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11 JOHN DOE, DAVID GUDEMAN
12 AND PAOLA CORREA

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

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

18 Plaintiffs,

19 vs.

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

23 Defendants.

Case No. CGC-16-556034

**PLAINTIFF PAOLA CORREA'S
NOTICE OF MOTION AND MOTION
FOR INCENTIVE PAYMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Hearing Date: March 4, 2019

Time: 2:00 p.m.

Department: 304 (COMPLEX)

Judge: Hon. A.C. Massullo

Complaint Filed: December 20, 2016

Trial Date: Not Set

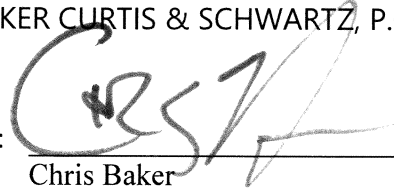
24 PLEASE TAKE NOTICE that on March 4, 2019, at 2:00 p.m., before the Honorable A.C.
25 Massullo of the California Superior Court, City and County of San Francisco, Department 304,
26 Plaintiff Paola Correa will and hereby does move the Court, pursuant to Labor Code § 2699(g),
27 California Code of Civil Procedure 1021.5, and the Court's inherent authority and applicable case
28 law, for an order awarding an incentive payment to Plaintiff in the amount of \$1000 in connection
with the requested approval of the PAGA Settlement in this case.

1 This Motion is based on this Notice of Motion, the Memorandum of Points and
2 Authorities attached to this Motion, the Declaration and Request for Judicial Notice
3 accompanying this motion, all pleadings and papers filed herein, the arguments of counsel, and
4 any other matters properly before the Court.

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DATED: January 28, 2019

Respectfully submitted:
BAKER CURTIS & SCHWARTZ, P.C.

By: 
Chris Baker
Attorneys for Plaintiffs
JOHN DOE, DAVID GUEDEMAN
AND PAOLA CORREA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After substantial litigation, Adecco USA, Inc. has agreed to pay \$140,000 into a common
4 fund in exchange for the release of PAGA claims arising from its use of an Adult Content (AC)
5 Liability Release. The settlement amount excludes attorneys fees and costs, which will be the
6 subject of separate negotiation or motion practice in the event the settlement is approved. The
7 settlement permits, however, a payment of \$1,000 to Correa (the former Adecco employee assigned
8 to work at Google) as an incentive and enhancement award for bringing this action, and as a
9 recognition of her service to the State and the other aggrieved employees.

10 Correa has provided, and continues to provide, material support in this case. Without her,
11 no case against Adecco would have been brought.

12 **II. FACTS**

13 The facts of this case are detailed in the motion for final approval and are not repeated here.
14 As relevant to Correa’s request for a \$1,000 incentive payment:

15 1. Correa previously received a modest \$1,000 payment in connection with the Google
16 Settlement.

17 2. Since that time, Correa has continued to be actively involved in this case. She
18 attended a mediation with Adecco and she has continued to be committed to this case. Most
19 recently, she provided an extensive declaration in support of her motion for summary judgment
20 against Adecco. She has also responded to discovery.

21 3. Incentive payments awarded to PAGA plaintiffs typically run much higher than
22 Correa’s \$1,000 request, e.g., \$10,000 or more. RJN, **Ex 1** *Garrett v. Bank of America*, Alameda
23 Superior Court Case No. RG13699027 (October 28, 2016) (Awarding \$25,000 to each of three
24 PAGA plaintiffs as Service Awards); **Ex 2**, *Brewer v. Connell Chevrolet*, Orange County
25 Superior Court, Case No. 30-2016-00852123 at p. 2 ¶5 (approving \$15,000 individual settlement
26 payment to PAGA plaintiff); **Ex. 3**, *Jones v. J.C. Penny Corporation*, Los Angeles Superior
27 Court, Case No. BC451823 at 5, Ex. 1 at 3-4 (awarding \$10,000 to PAGA plaintiff as service
28 award); **Ex. 4**, *Garcia v. Macy’s West Stores*, San Bernardino Superior Court, Case No.

1 CIVDS1516007 at 2 ¶ 6 (awarding \$10,000 to PAGA plaintiff as service award).

2 In light of these facts and others, Correa seeks an incentive payment of \$1,000 from the
3 common fund settlement.

4 **III. ARGUMENT**

5 Incentive payments to named plaintiffs are appropriate in representative litigation,
6 including class cases (where an individual sues on behalf of those similarly-situated) and
7 derivative cases (where an individual sues on behalf of a legal entity). *In re Cellphone Fee*
8 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1383 (class case); *Barovic v. Ballmer* (W.D.
9 Wash. 2016) 2016 WL 199674, * 5. “The rationale for making an enhancement or incentive
10 awards to named plaintiffs is that they should be compensated for the expense or risk they have
11 incurred in conferring a benefit on other members of the class.” Among other things, incentive
12 payments to named plaintiffs can be used to “recognize their willingness to act as a private
13 attorney general.” *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958.
14 Criteria considered when deciding an incentive award include: (1) the risk to the representative;
15 (2) the notoriety and difficulties encountered by the representative; (3) the duration of the
16 litigation; and (4) the personal benefit (or lack thereof).

17 While not expressly saying so, PAGA clearly supports incentive awards for named
18 plaintiffs. As with class and derivative cases, the named plaintiffs bring PAGA claims on behalf
19 of a legal entity (the State), and similarly-situated employees share in any resolution. Moreover,
20 “the lack of government resources to enforce the Labor Code led to a legislative choice to
21 deputize and incentivize employees uniquely positioned to detect and prosecute such violations
22 through PAGA”. *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348, 390.
23 While a 25% share of civil penalties would clearly be sufficient incentive if the named plaintiffs
24 collected *the entire 25%*, that is not how PAGA has been construed. *Id.* at 382 (stating that,
25 under PAGA “a portion of the penalty goes not only to the citizen bringing the suit but to all
26 employees affected by the Labor Code violation.”) Absent the possibility of an incentive
27 payment, less employees would be willing to step forward. Absent incentive payments, the
28 primary purpose of PAGA – private enforcement of the Labor Code – would be undermined.

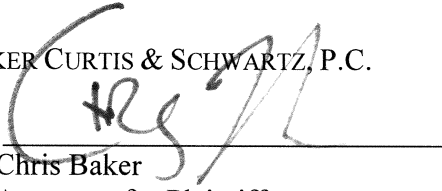
1 Here, Plaintiff Correa requests a modest incentive payment of \$1000. Correa has
2 provided material support to this case, which now spans more than two years. She has receiving
3 no real financial benefit because of the case, and she has risked (and potentially faces)
4 reputational harm. She continues to bear the risks associated with this litigation.

5 Accordingly, Correa asks that the Court approve the requested incentive payment.

6 **III. CONCLUSION**

7 For all of the reasons set forth above, Plaintiff respectfully requests that the Court, in
8 addition to approving the settlement, award Plaintiff Correa \$1,000 from the common fund as an
9 incentive payment.

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11 DATED: January 28, 2019

BAKER CURTIS & SCHWARTZ, P.C.
BY: 
Chris Baker
Attorneys for Plaintiffs
John Doe, David Gudeman and Paola Correa

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