulyathan Decl. ¶ 28. In the alternative, if the Court were to "stack" penalties, (*i.e.*, award multiple PAGA penalties for different Labor Code violations during the same pay period), the potential PAGA penalties could total as high as $1,873,800.00. *See id*. ¶ 29. The breakdown is as follows:

- $467,200.00 for PAGA for meal period violations;
- $467,200.00 for PAGA for rest period violations;
- $467,200.00 for PAGA for off-the-clock violations;
- $467,200.00 for PAGA for wage statement violations;
- $5,000.00 for PAGA 203 violations (based on approximately 50 former aggrieved employees during the PAGA Period).

Id. Again, this calculation above "stacks" PAGA penalties and does not take into account Defendants' arguments and the risks to Plaintiff's theories of liability.

Accounting for the risks of continued litigation takes the exposure to approximately **$727,291.20**. *Id.* ¶ 34. On the meal and rest claims, based on time and payroll data produced by Defendants, Plaintiff's expert analyzed 30,808 meal-eligible shifts and found a low violation rate of 2.3%. Applying that 2.3% violation rate to the above calculations, Plaintiff estimates the adjusted penalties at **$10,745.60** for meal period violations, and **$10,745.60** for rest period violations. *Id.* ¶ 35.

For the off-the-clock claim, taking into account Defendants' de minimis argument above, Plaintiff applied a 50% discount to this claim to reflect the challenges in proving this claim on a representative basis. The adjusted exposure is approximately **$233,600.00**. Tulyathan Decl. ¶ 36.

For the wage statement claim, Plaintiff acknowledges that the alleged violations are derivative of the meal period, rest period, and off-the-clock claims. Accordingly, to the extent the underlying violations are reduced or found not to have occurred, the PAGA penalties for wage statement violations would likewise be substantially reduced. Defendants also contend that their wage statements were facially compliant. *Id.* ¶ 37.

Based on the above and taking the risks into account, Plaintiff's adjusted total exposure is estimated at **$727,291.20**[8]. *Id.* ¶ 34.

Here, even if Plaintiff were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. 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.* (2018) 30 Cal. App. 5th 504, 517, 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. Upon review, the Court of Appeal found such a reduction to be proper. *Id*. at p. 539; *see O'Connor*, 2016 WL 4398271, at p. *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"). Here, Plaintiff maintains that there does not exist any reason for reducing PAGA penalties. However, Plaintiff is aware that Defendants could (and would) make a compelling argument to the contrary.

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[8] Plaintiff notes that this adjusted exposure does not apply any additional reduction to the derivative wage statement penalties (calculated at $467,200.00), which would likely decrease further to the extent the underlying meal period, rest period, or off-the-clock violations are reduced.

The Court's assessment of the proposed settlement must take into account that any penalties awarded may be subject to substantial reduction. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties "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." Courts routinely award far less than the statutory maximum amount of civil penalties, even where an underlying violation of the Labor Code is found. Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim at 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 a reduction to be proper. *Id*. at 539; *see O'Connor v. Uber Technologies, Inc*., 201 F. Supp. 3d 1110, 1133 (N.D. Cal., 2016).

When the discretionary reduction in penalties is considered, in conjunction with the history of PAGA settlements and the risks presented here, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Settlement for a reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendants' likely arguments that higher penalties would have been confiscatory.

Given Defendants' potential defenses to the alleged violations at issue and the risks and costs of continued litigation, Plaintiff's counsel believes that the settlement is fair and reasonable. *See* Tulyathan Decl. ¶ 40. The adjusted exposure totals $727,291.20. The Gross Settlement Amount if $100,000.00. Thus the Gross Settlement Amount represents approximately **13.75%** of the potential penalties. *Id.* A PAGA allocation need not represent any particular percentage of the overall settlement value in order to secure court approval, and courts routinely approve PAGA settlements representing only a tiny fraction of the overall settlement value.

The settlement proposes a payment of approximately $24,161.87 in penalties to the LWDA and approximately $13,010.24 penalties to the Aggrieved Employees. Tulyathan Decl. ¶ 24. Furthermore, the LWDA has been provided with notice of this motion and the PAGA settlement. *Id.* ¶ 58, Ex. F.

In sum, this settlement is fair, reasonable, and consistent with PAGA's policies and purposes under these circumstances.

F. The Request for Attorneys' Fees is Reasonable and Should be Approved

Labor Code § 2699(k)(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. Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic the market in legal services.").

An award of one-third of the Gross Settlement Amount in attorneys' fees mimics the marketplace as it "is supported by the fact that typical contingency fee agreements provide that class counsel will recover 33.33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008); *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011) (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million"). Indeed, "empirical studies [that] show that…fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n. 11 (2008).

In addition, it is recognized that one of the primary factors justifying an enhanced attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.* 495 F.2d 448, 470 (2d Cir. 1974) ("No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended"). For Plaintiff's counsel, the fees were wholly contingent in nature and the case presented far more risk than the usual contingent fee case. Among the risks were the costs inherent in PAGA litigation, as well as a long battle with corporate Defendants. As such, the requested fee should be awarded.

As a secondary support for the percentage of the fund method, when fees are allocated by percentage method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the *Laffitte* Court "emphasize[d] [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 the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

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

Courts have defined reasonable multipliers on a lodestar cross-check to "range from 2 to 4 or even higher." *Wershba*, 91 Cal. App. 4th at 255; *see also, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand).

With respect to Plaintiff's counsel's lodestar, approximately 143.3 hours have been expended by counsel this matter to date. *See* Tulyathan Decl. ¶¶ 49-50; Declaration of Elwina Grigoryan ("Grigoryan Decl.") ¶ 10; Declaration of Nick Galadzhyan ("Galadzhyan Decl.") ¶ 8. Plaintiff's counsel also anticipates spending approximately 10 hours through the approval of this settlement including handling any issues that may arise post-approval. Tulyathan Decl. ¶ 50. The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986). Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*].

For the purpose of the lodestar calculation, Plaintiff's counsel apply an hourly rate of $650.00 to $700.00 per hour. *See* Tulyathan Decl. ¶ 51; Grigoryan Decl. ¶ 11; Galadzhyan Decl. ¶ 9. The hourly rate is consistent with the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Here, Plaintiff's counsel's skill and experience justify the requested rate. As shown in the supporting declarations, counsel has significant experience in the area of employment and wage and hour class actions. Specifically, Plaintiff's counsel's practices focuses on representing employees in employment matters, particularly wage and hour cases. *See* Tulyathan Decl. ¶¶ 45-48; Grigoryan Decl. ¶¶ 4-9; Galadzhyan Decl. ¶¶ 5-7. As such, based on the hours and applicable rate, the total lodestar to be expended by Plaintiff's counsel through finalizing this settlement will be approximately $101,950.00 which is more than the requested attorneys' fee award. *See* Tulyathan Decl. ¶ 51; Grigoryan Decl. ¶ 11; Galadzhyan Decl. ¶ 9. Thus, this results in a **negative multiplier**. 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 Aggrieved Employees.

G. The Court Should Approve the Request for Reimbursement of Costs

The request for reimbursement of costs, in the amount of $20,494.56 is fair and reasonable. The costs are all litigation related costs, which have been detailed in the supporting declarations of Plaintiff's counsel. *See* Tulyathan Decl. ¶ 57, Ex. E; Grigoryan Decl. ¶ 12; Galadzhyan Decl. ¶ 10. The authority for the court to award this is the Parties' Settlement Agreement and the California Labor Code. As such, this request should be approved.

H. Plaintiff's Request for an Enhancement Award 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 **<u>willingness to act as a private attorney general</u>**") (emphasis added).

Here, Plaintiff seeks $5,000.00 for his Enhancement Award, which is intended to compensate Plaintiff for the time spent on this case, including reviewing pleadings and the Settlement Agreement and attending the mediation, and the potential for hesitation in engagement from prospective employers. *See* SA § 3.2.3; Declaration of Francisco Tubalinal ("Tubalinal Decl.") ¶¶ 8, 10. This requested Enhancement 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).

I. The Settlement Administrator's Costs Should be Approved

The Parties have agreed to pay actual costs of administration, or Four Thousand Dollars ($4,000.00), to the Settlement Administrator, Phoenix Settlement Administrators, to administer this settlement. *See* SA §§ 3.2.2, 7.1; Admin. Decl. ¶ 15, Ex. B. The Parties believe that the administration fee is reasonable and should be approved.

J. 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. *See* Tulyathan Decl. ¶ 58, Ex. F.

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V. CONCLUSION

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

DATED: November 17, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________
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