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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN DOE, DAVID GUDEMAN, and PAOLA CORREA, on behalf of the State of California and aggrieved employees,

Plaintiffs,

vs.

GOOGLE, INC., ALPHABET, INC. ADECCO USA INC., ADECCO GROUP NORTH AMERICA and ROES 1 through 10,

Defendants.

Case No. CGC-16-556034

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION FOR APPROVAL OF PAGA SETTLEMENT

Department: 304 (COMPLEX)
Judge: Hon. Curtis E.A. Karnow
Hearing Date: June 25, 2018
Time: 3:00 p.m.

Complaint Filed: December 20, 2016
Trial Date: November 6, 2017

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I. INTRODUCTION

Plaintiffs John Doe, David Gudeman, and Paola Correa ("Plaintiffs") and defendants Google Inc. and Alphabet, Inc. (collectively "Google") seek the Court's approval, pursuant to Labor Code section 2699(l), of a settlement of Plaintiffs' claims under the Labor Code Private Attorneys General Act ("PAGA"), arising from Google's use of an "Adult Content Liability Release." For the reasons explained below, the parties respectfully request that the Court approve the settlement.

II. FACTS & PROCEDURAL HISTORY

A. The Liability Release

On February 14, 2017, Plaintiffs Doe, Gudeman, and Correa filed a notice with the Labor Workforce and Development Agency ("LWDA") contending that Google's Adult Content Liability Release ("Liability Release") violated California Labor Code §§ 232.5 and 432.5. (Baker Decl. ¶ 2; Ex. 1). The Liability Release stated in full:

> *Confidential: For Google Employees and Temporary Workers on Assignment at Google Only*
>
> During my employment or assignment at Google, I may be exposed to sensitive "adult content", such as text, descriptions, graphics, pictures, and/or other files commonly referred to as being "adult" content.
>
> I acknowledge that exposure to this material may be a part of my essential job function and hereby release Google Inc. and its subsidiaries and affiliates from any and all liability associated with having this material present in the work environment, including but not limited to claims of harassment, hostile work environment and discrimination. This agreement does not change or impact the at-will status of my employment or my assignment at Google.

(Baker Decl. ¶ 2; Ex. 1 (Ex. 1)).

Plaintiffs argued that the Liability Release violated Labor Code § 232.5(a) and (b) because the Release was "confidential" and section 232.5(a) and (b) makes it unlawful for an employer to prohibit employees from "disclosing information about the employer's working conditions."

Plaintiffs also argued that the Liability Release violated Labor Code § 432.5 because it

required the release of unwaivable statutory claims under FEHA, Title VII, and other laws. Section 432.5 states that no employer "shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer . . . to be prohibited by law."

Google disputed the claims and contended that the "release" appropriately apprised employees and contingent workers assigned through Adecco that their essential job functions may include exposure to "adult content." Google further contended that: (1) the claims were not properly the subject of a representative action; (2) it "cured" any alleged violation of Labor Code section 232.5 (as described below); and (3) even if Plaintiff prevailed, any penalties awarded would be substantially reduced. Section 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part 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." *See Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112, 1136 ("[T]he trial court reasonably determined that an award of the maximum penalty amount would be unjust under the facts and circumstances of this case.").

B. The New Policy, the Cure Dispute, and the Third Amended Complaint

On March 17, 2017, Google, without conceding liability or fault, notified the LWDA that, "pursuant to Labor Code section 2699.3(c)(2)(A),[1] Google has elected to effectuate a 'cure' of the alleged violation in treating the [Liability Release] as confidential, by notifying employees that the [Liability Release] has been rescinded, will not be enforced, and will not be treated as confidential." (Baker Decl. ¶ 3; Ex. 2.) In place of the Liability Release, Google instituted the following policy:

[1] Because Labor Code § 232.5(a) or (b) is not listed in Labor Code § 2699.5, a violation of these provisions may be "cured" under certain circumstances. *See* Labor Code § 2699.3(c). Unless an aggrieved employee contests the cure, he or she may be prohibited from bringing suit. If the LWDA expressly accepts the cure, an aggrieved employee cannot file suit, but must instead appeal the LWDA's decision. Labor Code § 2699.3(c)(3).

> *All US Googlers and temporary workers are covered under this policy and if you previously signed our "Employee and Temporary Workers Adult Content Liability Release," that document is rescinded and will not be enforced.*
>
> *In addition, please be aware that neither this new policy, nor the "Employee and Temporary Worker Adult Content Liability Release" is or will be treated as "Confidential" material.*
>
> Depending on your role at Google, it is possible that you could be exposed to sensitive "adult content" or graphic or disturbing material that has been generated by Users, in the course of performing your regular job duties. For example, you might be exposed to such material as part of processing or investigating take-down or removal requests. Such content might include text descriptions, graphics, photographs, videos and/or other types of files or media containing concepts or images of a sexual and/or violent in nature.
>
> All Googlers and temporary workers assigned to work at Google are expected to bring to Google's attention right away any graphic or disturbing material that causes concern or distress. If a Googler or temporary worker no longer wishes to continue being placed in a position that exposes him/her to such material, he/she should inform Human Resources right away. Note, however, that Google may not be able to limit exposure to such material to the extent that such exposure is required by that individual's job responsibilities.
>
> This policy is not intended to alter or detract in any way from Google's policies prohibiting unlawful harassment. Google's policies prohibiting harassment remain in effect at all times, and any employee who engages in harassment or offensive conduct that violates applicable law and/or Google policy will be subject to discipline up to and including termination.

(Baker Decl. ¶ 3; Ex. 2 (Exs. C and D).

On March 27, 2017, Plaintiffs contested Google's cure effort. They argued that the cure was insufficient because Google failed to advise its former employees, as well as those working outside of California, that the Liability Release was not confidential. (Baker Decl. ¶ 4). Google responded to Plaintiffs' arguments. (Baker Decl. ¶ 4). The LWDA expressed no position on the matter. (Baker Decl. ¶ 4). Accordingly, on April 28, 2018, upon expiration of the relevant administration exhaustion periods, Plaintiffs filed a Third Amended Complaint (3AC) alleging that the Liability Release violated Labor Code §§ 232.5 and 432.5. (See 3AC ¶¶ 90-94, 160, 167).

If the parties had not resolved these claims, Google contends that it would have moved for summary adjudication on the issue.

C. Relevant Motion Practice

In May 2017, Google filed a demurrer to the 3AC. It argued, among other things, that Plaintiffs' claim against Google under Labor Code § 232.5 as to the Liability Release was preempted by *Garmon* and Plaintiff's claim against Google under Labor Code § 432.5 as to the Liability Release was impermissibly vague and uncertain. On June 27, 2017, the Court sustained Google's demurrer to the Labor Code § 232.5 claim, but overruled Google's demurrer as to the uncertainty of the Liability Release claim under Labor Code § 432.5.

In August 2017, co-defendant Adecco filed its own demurrer to Plaintiffs' 3AC. In addition to arguing *Garmon* preemption, Adecco also argued that the applicable limitations period under Labor Code § 432.5 was one year.[2] Plaintiffs' argue to the contrary. The Court ruled that a one-year limitations period applies:

> The parties agree that the statute of limitations for a PAGA claim is one year, and that the statute begins to run when the agreement is executed.
>
> Plaintiffs contend that because the releases that Correa was required to sign "never went away" and continued throughout her employment without being rescinded and without her obligations under the releases being released, liability existed for each new pay period.
>
> But the cause of action here accrues when the employer "require[s] any employee . . . to agree, in writing, to any term or condition which is known . . . to be prohibited by law." Lab. Code § 432.5. Correa executed the Social Event and GBike releases once, in 2015. There is no allegation or inference that Correa signed any releases or agreements (with Google or Adecco) after this event. This cause of action as to Adecco is time-barred.

(September 14, 2017 Order (references to briefs omitted)).

On October 4, 2017, in response to discovery, Google produced an agreement dated July

[2] Adecco made the limitations period argument in the context of challenging Correa's § 432.5 claims as to the GBike and Social Events Releases. The Court's reasoning, however, applies with equal force to the Liability Release claim.

7, 2016, signed by Correa that included the Liability Release language. (Baker Decl. ¶ 5; Ex. 3.) This agreement was signed within the limitations period.

On November 30, 2017, Google moved for judgment on the pleadings with respect to Plaintiffs' Liability Release claim, and Plaintiffs moved to compel a response to an RFP concerning the Liability Release claim. On December 26, 2017, the Court overruled Google's motion for judgment on the pleadings and granted Plaintiffs' motion to compel discovery.

III. THE SETTLEMENT AGREEMENT

After the above events, Google and Plaintiffs agreed to mediate this matter. As a result of this mediation, on March 22, 2018, they reached a Memorandum of Agreement as to the Liability Release claims.[3] Google and Plaintiffs subsequently entered into the long form settlement agreement presently before the Court. (Baker Decl. ¶ 6; Ex. 4). The material terms of this Agreement (for purposes of this motion) are as follows:

A. The Payment

Google will pay a total of $1,048,843.00 into a common fund to resolve the PAGA Liability Release claims identified in the Agreement. This settlement amount covers civil penalties (to be shared between the LWDA and aggrieved employees), as well as incentive payments, attorneys' fees, and litigation and settlement administration costs. (Ex. 4 (Agreement § III.C through I)). The LWDA will receive 75% of the "net" settlement amount (after fees, costs, and incentive payments are deducted). The aggrieved employees will receive 25% of the net settlement amount on a pro-rated basis. Each aggrieved employee covered by the release will receive the same amount. Each employee will also receive a notice explaining the payment.

B. Attorneys' Fees, Costs, Etc.

The Agreement permits Plaintiffs to apply for incentive payments of $1,000 each, attorneys' fees not to exceed 33% of the common fund, and actual litigation costs not to exceed

[3] The parties also reached settlement of a "medical release" claim alleged in the *Cassel v. Google* case pending in Santa Clara Superior Court. This settlement will presented to the *Cassel* court.

$25,000.[4] Absent something unanticipated, the settlement administration costs are estimated to be no more than $23,000. (Ex. 4 (Agreement § III.D, E, H)).

C. The Released Claims

In exchange for the Settlement Amount, the State and the identified aggrieved employees will release specified PAGA claims arising from the Liability Release. The aggrieved employees covered by the release are Google and Alphabet employees who signed any version of the Liability Release between February 14, 2016 and the present.[5] The aggrieved employees also include Adecco employees assigned to work at Google who signed any version of the Liability Release from February 14, 2016 to the present. (Ex. 4 (Agreement § I.E, I.O)). There are approximately 10,603 aggrieved employees covered by the release. (Ex. 4 (Agreement § III.B)).

D. Exclusions from the Release

The Agreement expressly does *not* release PAGA claims arising from the Liability Release of those temporary employees who worked at Google through staffing firms other than Adecco. (Ex. 4 (Agreement §§ I.K, I.R, III.R.1)). The Agreement expressly does *not* release PAGA claims arising from the Liability Release that Adecco employees who worked at Google may have against Adecco. (Ex. 4 (Agreement § I.K, I.R, III.R.1)).

E. Administration Process

The Agreement provides for a settlement administrator to distribute the common fund in accordance with a specified schedule. In distributing the settlement checks to the aggrieved employees, the settlement administrator will also provide a notice explaining the payment and the case. (Ex. 4 (Agreement § III.M)).

IV. ARGUMENT

A. Standard of Review

Labor Code § 2699(l)(2) states that "the superior court shall review and approve any

[4] Plaintiffs have filed a separation motion in support of their application for fees, costs, and incentive payments.

[5] Because Google rescinded and replaced the Liability Release on March 16, 2017, the applicable time frame as a practical matter is from February 14, 2016 to March 16, 2017 – 13 months.

settlement of any civil action filed pursuant to this part." Unfortunately, PAGA does not specify a standard of review for PAGA settlements, and there is no published appellate authority on the subject.

Existing law does, however, provide some guidance as to the appropriate standard of review. Plaintiffs contend, and for purposes of this motion Google does not contest, that the Court should look to: (1) the standard of review used in analogous statutory schemes; (2) Federal court decisions approving PAGA settlements; and (3) the purposes and policies of PAGA.

1. Analogous Statutory Schemes

A PAGA case is in the nature of a *qui tam* proceeding. *Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal.4th 348, 394. California has at least two other statutory schemes whereby an individual may sue on behalf of the State or in the public interest: The California False Claims Act and Proposition 65.[6] Under both schemes, a court must approve a settlement or dismissal of the action.

Under the California False Claims Act, a *qui tam* plaintiff may only dismiss the case with a court's (and the government's) consent. Gov't Code § 12652(c)(1). In deciding whether to give consent, a court must take into account "the best interests of the parties involved and the public purposes behind the act." *Id.* Moreover, if a *qui tam* plaintiff objects to a settlement between the government and a defendant, the court can only approve the settlement after finding it is "fair, adequate, and reasonable under all the circumstances." Gov't Code § 12652(e)(2)(B).

Similarly, Proposition 65 actions, like PAGA actions, are brought by private plaintiffs to safeguard public rights. *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America*

[6] A third statute, the Insurance Frauds Prevention Act ("IFPA"), also empowers "interested persons" to bring claims on behalf of the State to combat insurance fraud. Cal. Ins. Code § 1871.7. This statute sets forth a complicated formula for distributing settlement proceeds while also stating that the relator shall receive an amount that the court decides is "reasonable" for collecting civil penalties and damages, and that the court may allocate funds pursuant to a settlement agreement when it is in "the interests of justice." Cal. Ins. Code § 1871.7(g).

(2006) 141 Cal.App.4th 46, 63. In addition to complying with specified statutory criteria,[7] Prop 65 settlements may only be approved if: (1) they are "just" and (2) they "serve the public interest." *Id.* at 61-62. In making this determination, the *Kintetsu* court described the appropriate inquiry as similar to the "fair, reasonable, and adequate" test used in class actions. *Id.* at 61. The *Kintetsu* court also stated that, in determining whether to approve a Prop 65 settlement, a court should consider the policies underlying the statute. *Id.* at 63.

2. Federal Cases

In addition to analogous California law, several federal district court cases have also enunciated a standard for reviewing PAGA actions in the context of larger class action settlements.

In *O'Connor v. Uber Technologies* (N.D. Cal. 2016) 201 F.Supp.3d 1110, the district court denied a class settlement that included PAGA claims because the PAGA portion of the settlement was not "fair and adequate in view of the purposes and policies of the statute." *Id.* at 1135. Following *O'Connor*, other federal courts have concluded that a PAGA settlement should only be approved when it is "genuine and meaningful, [and] consistent with the underlying purpose of the statute to benefit the public." *Viceral v. Minstras Group, Inc.* (N.D.Cal. Oct. 11, 2016) 2016 WL 5907869 * 9. *See, also, Ferreri v. Bask Technology, Inc.* (S.D. Cal Nov. 21, 2016) 2016 WL 6833927, * 5 (evaluating PAGA settlement in light of purposes and policies of PAGA).

3. The Purposes and Policies of PAGA[8]

PAGA was passed because the Legislature believed it necessary "to achieve maximum compliance with state labor laws" and "to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." 2003 Cal. Legis. Serv. Ch. 906 §

[7] The expressly specified statutory criteria in Proposition 65 settlements are: (1) the adequacy of the Prop 65 warnings; (2) the reasonableness of the attorneys' fees; and (3) the reasonableness of the penalty amount. *Id.* at 62.

[8] Google does not necessarily agree that, in practice, PAGA actions—or this PAGA action in particular—advance the public policies described herein. However, it agrees with Plaintiff that the settlement should be approved.

1(a). The Legislature further found that, while self-policing efforts have had some success, "in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." *Id.* at § 1(b). Through PAGA, the Legislature thus: (1) sought to "enlist[] willing citizens in the task of private enforcement," *Iskanian*, 59 Cal.4th at 390; (2) "deputized" aggrieved employees to sue on behalf of the State to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys' fees, and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel's Digest). In bringing a PAGA action, "[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement agencies, representing the same legal right and interest as those agencies . . . ." *Iskanian*, 59 Cal.4th at 394.

As for the interests of the LWDA (in whose shoes Plaintiffs stand), its top enforcement priorities are "to vigorously enforce minimum labor standards in order to ensure employers are not required or permitted to work under substandard unlawful conditions . . ." and to "protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." Labor Code §90.5(a). Moreover, in addition to the collection of civil penalties,[9] Labor Code § 1194.5 (which is specifically referenced in Labor Code § 90.5) authorizes the LWDA to seek injunctive relief.

***

In light of the above law, as well as the policies and purposes of PAGA, Plaintiffs propose (and for purposes of this motion Google does not contest) that the Court consider the following factors in determining whether to approve the settlement:

(1) The extent to which the settlement achieves compliance with state labor laws.

(2) The extent to which the settlement deters violations of the state labor laws.

(3) Whether the settlement serves to enlist private citizens in public enforcement of PAGA.

(4) Whether the settlement is otherwise "just" and "in the public interest."

[9] Note that, under PAGA, civil penalties are primarily intended as a deterrent, and not as a financing mechanism for the LWDA and the State's general fund. While the State clearly has an interest "in receiving the proceeds of civil penalties," the penalties are "used to deter violations." *Iskanian*, 59 Cal.4th at 313.

Because the proposed settlement reasonably and fairly advances each of the above factors, the parties ask that it be approved.

B. The Settlement Should Be Approved

1. Although the Parties Dispute Whether Any Violations Have Occurred, the Settlement Achieves Compliance With, and Deters Violations of, State Labor Laws

As described above, in connection with its efforts to "cure" any alleged violation of Labor Code section 232.5, Google rescinded the Release and instituted a new, non-confidential, policy concerning the presence of "adult content" in the workplace. Therefore, while the parties dispute whether the Liability Release violated the law, as well as whether the alleged Labor Code § 232.5 violation was adequately "cured" as part of PAGA's administrative exhaustion process, the litigation has undisputedly achieved compliance with Labor Code § 232.5 and 432.5 as it relates to the Liability Release. In addition, Google has agreed to pay a substantial sum in settlement of the Liability Release PAGA claims. Accordingly, the proposed settlement reasonably advances PAGA's purpose by achieving compliance with the Labor Code and deterring similar violations.

2. The Settlement Serves to Enlist Private Citizens in Public Enforcement of PAGA

Plaintiffs also believe the proposed settlement acts to encourage private enforcement of PAGA. Through the settlement, Plaintiffs may receive a modest incentive payment, Plaintiffs' counsel will receive attorneys' fees and costs as determined by the Court, and all aggrieved employees will receive a 25% share of the net settlement amount, as well as notice of the claim.

3. The Settlement Is "Just" and "In the Public Interest"

Finally, the proposed settlement is both just and in the public's interest.

First, the settlement reasonably values the Liability Release PAGA claims as to Google. While Plaintiffs believe the claims are meritorious and that they would have recovered unreduced penalties, as described above Google asserted numerous defenses to the claims. Moreover, as noted above, the Court dismissed Plaintiffs' claims under Labor Code § 232.5 as to the Liability Release on preemption grounds, and the Court rejected Plaintiffs' "continuous accrual" argument

under Labor Code § 432.5, noting that "Correa executed . . . the releases once." (9.05.17 Order at p. 4).

In addition, PAGA awards penalties of "one hundred dollars ($100) for each aggrieved employee per pay period for the *initial* violation and two hundred dollars ($200) for each aggrieved employee per pay period for each *subsequent* violation." Labor Code § 2699(f)(2). At least one appellate court holds, in the context of other Labor Code violations, that the "subsequent" violation penalty rate for a Labor Code violation does not apply until an employer is notified that its conduct violates the law. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207-09.[10]

In light of the above law and rulings, Google has good arguments that its maximum liability for requiring employees to sign the Liability Release is $100 per signature.

Nevertheless, Google has agreed to pay a gross amount of $1,048,843.00 in exchange for a PAGA release involving approximately 10,603 aggrieved employees who signed the Liability Release in the applicable time frame. In other words, Google is paying almost $99.00 per violation against an arguable maximum recovery against Google – based on this Court's rulings and *Amaral* -- of $100 per violation. (In addition, both Google and Adecco also strongly dispute that the Liability Release violates Labor Code § 432.5 in the first place.) If the Court grants Plaintiffs' application for fees, costs and incentive payments, the State and the aggrieved employees will still share approximately $65 per violation in civil penalties – still a significant and reasonable recovery.[11]

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[10] Plaintiffs disagree with the Court's *Garmon* preemption analysis. Plaintiffs also disagree with the Court's finding as to the applicable limitations period under § 432.5, as well as whether the same logic applies to employees who signed the Release within the applicable period and remained subject to the release throughout and after their employment. Plaintiff also believes that *Amaral* does not apply to the present case and can otherwise be distinguished. Nevertheless, the above rulings materially impact the litigation value of the Liability Release claims. While Plaintiffs firmly believe (and Google disputes) that the Court's rulings will be reversed, this could easily take years, during which time the State, absent settlement, receives nothing.

[11] It is appropriate to consider the gross award (before deductions) in comparing the litigation value of a case against a settlement award. Among other things, it is appropriate to pay fees out of a common fund, even in a fee-shifting case, "to avoid the unjust enrichment of those who

In light of the above, the settlement reasonably values the Liability Release claims.

Second, the settlement expressly excludes from its scope both Adecco and other staffing firms that assign employees to work at Google. Therefore, the release is tailored to the claims asserted against Google.[12]

Third, the proposed settlement, even with deductions, provides a substantial sum to the State: $488,793.00. It also provides a small sum to each employee (around $15.00) on a pro-rata basis. (The aggregate sum provided to employees (assuming all deductions) is $162,931.603.) However, the purpose of PAGA is not to compensate employees, who retain any private right of action they may have under the applicable Labor Code provisions. In that respect, the settlement also requires that each employee receive a notice that describes this litigation and the settlement sum. Plaintiffs contend this notice will educate aggrieved employees as to the requirements of the Labor Code, something that is in the public interest and consistent with PAGA's purpose. *See* Labor Code § 2699(j) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for [among other things] "education of employers and employees about their rights and responsibilities under this code.")

Fourth, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu, supra*, 141 Cal.App.4th at 63. Because the proposed settlement is neither unjust nor ignores the public interest, it should be approved. *Id.*

C. Payment of Attorneys' Fees, Costs, and Incentive Payments

Finally, the settlement requires that attorney fees, costs, and incentive payments be paid from the common fund. This is appropriate, even in the non-class action context. "California has long recognized, as an exception to the general American rule that parties bear the costs of their own attorneys, the proprietary of awarding an attorney fee to a party who has recovered or

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benefit from the fund that is created, protected, or increased by litigation and who otherwise bear none of the litigation costs." *Sobel v. Hertz Corporation* (D. Nev. 2014) 53 F.Supp.3d 1319, 1326.

[12] Plaintiffs understand that Adecco argues the proposed settlement bars the State's and Correa's claims against Adecco as it relates to the Liability Release. Correa disagrees. Google and Plaintiffs' intent, as evidenced by the plain language of the Settlement Agreement, is to not effectuate a release of claims as to Adecco.

preserved a monetary fund for the benefit of himself or herself and others. In awarding a fee from the fund or from the other benefited parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment." *Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.5th 480, 561 (approving percentage of recovery method in wage and hour class action); *Sobel*, 53 F.Supp.3d at 1330 (approving Plaintiff's right to seek fees from common fund in fee shifting case); *Fox v. Hale & Norcross Silver Min. Co.* (1895) 108 Cal. 475 (approving fee payment from common fund in early derivative case).

Plaintiffs have filed a contemporaneous fee motion that further explains the proprietary of Plaintiffs' request for fees, costs, and incentive payments from the common fund. That said, the proposed settlement is not contingent upon any particular fee, incentive payment, or cost award (other than with respect to the settlement administrator's costs), and should not serve as a basis for rejecting the proposed settlement.[13]

V. CONCLUSION

For all the reasons discussed above, the parties request that the Court approve the proposed settlement, approve the proposed notice, and adopt the Order and schedule attached to this motion.

Respectfully submitted:

DATED: June 1, 2018

BAKER CURTIS & SCHWARTZ, P.C.

By: _____
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JOHN DOE, DAVID GUDEMAN
AND PAOLA CORREA

DATED: June 1, 2018

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Attorneys for Defendants
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[13] Note that, as is normally the case, Plaintiffs reserve the right to appeal the Court's order concerning fees, costs, or incentive payments.