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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

GREGORY CUSTODIO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

RANDSTAD INHOUSE SERVICES,
LLC, a Delaware limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV029977

(Assigned to the Honorable Elizabeth Riles, Dept.
512)

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

Date: January 15, 2026

Time: 2:30pm

Dept.: 512

Reservation ID: Set Per 10/2/25 Order

Action Filed: March 24, 2023

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on January 15, 2026, at 2:30 p.m.¹, or as soon thereafter
3 as the matter may be heard before the Honorable Elizabeth Riles, in Department 512, of the
4 Superior Court of the State of California for the County of Alameda, located at 24405 Amador
5 Street, Hayward, California 94544, Plaintiff Gregory Custodio (“Plaintiff”) will and hereby does
6 move the Court for entry of an order approving the proposed Joint Stipulation of Settlement
7 (“Settlement Agreement,” “Agreement,” or “Settlement”) entered into in the above-captioned
8 civil action between Plaintiff and Defendant Randstad Inhouse Services, LLC (“Defendant”)
9 (Plaintiff and Defendant shall collectively be referred to as the “Parties”) under the Labor Code
10 Private Attorneys General Act of 2004 (the “PAGA”).

11 This motion is made pursuant to California Labor Code § 2699(1)(2), which requires trial
12 courts to “review and approve any settlement of any civil action filed pursuant to [PAGA],” *see*
13 Cal. Lab. Code § 2699(1)(2), and on the grounds that the parties’ settlement is fundamentally fair,
14 adequate, and reasonable in light of the PAGA’s policies and purposes. As set forth in the
15 concurrently filed declaration of Max W. Gavron, a copy of the Parties’ proposed Agreement and
16 this motion was electronically submitted to the Labor and Workforce Development Agency in
17 accordance with California Labor Code §§ 2699(1)(2) and 2699(1)(4) concurrent with the filing
18 of this motion.

19 This motion is based on this notice of motion and motion for approval of the Parties’
20 Agreement concurrently filed herewith; the attached memorandum of points and authorities in
21 support of this motion; the concurrently filed declarations of Larry W. Lee, Max W. Gavron (and
22 any exhibits attached thereto), William L. Marder, and Plaintiff Gregory Custodio in support of
23 this motion; all pleadings, records, and files in this action; and upon such other matters as may be
24 properly presented to, or received by, the Court at or before the hearing on this motion.

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27 _____

28 ¹ Pursuant to the Court’s October 2, 2025 Order re: Case Management, the hearing date of January 15, 2026, was set.

1 DATED: December 22, 2025

DIVERSITY LAW GROUP, P.C.

2 By: 

3 Larry W. Lee

4 Max W. Gavron

Kwanporn "Mai" Tulyathan

Attorneys for Plaintiff and the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Gregory Custodio (“Plaintiff”) respectfully requests the
4 Court’s approval of the Joint Stipulation of Settlement (“Settlement Agreement,” “Agreement,”
5 or “Settlement”) with Defendant Randstad Inhouse Services, LLC (“Defendant”) (together with
6 Plaintiff, the “Parties”). After this lawsuit commenced and following referral of Plaintiff’s
7 individual claims to arbitration, the Parties engaged in extensive discovery, meet and confer
8 efforts, depositions, and mediation. As part of their privileged settlement negotiations, Defendant
9 produced data regarding the aggrieved employees, from which Plaintiff’s Counsel calculated the
10 maximum PAGA penalty exposure. Declaration of Max W. Gavron (“Gavron Decl.”) ¶¶ 12, 27.
11 Based on this information and evidence, the Parties have settled this case on a representative
12 PAGA basis for \$180,000.00, or approximately 30% of the originally calculated maximum
13 exposure. *Id.*

14 The Settlement Agreement allocates approximately one-third of the Gross Settlement
15 Amount for attorneys’ fees (or \$60,000.00), up to \$30,000.00 in litigation costs incurred by
16 Plaintiff’s Counsel,² \$5,000.00 to Plaintiff for a service award, and up to \$5,000.00 for
17 settlement administration costs. Agreement ¶¶ 14-16. The remainder, or the “Net Settlement
18 Amount,” is allocated to the payment of civil penalties under the Private Attorneys General Act
19 (“PAGA”), 75% of which is for distribution to the California Labor and Workforce Development
20 Agency (“LWDA”) and 25% of which is for distribution to the aggrieved employees on whose
21 behalf Plaintiff filed this action (“Aggrieved Employees”), as required by PAGA.³ *Id.* ¶ 20.
22 Based on these amounts, Plaintiff estimates that the LWDA will receive approximately
23
24

25 ² Plaintiff’s Counsel actually incurred \$12,427.08 in costs. Gavron Decl. ¶ 43; Ex. C (Cost
26 Report). Accordingly, the difference between what the agreement allocates and the costs actually
27 incurred will be distributed to the LWDA and Aggrieved Employees.

28 ³ California recently passed an amended version of the PAGA statute, which allocates less to the
state and more to the aggrieved employees. However, by its terms, this new version of the statute
only applies to cases where the PAGA Letter was served on or after June 19, 2024. Accordingly,
Plaintiff analyzes this settlement pursuant to the terms of the prior version of the statute.

1 \$60,000.00, and the Aggrieved Employees will receive approximately \$20,000.00.⁴ Gavron
2 Decl. ¶ 21.

3 Under PAGA, the Court must review and approve the proposed settlement. *See* Cal. Lab.
4 Code § 2699(1)(2). Accordingly, Plaintiff brings this motion to request approval of the
5 Settlement Agreement on the grounds it is fundamentally fair, adequate, and reasonable in light
6 of PAGA’s policy and purpose and the facts and circumstances discussed in detail below.

7 **II. DISCUSSION**

8 **A. Factual and Procedural Background**

9 On March 10, 2023, Plaintiff sent notice to the LWDA giving notice of his intent to
10 pursue a representative PAGA action, on behalf of himself and the State of California, as well as
11 on behalf of other aggrieved employees (the “PAGA Letter”). Gavron Decl. ¶ 2. Plaintiff’s
12 PAGA Letter alleged claims for violation of Labor Code §§ 201-203, 226, 226.7, 512, and 2802.
13 *Id.* ¶ 2.

14 On March 24, 2023, Plaintiff filed a putative class action complaint against Defendant
15 asserting claims for violation of Labor Code §§ 201-203, 226, 226.7, 512, and 2802 (the
16 “Action”). *Id.* ¶ 3. Plaintiff subsequently amended the complaint on May 18, 2023, to allege a
17 single cause of action for violation of Labor Code § 2698, *et seq.* *Id.* ¶ 3.

18 On September 20, 2023, after fully briefing the issue, the Court compelled the individual
19 component of Plaintiff’s PAGA claim to arbitration and stayed the representative component of
20 Plaintiff’s PAGA claims in this Court pending the outcome of the aforementioned arbitration.
21 Gavron Decl. ¶ 4.

22 On or about October 10, 2023, Plaintiff submitted a Demand for Arbitration to the
23 American Arbitration Association (“AAA”), alleging various individual wage and hour claims
24 against Defendant (the “Arbitration Action”). *Id.* ¶ 5. The Parties engaged in extensive written
25

26
27 ⁴ The amount allocated to the LWDA will actually be approximately \$73,179.69 and the amount
28 allocated to the Aggrieved Employees will be \$24,393.23, because the costs requested
(\$12,427.08) are less than those allocated in the Settlement Agreement (\$30,000.00). Gavron
Decl. ¶ 21.

1 discovery and several meet and confer efforts. Gavron Decl. ¶ 6. Plaintiff took the deposition of
2 Defendant's person most knowledgeable (Suk Ling) and sat for his own deposition as well. *Id.* ¶
3 6.

4 Through the arbitration process, Plaintiff discovered what he contended were additional
5 violations of the Labor Code. *Id.* ¶ 7. Accordingly, on or about January 19, 2024, Plaintiff filed
6 a supplemental written notice with the LWDA of alleged violations by Defendant of Labor Code
7 §§ 201-203, 226, 510, 558, and 1194, pursuant to Labor Code § 2699.3 (the "Amended PAGA
8 Letter"). *Id.* ¶ 7. The Parties litigated these issues in the arbitration. *Id.* ¶ 7.

9 Thereafter, the Parties agreed to engage in mediation before neutral Anthony F. Pantoni,
10 Esq. In connection with the mediation, Defendant provided Plaintiff and his counsel with
11 information and data to analyze Defendant's potential liability, including the number of
12 aggrieved employees, number of pay periods at issue, relevant policies, and time and pay records
13 for the aggrieved employees. Based on this information, the Parties conducted settlement
14 negotiations. Gavron Decl. ¶ 8.

15 The Parties mediated on June 24, 2025. Gavron Decl. ¶ 9. After arm's length negotiations
16 conducted during mediation, and continued arm's length negotiations facilitated by Mr. Pantoni
17 following the mediation, the Parties agreed to terms for complete settlement of the Action and
18 Arbitration Action. *Id.* ¶ 9. The Parties entered into the Joint Stipulation of Settlement, a true and
19 correct copy of which is attached to the Declaration of Max W. Gavron as **Exhibit A**.

20 As a condition of the settlement, the Parties agreed to the filing of a Second Amended
21 Complaint, which alleged the factual basis for the claims articulated in the Amended PAGA
22 Letter filed in January 2024. *Id.* ¶ 10. The Superior Court action was stayed pending completion
23 of arbitration so this amendment could not have occurred earlier. *Id.* ¶ 10.

24 On October 22, 2025, the Court signed a stipulation and order allowing Plaintiff to file
25 the Second Amended Complaint (the "Operative Complaint"). *Id.* ¶ 11. Plaintiff filed the Second
26 Amended Complaint on October 27, 2025, which adds the claims under PAGA for violation of
27 §§ 201-203, 226, 510, 558, and 1194. *Id.* ¶ 11. The Second Amended Complaint alleges a single
28 cause of action for violation of Labor Code § 2698, *et seq.*, predicated on underlying violations

of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2802 **Error! Bookmark not defined..** *Id.* ¶ 11.

B. Settlement Terms

The Parties have agreed that Defendant will fund the Gross Settlement Amount of \$180,000.00. Agreement ¶ 10.k. The Settlement Agreement allocates approximately one-third of the Gross Settlement Amount for attorneys' fees (or \$60,000.00), up to \$30,000.00 in litigation costs incurred by Plaintiff's Counsel, \$5,000.00 to Plaintiff for a service award, and up to \$5,000.00 for settlement administration costs. *Id.* ¶¶ 14-16. The remainder (or "Net Settlement Amount") is allocated to the payment of civil penalties under PAGA, 75% of which is for distribution to the LWDA ("LWDA Payment") and 25% of which is for distribution to the Aggrieved Employees on whose behalf Plaintiff filed this action ("PAGA Settlement Fund"), as required by PAGA. *Id.* ¶ 18.

C. Released Claims and Payments

The Settlement Agreement provides the following release:

Upon the date Defendant fully funds the entire Gross Settlement Amount, Plaintiff, as a proxy for the State of California and LWDA, fully, finally, and forever releases, settles, compromises, relinquishes, and discharges the Released Parties of all Released PAGA Claims during the PAGA Period, except as to the right to enforce the terms and conditions of this Settlement.

Upon the date Defendant fully funds the entire Gross Settlement Amount, each Aggrieved Employee shall be deemed to have released the individual component of his or her PAGA claim with respect to the Labor Code Sections set forth in the Released PAGA Claims for the entirety of the PAGA Period.

Agreement ¶¶ 28-29. The Released PAGA Claims are as follows:

all claims for civil penalties under PAGA which reasonably arise out of or are reasonably related to the factual allegations alleged in the Operative Complaint in the Action or Plaintiff Custodio's original and supplemental notices to the LWDA for alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558, 1194, 2802 *et seq.*, that accrued during the PAGA Period.

Id. ¶ 10.w. These claims are defined as the Released PAGA Claims. The Released Parties are

1 “Defendant and all of its present and former parent companies, subsidiaries, affiliates, attorneys,
2 insurers, employees, successors, and assigns.” *Id.* ¶ 10.x.

3 Each Aggrieved Employee will receive a payment proportionate to the number of pay
4 periods worked during the PAGA Period (“Individual PAGA Payment”). *See* Agreement ¶¶ 10.1,
5 19.a. Each Individual PAGA Payment will be considered the payment of penalties and treated as
6 IRS Form 1099 income. *See id.* ¶ 13. Finally, any checks not cashed by Aggrieved Employees
7 will be voided and the unclaimed amount will be forwarded to the State of California
8 Controller’s Unclaimed Property Division in the name of the respective Aggrieved Employees.
9 *See id.* ¶ 22.

10 **III. STANDARD OF REVIEW**

11 Although PAGA requires courts to “review and approve” the settlement of any civil
12 action filed under PAGA, *see* Cal. Lab. Code § 2699(l)(2), neither the Legislature, the California
13 Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard
14 PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d
15 959, 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a
16 PAGA settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL
17 1899912, at *2 (E.D. Cal. Apr. 20, 2018) (“PAGA does not establish a standard for evaluating
18 PAGA settlements.”). The LWDA itself has acknowledged the lack of a “specific benchmark”
19 and stated only that the relief provided under PAGA must be “genuine and meaningful,”
20 “consistent with the underlying purpose of the statute to benefit the public” and, in the context of
21 a class action, “meet[] the standards of being ‘fundamentally fair, reasonable, and adequate’
22 with reference to the public policies underlying the PAGA.” *See* California Labor and Workforce
23 Development Agency’s Comments on Proposed PAGA Settlement at 2-3, *O’Connor v. Uber*
24 *Techs.*, No. 3:13-CV-03826, ECF No. 736 (N.D. Cal. July 29, 2016).

25 Left to develop their own standards, federal district courts have typically followed the
26 LWDA’s limited guidance by requiring settlements to be “fundamentally fair, adequate, and
27 reasonable in light of PAGA’s policies and purposes.” *See Haralson*, 383 F. Supp. 3d at 972
28 (collecting cases). When applying this test, federal district courts often consider factors such as

1 strength of a plaintiff's case; the risk, expense, complexity, and likely duration of further
2 litigation; the amount offered in settlement; the extent of discovery completed; and the expertise
3 and views of counsel. *See Smith*, 2018 WL 1899912 at *3. Federal district courts have also been
4 mindful of the fact that trial courts have broad discretion to award civil penalties in amounts that
5 are less than the maximum amounts authorized by PAGA. *See, e.g., id.* at *3; *see also* Cal. Lab.
6 Code § 2699(e)(2).

7 **IV. ARGUMENT**

8 **A. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant** 9 **to Labor Code § 2699(l)(2)**

10 When enacting PAGA, the Legislature intended to ensure that the LWDA retained
11 “primacy” over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end,
12 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the
13 proposed settlement to the LWDA online “at the same time that it is submitted to the court,” to
14 give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§
15 2699(l)(2), 2699(l)(4). In satisfaction of that requirement, Plaintiff submitted a copy of the
16 Settlement Agreement and this Motion to the LWDA through the LWDA’s online filing system
17 in conjunction with filing this motion. *See* Gavron Decl. ¶ 44, Ex. D.

18 **B. The Court Should Approve the Settlement Agreement**

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

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

1 1110, 1134 (N.D. Cal. 2016).

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

8 All of the factors that would give rise to a presumption of fairness in the context of a
9 class action settlement are present in this PAGA action. After this lawsuit was commenced, the
10 Parties agreed to engage in arm’s-length negotiations between highly experienced counsel. As
11 part of their privileged settlement negotiations, Defendant produced data regarding the
12 Aggrieved Employees, from which Plaintiff’s Counsel calculated the maximum PAGA penalties
13 and analyzed Defendant’s potential liability. Gavron Decl. ¶ 12. Plaintiff’s Counsel have
14 significant experience in litigating wage and hour class and PAGA actions, which further
15 supports the reasonableness of the settlement. Gavron Decl. ¶¶ 29-42; Declaration of Larry W.
16 Lee (“Lee Decl.”) ¶¶ 6-8; Declaration of William L. Marder (“Marder Decl.”) ¶¶ 7-15.
17 Therefore, the settlement is entitled to a presumption of fairness.

18 **2. The Scope of the Settlement Agreement is Fair, Adequate, and**
19 **Reasonable**

20 Citing a decline in “[s]taffing levels for state labor law enforcement” and finding the
21 “vigorous assessment and collection of civil penalties as provided in the Labor Code” to
22 sometimes be “the only meaningful deterrent to unlawful conduct,” the Legislature enacted
23 PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement
24 capability of the LWDA with private enforcement actions by “aggrieved employees” acting as
25 private attorneys general. *See* 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS*
26 *Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of
27 in the nature of an enforcement action, where the named plaintiff acts as a proxy of the LWDA
28 to collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see*

1 *also Iskanian*, 59 Cal. 4th at 381-82. In that role, the named plaintiff “take[s] on a special
2 responsibility to their fellow aggrieved workers who are effectively bound by any judgment.”
3 *See O’Connor*, 201 F. Supp. 3d at 1134.

4 Plaintiff’s claims in this action are based on alleged violations of Labor Code §§ 201-
5 204, 210, 226, 226.7, 510, 512, 558, 1194, and 2802, as enforced through the PAGA, Cal. Lab.
6 Code §§ 2698, *et seq.* *See generally*, Operative Complaint. When reviewing a settlement
7 agreement, “the test is not the maximum amount plaintiffs might have obtained at trial on the
8 complaint,” *see Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), nor is it
9 “whether the settlement agreement is perfect in the estimation of the reviewing court.” *See Lane*
10 *v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is “whether the settlement is
11 reasonable under all of the circumstances.” *See Wershba*, 91 Cal. App. 4th at 250
12

13 . Relevant considerations include the strength of a plaintiff’s case and the risk, expense,
14 complexity, and likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168
15 Cal. App. 4th 116, 130 (2008); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018
16 WL 1899912 at *2 (E.D. Cal. Apr. 20, 2018). In PAGA settlements, courts also consider their
17 authority to award less than the maximum penalty authorized by PAGA. *See* Cal. Lab. Code §
18 2699 (e)(2); *see also Smith*, 2018 WL 1899912 at *3.

19 Here, Defendant produced data for the Aggrieved Employees, which permitted Plaintiff
20 to analyze Defendant’s potential exposure and liability. Gavron Decl. ¶ 12. As detailed in the
21 Settlement Agreement, there are approximately 325 Aggrieved Employees and approximately
22 6,000 pay periods at issue during the time encompassed by this settlement. Agreement ¶¶ 10.c,
23 31.

24 The PAGA’s default penalty structure provides \$100 for the initial violation and \$200 for
25 subsequent violations. Cal. Labor Code § 2699(f). If the Court only awarded \$50 per pay period
26 for alleged violations of the overtime statutes, the exposure could be even less. *See* Cal. Lab.
27 Code § 558. Defendant’s potential exposure could be as high as \$600,000 (6,000 pay periods x
28 \$100 per pay period) if the Court were to award a \$100 penalty for each pay period encompassed

1 by the proposed settlement. If the Court were to “stack” multiple penalties for each distinct labor
2 code violation proven during a pay period, the potential maximum exposure could be even
3 higher. However, courts have generally been reluctant to stack penalties for multiple violations
4 occurring during the same pay period, and even if it did, the Court retains discretion to reduce
5 the penalties, as discussed below. Accordingly, a realistic maximum exposure model is
6 approximately \$600,000, which assumes that Plaintiff would prevail on his claims and that the
7 Court would not reduce the applicable penalties. Gavron Decl. ¶ 13.

8 While the PAGA does provide for a potentially heightened penalty of \$200 for
9 “subsequent” violations, the majority of courts do not award that penalty unless there has been a
10 prior citation by the LWDA or court ruling demonstrating that the employer previously violated
11 the Labor Code. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord*
12 *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.*, 2009 WL 2448430, at
13 *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law, courts have held that employers are not
14 subject to heightened penalties for subsequent violations unless and until a court or
15 commissioner notifies the employer that it is in violation of the Labor Code”); *see also Bernstein*
16 *v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty unless
17 prior citation or court ruling). Thus, Defendant argued that even if Plaintiff was able to establish
18 any violation of the Labor Code, the PAGA penalties assessed for these violations will be
19 computed at the \$100 rate, as opposed to the \$200 per pay period rate at maximum, and there is a
20 likelihood that a further reduction of the penalty would be appropriate given Defendant’s good
21 faith efforts to comply with the Labor Code and its contention that it complied with the Labor
22 Code at all times.

23 For example, Defendant argued that it maintained facially compliant meal, rest, and
24 overtime policies and procedures. Gavron Decl. ¶ 15. Defendant argued that because it
25 maintained and enforced legally compliant written policies, which satisfied *Brinker*, that any
26 failure to provide a legally compliant meal or rest period by employees was isolated and/or
27 infrequent. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537
28 (2012) (“On the other hand, the employer is not obligated to police meal breaks and ensure no

1 work thereafter is performed.”). Defendant’s Person Most Qualified also testified that Defendant
2 maintained facially compliant wage and hour policies, and that many of the Aggrieved
3 Employees’ hours worked were self-reported because the employees worked offsite and thus did
4 not have access to a timeclock. Defendant therefore argued that any decision not to take a meal
5 or rest period was entirely outside of Defendant’s control. Gavron Decl. ¶ 15. In contrast,
6 Plaintiff argued that employees like him were sometimes required to maintain radios during
7 meal/rest periods which they were required to monitor thus precluding a duty-free meal or rest
8 period. *Id.*

9 Defendant also argued that Plaintiff’s overtime claim would fail because Defendant
10 properly calculated overtime rates for its employees and any discrepancies identified by Plaintiff
11 were individual to him. Defendant again argued that much of the aggrieved employees’ hours
12 worked were self-reported and therefore any discrepancies in the amount of overtime paid were
13 the result of an employee’s failure to properly record and report their hours worked. Gavron
14 Decl. ¶ 15.

15 Finally, with respect to Plaintiff’s reimbursement claim, Defendant argued that it
16 maintained legally compliant reimbursement policies, and that any alleged failure to reimburse
17 business expenses was the result of either: (1) employees not requesting reimbursement and
18 Defendant lacking actual or constructive knowledge that any reimbursable expenses; or (2) the
19 expenses not being a necessary and reasonable business expense. *See Andersen v. United Parcel*
20 *Serv., Inc.*, 2024 WL 2104496, at *11 (C.D. Cal. Apr. 11, 2024) (granting the defendant’s motion
21 for summary judgment on the plaintiff’s Section 2802 claim because “[the plaintiff] did not
22 inform [the defendant] that he had unreimbursed [mileage] expenses.”). Defendant also argued
23 that even if Plaintiff or any of the aggrieved employee could show they incurred reimbursable
24 expenses for travel between job sites (which Defendant denied), any such travel was minimal
25 and infrequent such that exposure under this claim would be minimal. Gavron Decl. ¶ 16.

26 Plaintiff’s derivative failure to pay final wages and wage statement claims would be
27 subject to a good faith defense, which could potentially extinguish the possibility of these
28 penalties altogether. *Hill v. Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding good faith

1 defense because defendant reasonably believed wages were not due and owing at time of
2 separation of employment); *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1087 (2024)
3 (upholding good faith defense to imposition of Section 226 penalties).

4 Defendant also argued that even if Plaintiff prevailed, the recoverable penalties under
5 PAGA are minimal and subject to reduction given Defendant's compliant policies and good faith
6 attempts to enforce same. Gavron Decl. ¶ 18. Indeed, courts often significantly reduce the
7 penalties awarded. *See Carrington v. Starbucks Corporation*, 30 Cal. App. 5th 504, 517 (2018)
8 (approving PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani*, 27 Cal.
9 App. 5th 809 (2018). If the Court in this case were to reduce penalties as was approved in
10 *Carrington*, the potential exposure would be significantly less, falling somewhere close to
11 \$30,000.00 (6,000 pay periods x \$5).

12 Under the circumstances of this case, the payment of \$180,000.00 in civil penalties is
13 fair, adequate, and reasonable. The payment of \$180,000.00 in exchange for a release of only
14 those claims for civil penalties that are pleaded or that could have been pleaded based on the
15 facts alleged in the PAGA Letter, Supplemental PAGA Letter, and Operative Complaint will
16 have a substantial deterrent effect on Defendant and other California employers and will confer
17 benefits on the Aggrieved Employees, who will each receive a portion of the settlement, and the
18 LWDA. This is approximately 30% of the calculated maximum exposure ($\$180,000.00 \div$
19 $\$600,000.00$), and a significantly higher percentage if the Court were to reduce the PAGA
20 penalties, as done in *Carrington* and many other cases. Gavron Decl. ¶ 19. Based on a raw
21 average and using the amounts allocated in the Settlement Agreement, each Aggrieved
22 Employee stands to receive approximately \$61.54 ($\$20,000.00 \div 325$ aggrieved employees);
23 however, when taking into account Plaintiff counsel's actual costs, the amount increases to
24 approximately \$75.06 ($\$24,393.23 / 325$ aggrieved employees). Gavron Decl. ¶ 19.

25 Numerous courts have held that **gross** settlements approximating between 8% and 25%
26 of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp.*
27 *Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering
28 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement

amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained **only 9.1%** of projected damages, given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24% was reasonable). In sum, this settlement is fair, reasonable, and consistent with PAGA’s policies and purposes under these circumstances.

3. The Settlement Agreement Apportions Civil Penalties Between the LWDA and the Aggrieved Employees as Required by PAGA

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

4. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Attorneys’ Fees

a. Percentage of the Fund

PAGA allows a prevailing plaintiff to recover reasonable attorneys’ fees. *See* Cal. Lab.

1 Code § 2699(g). In recognition of this, the Settlement Agreement allows Plaintiff’s Counsel to
2 request up to \$60,000.00, in attorneys’ fees. *See* Agreement ¶ 14. For two reasons, this amount is
3 fair, adequate, and reasonable in light of PAGA’s policy and purpose.

4 First, in class actions, state and federal courts have held that when a class action
5 establishes a monetary fund for the benefit of the class members out of which attorneys’ fees
6 may be paid, courts may determine the amount of a reasonable fee by “choosing an appropriate
7 percentage of the fund created.” *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016)
8 (affirming a fee award representing 33 1/3 percent of the fund and joining “the overwhelming
9 majority of federal and state courts” in approving the “percentage method” as a reasonable
10 means for determining attorney fee awards in class actions). While different from class action
11 settlements in important ways, PAGA settlements also involve the establishment of a common
12 fund for the benefit of persons other than the named plaintiff, so the reasons for utilizing the
13 percentage method are the same. *See id.* (noting that the percentage method provides “ease of
14 calculation,” “alignment of incentives between counsel and the class,” “a better approximation of
15 market conditions in a contingency case,” and the “encouragement...to seek an early
16 settlement”). The \$60,000.00 requested by Plaintiff’s Counsel represents approximately one-
17 third of the Gross Settlement Amount, which is consistent with awards usually approved in class
18 actions. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008) (“[F]ee awards in
19 class actions average around one-third of the recovery”); *see also Laffitte*, 1 Cal. 5th at 506
20 (upholding the approval of a fee award equal to one-third of the Gross Settlement Amount).

21 **b. Lodestar Cross-Check**

22 When the primary method employed to determine fees is the percentage method, courts
23 have discretion to use the lodestar method to “cross-check” the amount of fees calculated by way
24 of percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when used
25 in this manner, does not override the trial court’s primary determination of the fee as a
26 percentage of the common fund and thus does not impose an absolute maximum or minimum on
27 the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs.*
28 *Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does not trump the

1 primary reliance on the percentage of common fund method”).

2 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means
3 of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether
4 the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable
5 range, but the court is not necessarily required to make such an adjustment.” *Id.* (emphasis
6 added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-
7 checks are not required; in many cases, performing a cross-check “undermines” one of the
8 primary reasons for using the percentage method: aligning counsel’s incentives with the benefits
9 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain
10 the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court*
11 *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
14 now echoed by many authorities, who have been most vocal about the manner in which it
15 exacerbates the problem of ‘cheap settlements’ and burdens already overworked trial judge.”).

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

26 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees
27 awarded by the percentage method showing that the majority of multipliers awarded are “in the
28 1.5-3.0” range. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming

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

13 With respect to Plaintiff's Counsel's lodestar, Plaintiff's Counsel will have expended
14 approximately 159.6 hours litigating this case, which does not include approximately 5 hours of
15 anticipated time spent after approval responding to correspondence and phone calls from
16 Aggrieved Employees, the settlement administrator, and defense counsel. Gavron Decl. ¶ 37, Ex.
17 B; Lee Decl. ¶ 9, Ex. A; Marder Decl. ¶ 14, Ex. A. Plaintiff's Counsel request hourly rates
18 ranging from \$750.00 to \$900.00, which have been approved by numerous courts. *See* Gavron
19 Decl. ¶ 38; Lee Decl. ¶ 10; Marder Decl. ¶ 14. The courts are quite liberal in the evidence
20 required to prove an attorney's hours. Detailed time records are not required. An attorney's
21 testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a
22 particular case is sufficient evidence to support an award of attorney fees, even in the absence of
23 detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

24 Reasonable hours include, in addition to time spent during litigation, the time spent
25 before the action is filed, including time spent interviewing the clients, investigating the facts and
26 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
27 62 (1980). The fee award should also include fees incurred to establish and defend the attorneys'
28 fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel

1 seeks compensation involve only these types of tasks. Thus, the number of hours for which fees
2 are sought is reasonable.

3 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
4 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
5 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
6 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
7 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
8 4th 629, 632-33 (1998).

9 Plaintiff's Counsel's skill and experience justify the requested rates. As shown in the
10 supporting declarations, Plaintiff's Counsel have significant experience in the area of
11 employment and wage and hour class and representative actions. Plaintiff's Counsel's practice
12 focuses on representing employees in employment matters, particularly wage and hour cases on a
13 contingency basis. Gavron Decl. ¶¶ 29-42. As such, based on the hours and applicable rates,
14 Plaintiff's Counsel's lodestar amount through the finalization of this settlement – without a
15 multiplier – will be approximately \$131,325.00, which results in a negative multiplier of 0.46.
16 Gavron Decl. ¶ 38, Ex. B; Lee Decl. ¶¶ 9-10, Ex. A; Marder Decl. ¶ 14, Ex. A. This is well
17 within the range approved by the California Supreme Court in *Laffitte* and significantly lower
18 than the multiplier of 2.13 approved in that case. Accordingly, the cross-check supports the fee
19 requested.

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

22 PAGA also allows a prevailing plaintiff to recover litigation costs. *See* Cal. Lab. Code §
23 2699(g). Accordingly, the Settlement Agreement allows Plaintiff's Counsel to request up to
24 \$30,000.00 in litigation costs. Agreement ¶ 14.

25 Plaintiff's Counsel requests \$12,427.08 for the reimbursement of litigation costs. As set
26 forth in the accompanying declaration of Max W. Gavron, these costs were all directly incurred
27 in the prosecution of this action, including, but not limited to, filing fees, service of process fees,
28 and mediation costs. Gavron Decl. ¶ 43, Ex. C (Cost Report). As such, Plaintiff's Counsel's

1 request for costs is fair, adequate, reasonable, and consistent with PAGA’s policies. Because this
2 amount is less than what was provided in the Settlement Agreement, the difference will be
3 distributed to the LWDA and Aggrieved Employees.

4 **6. Plaintiff’s Service Award Should be Approved**

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

11 Here, Plaintiff respectfully requests \$5,000.00 for his service award, which is intended to
12 compensate Plaintiff for the time spent on this case. Plaintiff estimates that he spent between
13 approximately 50-60 hours assisting in the litigation of this case, including conferring with his
14 attorneys, providing documents, preparing and sitting for a full-day of deposition, and reviewing
15 filings. Declaration of Gregory Custodio Decl. ¶ 8. Plaintiff has assisted in the prosecution of
16 this action for nearly two years. Plaintiff has assisted in providing information and discovery in
17 this action and played a pivotal role in the successful resolution of this action. This requested
18 award is consistent with awards approved in other common fund cases. *See Van Vranken v.*
19 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
20 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
21 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000). Plaintiff also
22 took the risk of bringing the lawsuit, which was a matter of public record. Future employers may
23 be less likely to hire an employee who has previously filed an action against an employer. This
24 also supports the requested award.

25 **7. The Settlement Agreement Allocates a Fair, Adequate, and**
26 **Reasonable Amount to the Payment of Settlement Administration**
27 **Costs**

28 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff’s

1 Counsel, and the LWDA, but also to Defendant's current and former employees, significant time
2 and effort will be required to administer the settlement if it is approved by this Court. Among
3 other things, the Settlement Administrator will calculate each Aggrieved Employee's settlement
4 shares; appropriate tax forms must be issued to all parties who receive payments under the
5 Settlement Agreement; payments must be mailed to Plaintiff, Plaintiff's Counsel, the LWDA,
6 and each Aggrieved Employee; and any checks not cashed by Aggrieved Employees must be
7 voided so that the unclaimed amount can be forwarded to the State of California Controller
8 Office's Unclaimed Property Division in the name of the Aggrieved Employees who did not cash
9 their respective Individual PAGA Payments. *See* Agreement ¶¶ 13-19. The Settlement
10 Administrator will also distribute a short letter to Aggrieved Employees explaining the release of
11 claims and settlement. Agreement, Ex. A (Explanatory Letter).

12 In contemplation of these expenses, the Parties will engage Phoenix Settlement
13 Administrators to act as a third-party settlement administrator and have allocated up to \$5,000.00
14 to cover the cost of settlement administration. Agreement ¶¶ 10.z, 16; Gavron Decl. ¶ 46; Ex. E
15 (Phoenix Bid).

16 **V. CONCLUSION**

17 For all of the foregoing reasons, Plaintiff requests that the Court approve the Settlement
18 Agreement pursuant to Labor Code § 2699(1)(2).

19 DATED: December 22, 2025

DIVERSITY LAW GROUP, P.C.

20 By: _____

Larry W. Lee

Max W. Gavron

Kwanporn "Mai" Tulyathan

Attorneys for Plaintiff and the Aggrieved Employees