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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KERRY CONNELLY, as an individual and as a
private attorney general,

Plaintiff,

vs.

STARBUCKS CORPORATION, a Washington
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 1:21-cv-00746-ADA-SAB

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.
Lee; Declaration of Simon L. Yang; Declaration
of Kerry Connelly; [Proposed] Order]*

Date: August 28, 2023
Time: 1:30 p.m.
Courtroom: 1

Complaint Filed: January 21, 2021

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 28, 2023, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Courtroom 1 of the above-entitled court located at 2500 Tulare Street, Fresno,
4 California 93721, Plaintiff, Kerry Connelly, will and hereby does move for an Order approving the Joint
5 Stipulation of PAGA Settlement (the “Agreement”) entered into between Plaintiff and Defendant,
6 Starbucks Corporation.¹

7 The motion is made pursuant to Labor Code section 2699(1)(2), which requires a court to “review
8 and approve any settlement of any civil action filed pursuant to [the Labor Code Private Attorneys
9 General Act of 2004, Lab. Code §§ 2698 et seq. (“PAGA”)].” Lab. Code § 2699(1)(2). The motion is
10 made on the grounds that the Agreement and the Parties’ settlement are fundamentally fair, adequate,
11 and reasonable in light of PAGA’s policies and in furtherance of PAGA’s purposes. As set forth in the
12 concurrently filed declaration of Simon L. Yang, a copy of the Agreement and the motion have been
13 electronically submitted to the Labor and Workforce Development Agency in accordance with Labor
14 Code sections 2699(1)(2) and 2699(1)(4).

15 The motion is based on this notice, the memorandum of points and authorities, the Agreement,
16 the supporting Declarations of Larry W. Lee, Simon L. Yang, and Kerry Connelly, all pleadings and
17 papers on file herein, and any further oral and documentary evidence as may be presented before or at
18 the hearing of this matter.

19 DATED: July 20, 2023

DIVERSITY LAW GROUP, P.C.

20
21 By: /s/ Simon L. Yang
22 Larry W. Lee
23 Simon L. Yang
24 Attorneys for Plaintiff
25
26
27

28 ¹ The Agreement is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

MEMORANDUM OF POINTS AND AUTHORITIES

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1 **SUMMARY OF MOTION**

2 Plaintiff, Kerry Connelly, sues Defendant, Starbucks Corporation, for alleged failures to provide
3 herself and other employees with complete and accurate itemized wage statements in compliance with
4 Labor Code section 226(a). Specifically, the operative complaint alleges Defendant furnishes wage
5 statements that fail to show (i) the name of the legal entity that is the employer and (ii) the total hours
6 worked. Plaintiff sues both as an individual and as a proxy for the State of California pursuant to the
7 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

8 Through informal and formal discovery, including the depositions of both Plaintiff and
9 Defendant’s corporate designee, Plaintiff has determined that the allegation that Defendant’s wage
10 statements generally fail to show the employer name lack merit, since the employer name is omitted in
11 certain circumstances only (i.e., on reprinted copies of Defendant’s wage statements). But Plaintiff has
12 also confirmed that on approximately 16,800 occasions, Defendant furnished employees with wage
13 statements that Plaintiff contends do not show the total hours worked.²

14 After more than two years of litigation, the Parties negotiated an informal resolution. Plaintiff
15 obtained an excellent result for the State that requires Defendant to pay \$252,000.00—or 15.0% of
16 Defendant’s potential penalty liability—without the risks of further litigation, trial, or appeal. The terms
17 of the settlement are memorialized in the Joint Stipulation of PAGA Settlement (“Agreement”), which is
18 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang.

19 Under PAGA, the Court must review and approve the proposed settlement. Lab. Code §
20 2699(1)(2). Plaintiff thus moves for approval of the Agreement:

- 21 • The Agreement provides for an award of Attorneys’ Fees and Costs in the amount of 33⅓% of
22 the \$252,000.00 Settlement Amount, or \$84,000.00, in fees, plus up to \$10,000.00 in costs
23 (though Plaintiff now seeks reimbursement of \$4,794.16 in costs only).
24 • It also provides for a \$10,000.00 General Release Payment to Plaintiff (i) as consideration for her
25 additional general release of claims and waiver of Civil Code section 1542 and (ii) in recognition
26 of her efforts and work in prosecuting the lawsuit on behalf of the State.

27
28 ² Defendant disagrees and believes that its wage statements show the total hours worked, even for the
16,800 wage statements that Plaintiff contends are unlawful.

- It also provides for \$16,000.00 in Administration Costs to a settlement administrator for effectuating the payments contemplated by the Agreement.
- Finally, it provides for all remaining funds to constitute a PAGA Penalty Fund, 75% of which would be distributed to the Labor and Workforce Development Agency (“LWDA”) and 25% of which would be distributed to allegedly aggrieved employees.

The terms of the Agreement are fundamentally fair, adequate, and reasonable. In light of PAGA’s policies and in furtherance of PAGA’s purposes, the Court should approve the settlement.

RELEVANT BACKGROUND

On March 19, 2021, Plaintiff filed the original putative class action complaint in this matter. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On April 2, 2021, Plaintiff file a first amended complaint to also allege PAGA claims. *Id.* Plaintiff ultimately elected not to pursue class action claims, and on April 5, 2022, Plaintiff filed the operative second amended complaint that limits the alleged claims to Plaintiff’s individual claim for violations of Section 226(a) and Plaintiff’s PAGA claim for the same violations. *Id.* Specifically, Plaintiff alleges that Defendant fails to furnish accurate itemized wage statements that show (i) the name of the legal entity that is the employer or (ii) the total hours worked. *Id.*

The Parties met and conferred about Plaintiff’s allegations and claims as well as Defendant’s defenses. Yang Decl. ¶ 3. The Parties also engaged in formal discovery, including the exchange of document requests and interrogatories, the deposition of Plaintiff, and the deposition of Defendant’s corporate designee. *Id.* Plaintiff also requested (and Defendant provided) additional informal discovery to enable the Parties to explore the possibility of an informal resolution. *Id.* Defendant’s willingness to produce this information enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. *Id.*

Based on Plaintiff’s thorough investigation of the allegations and claims alleged in the operative complaint, Plaintiff determined that the allegation that Defendant’s wage statements generally fail to show the employer name lack merit, since the employer name is omitted in certain circumstances only (i.e., on reprinted copies of Defendant’s wage statements). Yang Decl. ¶ 4. Plaintiff, however, was able to confirm that on approximately 16,800 occasions, Defendant furnished employees with wage statements that Plaintiff contends do not show the total hours worked. *Id.* Defendant disagrees and

believes that its wage statements show the total hours worked, even for the 16,800 wage statements that Plaintiff contends are unlawful. *Id.*

Ultimately, the Parties disagree about whether approximately 16,800 wage statements comply with Section 226(a).³ Over the course of several months of negotiations, the Parties were able to agree to the terms of a settlement memorialized in the Joint Stipulation of PAGA Settlement. Yang Decl. ¶ 4, Ex. 1 (the “Agreement”).

SUMMARY OF PROPOSED SETTLEMENT

I. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Settlement Amount of \$252,000.00. Agreement § 3.1. From the Settlement Amount, the Parties will request that the Court approve a PAGA Penalty Fund, Administration Costs, Attorneys’ Fees and Costs Award, and General Release Payment. *Id.* § 3.1.1-4. It is expected that the LWDA will receive \$102,904.38 as its share of PAGA Penalties and employees will receive \$34,301.46 as their share of PAGA Penalties. Yang Decl. ¶ 6.

II. Settlement Releases

Plaintiff is subject to a general release. Agreement § 5.2. The State releases any PAGA claims from September 29, 2019, through April 30, 2021, that are “predicated on alleged violations of California Labor Code § 226, to the extent any such claims are either (i) asserted in the PAGA Action or in any letter to the LWDA relating to this Action, including any claims alleging that wage statements failed to provide the total hours worked, or (ii) arising from, or derivative of, the claims or factual allegations asserted in this Action.” *Id.* § 5.1.

LEGAL STANDARD

PAGA requires courts to “review and approve” the settlement of any action filed under PAGA. Lab. Code §2699(l)(2). The California Supreme Court has explained that a court’s review of a PAGA settlement is to ensure “that any negotiated resolution is fair to those affected.” *Williams v. Superior Court*, 3 Cal. 5th 531, 549 (2017). But “PAGA does not establish a standard for evaluating PAGA settlements.” *Griffin v. Consolidated Commc’ns*, 2023 WL 3853643, at *3 (E.D. Cal. June 6, 2023)

³ Except as otherwise noted, all “Section” references are to the Labor Code.

1 (quoting *Smith v. H.F.D. No. 55, Inc.*, 2018 WL 1899912, at *2 (E.D. Cal. Apr. 20, 2018)). Indeed, the
2 Legislature, California Supreme Court, California Courts of Appeal, and LWDA have not definitively
3 established the standards for review. *E.g.*, *Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959,
4 971 (N.D. Cal. 2019) (noting the absence of a “definitive” guidance for approval of a PAGA settlement).
5 The LWDA acknowledges the lack of a “specific benchmark” and has stated only that the relief
6 provided under PAGA must be “genuine and meaningful,” “consistent with the underlying purpose of
7 the statute to benefit the public” and, in the context of a class action, “meet[] the standards of being
8 ‘fundamentally fair, reasonable, and adequate’ with reference to the public policies underlying the
9 PAGA.” *See O’Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (quoting
10 California Labor and Workforce Development Agency’s Comments on Proposed PAGA Settlement) .

11 Federal district courts have typically followed the LWDA’s limited guidance by requiring
12 settlements to be “fundamentally fair, adequate, and reasonable in light of PAGA’s policies and
13 purposes.” *See Haralson*, 383 F. Supp. 3d at 972 (collecting cases). When applying this test, federal
14 district courts often consider factors such as strength of a Plaintiffs’ case; the risk, expense, complexity,
15 and likely duration of further litigation; the amount offered in settlement; the extent of discovery
16 completed; and the expertise and views of counsel. *See Smith*, 2018 WL 1899912, at *3. Federal district
17 courts have also been mindful of the fact that trial courts have broad discretion to award civil penalties
18 in amounts that are less than the maximum amounts authorized by PAGA. *Id.* at *3; *see also* Lab. Code
19 § 2699(e)(2).⁴

20 “Given PAGA’s purpose to protect the public interest, [authoritative California courts] also
21 agree with the LWDA and federal district courts that have found it appropriate to review a PAGA

22 ⁴ A party asserting a PAGA claim is not required to meet the requirements of a class action. *Arias v.*
23 *Superior Court*, 46 Cal. 4th 969, 984 (2009). Due process concerns with respect to absent class members
24 are not present in a PAGA action. *Williams*, 3 Cal. 5th at 547 n.4. Unnamed employees need not be
25 given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA
26 claim. *E.g.*, *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (noting that
27 unnamed employees need not be given notice of the PAGA claim or settlement approval) (citing *Ochoa-*
28 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010)). “The court does
not have to approve the named PAGA plaintiff, nor does the court inquire into the adequacy of counsel’s
ability to represent the unnamed employees.” *Ochoa-Hernandez*, 2010 WL 1340777, at *4. “[T]he
purpose of PAGA is to incentivize private parties to recover civil penalties for the government that
otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *Id.*

1 settlement to ascertain whether a settlement is fair in view of PAGA’s purposes and policies.” *Moniz v.*
2 *Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021).

3 DISCUSSION

4 I. The Settlement Complies with Statutory Requirements.

5 PAGA states that any “proposed settlement shall be submitted to the agency at the same time that
6 it is submitted to the court.” Lab. Code. § 2699(1)(2). In satisfaction of that requirement, Plaintiff
7 submitted a copy of the Agreement and this motion to the LWDA through the LWDA’s online filing
8 system in conjunction with filing this motion. Yang Decl. ¶ 14, Ex. 6.

9 II. The Settlement Should Be Approved as Fair in Light of PAGA’s Purposes and Policies.

10 A. The Settlement Is Entitled to a Presumption of Fairness.

11 In the class action context, a trial court must determine and approve a class action settlement is
12 fair to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class
13 action.” *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006).
14 Courts presume the absence of fraud or collusion in the negotiation of settlement unless there is
15 evidence to the contrary. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v.*
16 *Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust*
17 *Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980).

18 While the recommendations of counsel proposing the settlement are not conclusive, the Court
19 can properly take them into account, particularly where, as here, they have been involved in thorough
20 investigation, are experienced with this type of litigation, and agreed to a resolution through arm’s
21 length negotiation. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.47 (4th ed.
22 2002); *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. at 528 (C.D. Cal. 2004) (“So
23 long as the integrity of the arm’s length negotiation process is preserved, however, a strong initial
24 presumption of fairness attaches to the proposed settlement ... and ‘great weight’ is accorded to the
25 recommendations of counsel, who are most closely acquainted with the facts of the underlying
26 litigation.”) (citations omitted). In such circumstances, as here, courts do not substitute their judgment
27 for that of the proponents. *National Rural Telecomms. Coop.*, 221 F.R.D. at 528; *accord Hammon v.*
28 *Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re*

1 *Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal*
2 *Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

3 The factors that would give rise to a presumption of fairness in the context of a class action
4 settlement are present in this PAGA action. Here, both Plaintiff’s counsel and Defendant’s counsel have
5 a great deal of experience in wage and hour and PAGA litigation. Plaintiff’s counsel have extensive
6 class action and PAGA litigation experience and have been approved as class counsel in numerous wage
7 and hour class actions. Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 5-8; Yang Decl. ¶¶ 9-13. Each side
8 has apprised the other of their respective factual contentions and legal theories, and each side has
9 considered the other’s contentions and theories. Defendant provided the relevant numbers of certain
10 types of wage statements, among other things—enabling Plaintiff to assess the full value of the PAGA
11 claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶ 3. As the
12 settlement is the result of extensive arm’s length negotiations between the Parties and their counsel, it is
13 entitled to a presumption of fairness. *Id.* ¶ 9.

14 **B. The Settlement Obtains an Excellent Result for the State.**

15 **1. The Settlement Amount Is Reasonable.**

16 The Agreement requires Defendant to pay \$252,000.00—or approximately \$15.00 per pay
17 period. Yang Decl. ¶ 5. This amounts to approximately 15.0% of Defendant’s potential liability and is an
18 excellent result for the State. *Id.* Plaintiff contended that Defendant’s alleged wage statement failures
19 resulted in a \$100 per pay period penalty under Section 2699(f) for each of approximately 16,800 wage
20 statements that Plaintiff contended did not show the total hours worked. *Id.*; Lab. Code § 2699(f).

21 Defendant contested the merits and denied it was liable at all. Yang Decl. ¶ 5. Moreover, even if
22 Plaintiff prevailed on the merits, Defendant contested the extent of liability. *Id.* Specifically, Defendant
23 contended that PAGA penalties would be subject to discretionary reductions. *Id.* For example,
24 Defendant continued to rely on its experience in prior PAGA litigation, in which it defended PAGA
25 claims alleging different Labor Code violations through a bench trial. *Id.* In that PAGA litigation, the
26 trial court reduced PAGA penalties by 90%—even though the employee prevailed on the PAGA claims.
27 *Id.*; see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming “reduction of
28 the \$50 maximum penalty (per initial violation) to the penalty imposed—only \$5 per initial violation”).

1 While the Parties disagree on the application of the law to the facts, each Party recognized in
2 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the
3 Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 5. Ultimately,
4 based on a review of Defendant’s wage statements, Plaintiff argued that the potential total recovery
5 amounted to \$1,680,000.00—or \$100 for each of approximately 16,800 wage statements with alleged
6 total hours worked deficiencies. *Id.* Plaintiff contends that the Settlement Amount of \$252,000.00—
7 approximately 15.0% of the potential total recovery of \$1,680,000.00—is an excellent result. *Id.*

8 Although Plaintiff and her counsel are confident that litigation of the claims would result in a
9 judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks
10 that the applicable law could change, that liability could not be established at trial, or that penalties
11 awarded after trial would be reduced. Yang Decl. ¶ 7. The settlement is fair, reasonable, and adequate,
12 given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing
13 litigation. *Id.*

14 **2. The Settlement Releases Are Appropriate.**

15 As discussed above, only Plaintiff is subject to a general release. Agreement § 5.2. The State
16 releases any PAGA claims from September 29, 2019, through April 30, 2021, that are “predicated on
17 alleged violations of California Labor Code § 226” *Id.* § 5.1. Plaintiff alleged targeted claims in the
18 Action, and any settlement releases also are specifically tailored to the targeted claims alleged. The
19 settlement releases are thus appropriate. *E.g., Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 820
20 (2014) (“A general release—covering ‘all claims’ that were or could have been raised in the suit—is
21 common in class action settlements.”).

22 **C. The Requested Payments and Allocations Are Reasonable.**

23 The Agreement provides for a Settlement Amount of \$252,000.00. Agreement § 3.1. From the
24 Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement Amount (or
25 \$84,000.00) and litigation costs of up to \$10,000 are permitted—though Plaintiff’s Counsel seeks
26 reimbursement of \$4,794.16 in costs only. *Id.* § 3.1.1; Lee Decl. ¶ 8, Ex. A. The requested General
27 Release Payment is \$10,000.00. Agreement § 3.1.2. The requested Administration Costs are \$16,000.00.
28 Agreement § 3.1.3. The PAGA Penalty Fund thus will be \$137,205.84, and pursuant to statute, 75% of

1 the PAGA Penalty Fund (or \$102,904.38) would constitute the LWDA Payment, and 25% of the PAGA
2 Penalty Fund (or \$34,301.46) shall be payable to Aggrieved Employees in equal shares. *Id.* § 3.1.4; *see*
3 *also* Yang Decl. ¶ 6.⁵

4 **1. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

5 PAGA allows a prevailing Plaintiff to recover reasonable attorneys’ fees. Lab. Code § 2699(g).
6 As discussed below, the requested Attorneys’ Fees of \$84,000.00 are reasonable and should be awarded.

7 “When calculating an attorney’s fee award, a district court can employ one of two methods—the
8 lodestar or a percentage of the recovery.” *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784
9 (9th Cir. 2022) (citing *Kim v. Allison*, 8 F.4th 1170, 1180 (9th Cir. 2021)). Under the lodestar method,
10 the district court “multiplies the number of hours the prevailing party reasonably spent on litigation by a
11 reasonable hourly rate to determine a presumptively reasonable fee award”—the lodestar. *Id.* The
12 lodestar amount can then be adjusted “by an appropriate positive or negative multiplier” to account for
13 factors such as “the quality of representation, the benefit obtained for the class, the complexity and
14 novelty of the issues presented, and the risk of nonpayment.” *Id.* The percentage-of-recovery method
15 expresses fees as a percentage of a recovered common fund, calculated to be “sufficient to provide class
16 counsel with a reasonable fee.” *Kim*, 8 F.4th at 1181 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
17 1029 (1998)).

18 “There is a strong presumption that the lodestar is a reasonable fee.” *Stetson v. Grissom*, 821
19 F.3d 1157, 1165 (9th Cir. 2016) (quoting *Fischel v. Equitable Life Assurance Soc’y*, 307 F.3d 997, 1007
20 (9th Cir. 2002)). In general “the choice to apply the lodestar method, rather than the percentage-of-fund
21 method, [is] well within the district court’s discretion.” *Id.* (quoting *Stanger v. China Elec. Motor, Inc.*,
22 812 F.3d 734, 739 (9th Cir. 2016)).

23 **a. Plaintiff’s Counsel’s lodestar results in a negative multiplier.**

24 Here, Plaintiff requests an attorneys’ fees award of \$84,000.00, which is reasonable in light of
25 Plaintiff Counsel’s lodestar. As discussed below, the lodestar for just one of Plaintiff’s Counsel through
26 the finalization of this settlement—without a multiplier—will be approximately \$109,692.50 (151.3
27

28 ⁵ Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 14.

1 hours x \$725/hour), which exceeds the fee requested by Plaintiff here and results in a negative multiplier
2 of 0.76. Yang Decl. ¶¶ 12, 13, Ex. 2.

3 With respect to the Plaintiff's Counsel's hours, the Court is not required to perform an
4 "exhaustive cataloguing and review of counsel's hours." *See Barbosa v. Cargill Meat Sols. Corp.*, 297
5 F.R.D. 431, 451 (E.D. Cal. 2013) (citation omitted). Reasonable hours include time spent during
6 litigation as well as time spent before the action is filed, including time spent interviewing the clients,
7 investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v.*
8 *Carey*, 447 U.S. 54, 62 (1980). Plaintiff's Counsel bases its lodestar calculations on these types of tasks.

9 Here, at least 151.3 hours will be spent, for example, conducting and defending depositions,
10 preparing an opposition to a motion for summary judgment, and generally litigating for more than two
11 years. Yang Decl. ¶ 12, Ex. 2. Specifically, just one of Plaintiff's Counsel has already expended 141.3
12 hours litigating this case and anticipates incurring 10.0 additional hours of time to (i) obtain approval of
13 the settlement in district court, (ii) respond to correspondence and phone calls from the administrator,
14 defense counsel, or aggrieved employees, and (iii) prepare status reports, attend case management
15 conferences, and otherwise dispose of the case from the docket in Stanislaus County Superior Court
16 (from whose jurisdiction this case was removed). *Id.*

17 With respect to the hourly rate for Plaintiff's Counsel's hours, attorneys' fees are to be calculated
18 with "the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895-96
19 n.11 (1984). In general, the "relevant community" for purposes of determining the prevailing market
20 rate is the "forum in which the district court sits." *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979
21 (9th Cir. 2008). "Affidavits of the plaintiffs' attorney[s] and other attorneys regarding prevailing fees in
22 the community ... are satisfactory evidence of the prevailing market rate." *Chaudhry v. City of Los*
23 *Angeles*, 751 F.3d 1096, 1110-11 (9th Cir. 2014).

24 Here, Plaintiff's Counsel's hourly rate is \$725. Yang Decl. ¶ 13. Plaintiff's Counsel's skill and
25 experience justify the requested rates. As shown in the supporting declarations, Plaintiff's Counsel has
26 significant experience in the area of employment and wage and hour class and representative actions.
27 Plaintiff's Counsel's practice focuses on representing employees in employment matters, particularly
28 wage and hour cases on a contingency basis. Yang Decl. ¶ 8-11. Indeed, California courts in this district

1 have found Plaintiff’s Counsel’s hourly rate to be reasonable. *E.g.*, Yang Decl. ¶ 10, Ex. 3 (approving
2 hourly rate of \$725 in Tulare County), Exs. 4 & 5 (approving hourly rate of \$725 in Sacramento
3 County). Plaintiff’s Counsel’s hourly rate also is supported by decisions by this Court that find hourly
4 rates of \$750 earlier this year and of \$695 as of five years ago to be reasonable for experienced wage-
5 and-hour counsel. *E.g.*, *Mostajo v. Nationwide Mut. Ins. Co.*, 2023 WL 2918657, at *11 (E.D. Cal. Apr.
6 12, 2023) (considering hourly rates of up to \$750 in wage-and-hour class action and “find[ing] that these
7 rates are fair and reasonable in this case”); *Mathein v. Pier 1 Imports (U.S.), Inc.*, 2018 WL 1993727, at
8 *11 (E.D. Cal. Apr. 27, 2018) (noting “as reasonable for lodestar purposes hourly rates [of] \$695 for
9 senior counsel” in wage-and-hour class action).

10 In sum, the lodestar for just one of Plaintiff’s Counsel through the finalization of this
11 settlement—without a multiplier—will be approximately \$109,692.50 (151.3 hours x \$725/hour), which
12 exceeds the fee requested by Plaintiff here and results in a negative multiplier of 0.76. Yang Decl. ¶ 14.

13 **b. 33⅓% of the fund is reasonable given the results and risks.**

14 Although the lodestar method fully supports the requested fee award, the percentage of the fund
15 method also supports awarding \$84,000—or 33⅓% of the Settlement Amount—in attorneys’ fees.

16 The Ninth Circuit starts with a “benchmark” of 25% of a common fund as a “starting point for
17 analysis” in determining an appropriate attorneys’ fee award from a common fund. *Vizcaino v. Microsoft*
18 *Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). But “[t]he 25% benchmark rate, although a starting point
19 for analysis, may be inappropriate in some cases.” *Id.* (the appropriate percentage “must be supported by
20 findings that take into account all of the circumstances of the case”). Indeed, “[t]he typical range of
21 acceptable attorneys’ fees in the Ninth Circuit is 20% to 33⅓% of the total settlement value, with 25%
22 considered the benchmark.” *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491 (E.D. Cal. 2010).
23 Moreover, the Ninth Circuit and district courts therein have routinely permitted recovery in the amount
24 of 33⅓%, 40% and even up to 50% of the common fund. *See, e.g., In re Activision Sec. Litig.*, 723 F.
25 Supp. 1373, 1378 (N.D. Cal. 1989) (listing Ninth Circuit cases).

26 Here, numerous factors support awarding 33⅓% of the common fund:

27 *First*, Plaintiff achieved “exceptional results” for the State. *Vizcaino*, 290 F.3d at 1048. As
28 discussed above, Defendant has previously defended PAGA claims through trial—and successfully

1 reduced the amount of PAGA penalties by 90%. *See Carrington*, 30 Cal. App. 5th at 529 (awarding \$5
2 per pay period following bench trial). Here, Plaintiff obtained *more* than 90% of the potential penalties
3 for the State—\$15 per pay period—while eliminating the risk of potentially not prevailing on the merits.
4 This is an excellent result, especially since Defendant had reasonable arguments to argue for a
5 significant reduction in penalties (i.e., the wage statements that Plaintiff contended were unlawful by
6 failing to show the total hours worked were the result of a system glitch). Yang Decl. ¶ 4.

7 *Second*, Plaintiff’s lawsuit “generated benefits beyond the cash settlement fund.” *Vizcaino*, 290
8 F.3d at 1049. The above-referenced system glitch impacted 3,963 employees from September 29, 2019,
9 through April 30, 2021, but the system glitch was corrected by Defendant by April 30, 2021, shortly
10 after Plaintiff initiated the lawsuit in January 2021. Yang Decl. ¶ 4. Regardless of whether Plaintiff
11 prevailed on the merits, the mere filing of the lawsuit resulted in employees benefiting from Defendant’s
12 correction of the system glitch that and provision of clearer wage statements.

13 *Third*, the lawsuit was extremely risky for Plaintiff’s Counsel. *Vizcaino*, 290 F.3d at 1048. For
14 Plaintiff’s Counsel, the fees here were wholly contingent in nature. Plaintiff’s Counsel contends that this
15 case presented far more risk than the usual contingent fee case, given that Defendant is a corporate
16 defendant who had retained a premier and highly experienced defense firm that historically litigates
17 these types of lawsuits through trial.

18 *Fourth*, the requested percentage is below the market rate. *Vizcaino*, 290 F.3d at 1049. Not only
19 did the retainer agreement in this matter provide for 40% of Plaintiff’s recovery to be awarded as
20 attorneys’ fees, Yang Decl. ¶ 15, the lodestar discussed above also shows that the market rate for
21 Plaintiff’s Counsel’s work on this case easily exceeds the requested percentage of the fund.

22 For such reasons, the percentage of the fund method also supports Plaintiff’s request for
23 \$84,000.00 in attorneys’ fees.

24 **2. The Requested Litigation Costs Are Reasonable.**

25 PAGA also allows a prevailing Plaintiff to recover litigation costs. Lab. Code § 2699(g). The
26 Agreement permits Plaintiff’s Counsel to request up to \$10,000.00 in litigation costs. Agreement § 3.1.1.
27 Plaintiff’s Counsel, however, seeks \$4,794.16 in costs only. Lee Decl. ¶ 8, Ex. A; Yang Decl. ¶ 6. As set
28 forth in accompanying declarations of Plaintiff’s counsel, these costs were all directly incurred it the

1 prosecution of this action, including filing fees and service fees. *Id.* As such, Plaintiff’s counsel’s
2 request for costs in the amount of \$4,794.16 is fair, adequate, reasonable, and consistent with PAGA’s
3 policies. Because this amount is less than what was provided in the Agreement, the difference will be
4 distributed to the LWDA and Aggrieved Employees as part of the PAGA Penalty Fund.

5 **3. The Requested General Release Payment Is Reasonable.**

6 Plaintiff, Kerry Connelly, requests a modest General Release Payment of \$10,000.00. Agreement
7 § 3.1.2. The request is reasonable in light of the general release that the Agreement requires of Plaintiff.
8 Independently, the request is appropriate in recognition of Plaintiff’s efforts on behalf of the State.
9 Declaration of Kerry Connelly (“Connelly Decl.”) ¶¶ 2-3.

10 With respect to the general release, Plaintiff did not proceed with litigation of all of her potential
11 claims and instead strategically pursued the targeted claims in this lawsuit to maximize her ability to
12 recover penalties for the State for the alleged violations of Section 226(a). Had Plaintiff instead pursued
13 all of her individual claims, Plaintiff would have been able to recover at least \$5,206 and additional
14 sums that Plaintiff cannot fully yet calculate. Connelly Decl. ¶ 6. Nonetheless, Plaintiff agreed to a
15 general release as part of this settlement, though in any other context, Plaintiff would have sought at
16 least a \$10,000 payment in exchange for a general release.

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

22 As part of her duties as a private attorney general, Plaintiff provided all necessary information
23 and evidence that resulted in this settlement. Connelly Decl. ¶¶ 2-3. In addition to preparing for and
24 attending her deposition, Plaintiff met and conferred with her counsel on a number of occasions to
25 discuss the case. *Id.* ¶ 3. She provided information and documents to her counsel and made herself
26 available to answer any other questions. *Id.* Ultimately, Plaintiff’s efforts secured an exceptional result.

27 In addition to the invaluable services that Plaintiff provided, she also took a significant risk.
28 Connelly Decl. ¶ 4. Plaintiff risks prejudice in the future from other potential employers that may be less

1 willing to hire an individual who has filed suit against a prior employer—particularly a Section 226
2 wage statement lawsuit pursued on a representative basis. Plaintiff took this risk upon herself and the
3 State benefited. No other allegedly aggrieved employees had to face potential prejudice in future
4 employment. Nor did the State have to allocate its limited resources to ensure compliance with the
5 Labor Code.

6 **4. The Administration Costs Are Reasonable.**

7 Because the Agreement requires payments not only to Plaintiff, Plaintiff's Counsel, and the
8 LWDA, but also to other current and former employees, significant time and effort will be required to
9 administer the Agreement if it is approved by this Court. Among other things, the Administrator will
10 prepare and mail each absent employee's share and prepare appropriate tax forms for all parties who
11 receive payments under the Agreement. Similarly, any uncashed checks must be voided so that the
12 unclaimed amounts can be forwarded to the State of California Controller's Office Unclaimed Property
13 Fund. Agreement § 4.4.

14 Phoenix Settlement Administrators, a well-recognized settlement administrator, has quoted
15 Administration Costs not to exceed \$16,000.00 to administer the settlement. Yang Decl. ¶ 6; *see also*
16 Agreement § 3.1.3. The Administration Costs are reasonable and should be approved.

17 **CONCLUSION**

18 The proposed settlement would result in substantial monetary benefits to the State. It was the
19 result of informed, arm's length negotiations conducted by counsel experienced in wage and hour class
20 and representative action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no
21 reason to believe the proposal is outside the range of reasonableness for such a settlement. Accordingly,
22 for the benefit of the State and in furtherance of PAGA's policies, Plaintiff respectfully requests that the
23 Court grant approval of the settlement.

24 DATED: July 20, 2023

DIVERSITY LAW GROUP, P.C.

25
26 By: /s/ Simon L. Yang
27 Larry W. Lee
28 Simon L. Yang
Attorneys for Plaintiff