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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TANAIA ATTAWAY & ARMANDO
MONTANO, on behalf of themselves and all
other aggrieved employees,

Plaintiff,

v.

ALLIANCE RESIDENTIAL, LLC., an Arizona
Limited Liability Company; and DOES 1-50,
inclusive.

Defendants.

JCCP NO. 5173

Assigned to Hon. Theodore C. Zayner

**NOTICE OF MOTION AND MOTION TO
APPROVE PAGA SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEY GENERAL ACT OF 2004;
MEMORANDUM OF POINTS AN
AUTHORITIES IN SUPPORT THEREOF**

HEARING DATE

Date: May 24, 2023
Time: 1:30 p.m.
Dept.: 19

Complaint Filed: March 11, 2020
FAC Filed: June 22, 2021
SAC Filed: December 27, 2022

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

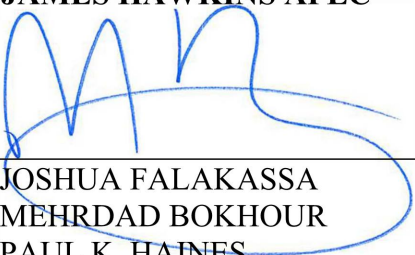
PLEASE TAKE NOTICE that on May 24, 2023, at 1:30 p.m., or as soon thereafter as this matter may be heard by the Honorable Theodore C. Zayner in Department 19 of the Santa Clara County Superior Court, located at 191 North First Street San Jose, CA 95113, Plaintiffs Tania Attaway, Armando Montano, and Mahogani Woods. (“Plaintiffs”) will and hereby do move this Court for an order approving a settlement pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”).

This motion is based upon this Memorandum of Points and Authorities; the Declarations of Joshua Falakassa, Mehrdad Bokhour, Paul K. Haines, and James R. Hawkins in support thereof; Settlement Agreement and Release of PAGA Claims (the “Settlement Agreement” and/or the “Settlement”); the [Proposed] Order granting approval of PAGA Settlement; all other records, pleadings, and papers on file in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: April 18, 2023

**FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.
HAINES LAW GROUP, APC
JAMES HAWKINS APLC**

BY: _____


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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This PAGA representative action stems from the alleged failure of Defendant Alliance
4 Residential, LLC (“Alliance”) (“Defendant”) to properly provide compliant duty-free rest breaks,
5 overtime pay, and reimbursement for necessary business expenses, along with derivative wage
6 statement and waiting time penalty claims on behalf of all aggrieved employees and the State of
7 California for civil penalties under the Labor Code Private Attorneys General Act of 2004,
8 California Labor Code § 2698 *et seq.* (“PAGA”).

9 The PAGA action is a type of qui tam action filed on behalf of the state to assist it with
10 labor law enforcement. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-382.
11 As such, the state is the real party in interest in PAGA actions. *Id.* at 382. The State of California
12 was timely served with a copy of the Settlement Agreement and Release of PAGA Claims (the
13 “Settlement Agreement”) concurrently filed with this instant Motion to Approve the PAGA
14 Settlement.

15 Plaintiffs Tania Attaway, Armando Montano, and Mahogani Woods (collectively
16 “Plaintiffs”) brought this action on behalf of themselves and the aggrieved employees who worked
17 for Defendant as non-exempt hourly employees, within the State of California from January 15,
18 2019 through the date that the Court approves this settlement (the “PAGA Members”). The PAGA
19 Members contend that Defendant: (1) failed to pay minimum/overtime/reporting time wages, (2)
20 failed to authorize and/or permit lawful meal/rest periods, (3) failed to issue and/or keep accurate
21 wage statements and timekeeping records, (4) failed to timely pay wages due and payable during
22 employment; (5) failed to pay all earned wages due to terminated/resigned employees, (6) failed to
23 indemnify all necessary business expenses; (7) failed to pay sick leave at the proper rate, (8) failed
24 to provide commission statements, agreements, or notices, and (9) owes civil penalties under
25 PAGA. Plaintiffs alleges that Defendant owes PAGA penalties as a result of its alleged violations of
26 various Labor Code sections

27 Defendant denies these claims, denies any fault or wrongdoing, and disputes Plaintiffs’
28 characterization of liability, and damages/penalties. Thus, the Parties fully dispute the merits of the

1 claims and defenses.

2 In an attempt to resolve the Action¹, the Parties engaged in extensive discussions, as well as
3 negotiations and the exchange of informal discovery. On April 16, 2021, the parties to the Attaway
4 and Montano actions participated in a private mediation with Lou Marlin, Esq., a well-regarded
5 mediator experienced in mediating complex labor and employment matters. Settlement Agreement
6 § II(E). On December 30, 2021, the parties to the Woods Action participated in a private mediation
7 with Stephanie Chow, a well-regarded mediator experienced in mediating complex labor and
8 employment matters. *Id.* Neither mediation resulted in a settlement being reached. *Id.* All Parties
9 continued to negotiate and were able to reach an agreement on terms that would be mutually
10 acceptable. Settlement Agreement § II(F). After many months of negotiation, the Parties agreed to
11 settle the Action and agreed to the terms and/or conditions set forth in the Settlement Agreement
12 attached at **Exhibit “A”** to Declaration of Mehrdad Bokhour (“Bokhour Decl.”) filed concurrently
13 herewith.

14 Now with a comprehensive Settlement Agreement that resolves the claims alleged in this
15 case, Plaintiffs seek this Court’s approval of the \$500,000.00 Total Settlement Amount involving
16 approximately 1,154 PAGA Members. For estimation purposes only, assuming *arguendo* that
17 distributions were pro rata across the 1,154 PAGA Members (in reality, it is pro rata based on
18 proportionate Pay Periods worked), the average payment to each PAGA Member is approximately
19 \$55.25. This settlement merits approval because it fulfills the purpose of PAGA (*i.e.*, to deter
20 violations of the Labor Code and secure obedience of California’s labor laws; and to provide relief
21 that is genuine, meaningful, and consistent with California’s goal of benefitting the public through
22 enforcement of labor laws).

23 Because this is a PAGA-only settlement, the process for approval is straight-forward: “The
24 superior court shall review and approve any settlement of any civil action filed pursuant to this
25 part.” (Labor Code § 2699(1)(2).) Based on the California Supreme Court’s holdings in *Arias v.*

26 _____
27 ¹ “Action” means, collectively, the following lawsuits entitled: (a) Tanaia Attaway v. Alliance Residential, LLC, filed
28 in the Superior Court, County of Santa Clara, Case No. 20CV365134. (b) Armando Montano v. Alliance Residential,
LLC, filed in the Superior Court, County of Riverside, Case Number RIC2002097. (c) Mahogani Woods v. Alliance
Residential, LLC et al., filed in the Superior Court, County of Los Angeles, Case No. 21STCV29050. (Settlement
Agreement § I(A).)

1 *Superior Court*, 46 Cal.4th 969 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59
2 Cal.4th 348 (2014), there is no requirement under PAGA for Plaintiffs to establish the requirements
3 of class certification (*i.e.* numerosity, typicality, commonality and adequacy) nor is there the usual
4 two-step preliminary and final approval process as found in class actions. Rather, this PAGA-only
5 settlement merely requires a one-step review and approval process. For these reasons and those
6 discussed below, the Parties now seek the Court's approval of the Settlement.

7 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 **A. Factual Background**

9 Defendant Alliance Residential owns, manages, and redevelops apartment communities
10 across the United States and California. The company provides third-party property and asset
11 management services with a management portfolio comprised of hundreds of high-rises, mid-rises,
12 garden-style properties, and student housing facilities. Alliance Residential employs a variety of
13 non-exempt employees throughout all of California. (Bokhour Decl. ¶ 13.) Plaintiffs, along with all
14 PAGA Members, were classified as hourly-paid employees, non-exempt from overtime
15 compensation.

16 During the relevant time period, Plaintiffs allege, among other things, that Defendant failed
17 to provide Plaintiffs and other similarly situated employees with all overtime compensation at the
18 appropriate premium rate, failed to provide Plaintiffs and other aggrieved employees with all
19 minimum wages, failed to provide Plaintiffs and other aggrieved employees with all of their
20 statutorily mandated meal and/or rest periods, failed to compensate Plaintiffs and aggrieved
21 employees with all earnings at their separation of employment, failed to reimburse Plaintiffs and
22 aggrieved employees for all necessary business expenditures and failed to furnish Plaintiffs and
23 other aggrieved employees with complete, accurate, itemized wage statements. (Bokhour Decl. ¶
24 14.)

25 For example, Defendant's policy and/or practice of failing to relieve employees of all duties
26 during their rest periods and disseminating written policies mandating employees to remain on the
27 premises during rest periods resulted in a rest period requirement violation. (Bokhour Decl. ¶ 15.)
28 Moreover, Plaintiffs and aggrieved employees were regularly required to work more than 8 hours in

1 a workday and/or 40 hours in a workweek. However, Defendant failed to include all compensation,
2 including but not limited to, non-discretionary “Quarterly Incentive Program bonuses,” when
3 calculating the regular rate for purposes of calculating overtime wages. (Bokhour Decl. ¶ 16.)

4 **B. Procedural History**

5 On or about January 15, 2020, Armando Montano filed with the LWDA, a notice under
6 Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA to recover civil
7 penalties for the violation of Labor Code section 226 (“Montano PAGA Notice”). On June 25,
8 2020, Plaintiff Montano filed a PAGA representative action against Alliance Residential in the
9 Superior Court of California for the County of Riverside, Case Number RIC2002097, seeking civil
10 penalties under PAGA on behalf of himself and Aggrieved Employees for the violation alleged in
11 the Montano PAGA Notice (the “Montano Action”).

12 On or about March 11, 2020, Tanaia Attaway filed with the LWDA a notice under Labor
13 Code section 2699.3 stating she intended to serve as a proxy of the LWDA to recover civil penalties
14 for various Labor Code violations (“Attaway PAGA Notice”). On March 13, 2020, Plaintiff
15 Attaway filed a putative class and PAGA representative action against Alliance in the Superior
16 Court of California for the County of Santa Clara, Case Number 20CV365134, seeking civil
17 penalties under PAGA on behalf of himself and Aggrieved Employees for the violations alleged in
18 the Attaway PAGA Notice (the “Attaway Action”). On March 12, 2021, a Petition for
19 Coordination of the Montano Action and the Attaway Action was submitted to the Chairperson of
20 the Judicial Council. On May 26, 2021, the Santa Clara County Court granted the Petition for
21 Coordination, with Santa Clara County Court as the court to hear the coordinated actions. (Bokhour
22 Decl. ¶ 19.)

23 On or about June 1, 2021, Mahogani Woods filed with the LWDA a notice under Labor
24 Code section 2699.3 stating she intended to serve as a proxy of the LWDA to recover civil penalties
25 for various Labor Code violations (“Woods PAGA Notice”). On August 6, 2021, Plaintiff Woods
26 filed a PAGA representative action against Alliance and Greystar Real Estate Partners, LLC in the
27 Superior Court of California for the County of Los Angeles, Case Number 21STCV29050, seeking
28 civil penalties under PAGA on behalf of himself and Aggrieved Employees for the violations

1 alleged in the Woods PAGA Notice (the “Woods Action”).² (Bokhour Decl. ¶ 20.)

2 The PAGA Notices are required under Labor Code § 2699.3(a)(1)(A) as a prerequisite to
3 bringing a PAGA representative claim against an employer. The LWDA did not respond to any of
4 the aforementioned PAGA Notices, thus allowing Plaintiffs to file the Action. Labor Code §
5 2699.3(a)(2)(A). (Bokhour Decl. ¶ 18.)

6 Although Defendant denies the allegations and has vowed to vigorously defend against
7 them, the Parties agreed to attempt an informal resolution by way of mediation. (Bokhour Decl. ¶
8 23.) In preparation for mediation, the Parties exchanged documents and information that allowed all
9 Parties to evaluate the potential exposure and potential risk, such as a sampling of time and payroll
10 records for the PAGA Members, review of employee handbooks and relevant meal and rest break
11 policies, along with timekeeping and overtime procedures, wage statements, and the total number of
12 employees and workweeks during the PAGA period. (Bokhour Decl. ¶ 24.) During this process,
13 PAGA Counsel analyzed, researched, and investigated the potential issues, including matters
14 related to the calculation of damages, trial management, and appellate issues and risks. (Bokhour
15 Decl. ¶ 25.)

16 As set forth above, the Parties attended mediation with experienced mediators in wage and
17 hour matters. (Bokhour Decl. ¶ 26.) During the mediations, the Parties exchanged further
18 information and discussed all aspects of the case, including the risks and delays of litigation, the
19 risk associated with proceeding in a representative capacity, liability under the claims asserted, and
20 the ability to recover and measure damages and/or penalties. (*Id.*)

21 The settlement negotiations were at all times at arm’s length, although conducted in a
22 professional manner, and were adversarial. (*Id.*) The Parties ultimately reached an agreement after
23 the mediations regarding the major terms of the settlement and subsequently finalized those terms
24 in a long-form Settlement Agreement. (Bokhour Decl. ¶ 27.) This settlement was the culmination of
25 protracted discussions between the Parties following a thorough analysis of the pertinent facts and
26 law at issue. (*Id.*) The Parties now present the Settlement Agreement to this Court for approval.
27 (Bokhour Decl. ¶ 22.)

28 _____
² Plaintiff Woods subsequently dismissed Greystar Real Estate Partners, LLC from the Woods Action.

1 **III. PAGA AND ITS REQUIREMENTS**

2 PAGA provides an enforcement mechanism for California's labor laws by enlisting
3 individual plaintiffs as private attorneys general to recover civil penalties for the state, with a share
4 also going to the aggrieved employees. Due to the lack of financing for California's agencies, and
5 the substantial number of Labor Code violations by California employers, the California Legislature
6 found that it was in the public interest to allow aggrieved employees to act as "private attorneys
7 general" to enforce and recover civil penalties on behalf of the State of California for Labor Code
8 violations committed by employers. *Arias, supra*, 46 Cal.4th at 980. As the Legislature observed,
9 "the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of
10 civil penalties as provided in the Labor Code." Stats. 2003 ch. 906, § 1(b).

11 Moreover, the Labor Code's primary purpose is to "ensure employees are not required or
12 permitted to work under substandard unlawful conditions ... and to protect employers who comply
13 with the law from those who attempt to gain a competitive advantage at the expense of their
14 workers by failing to comply with minimum labor standards." Labor Code § 90.5(a). Therefore, the
15 Legislature determined that "adequate financing of labor law enforcement was necessary to achieve
16 maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies
17 had declined and were unlikely to keep pace with the future growth of the labor market, and that it
18 was therefore in the public interest to allow aggrieved employees, acting as private attorneys
19 general, to recover civil penalties for Labor Code violations, with the understanding that labor law
20 enforcement agencies were to retain primacy over private enforcement efforts." Thus, Plaintiffs,
21 acting as a private attorney general and proxy for the State of California, filed this action seeking
22 civil penalties for Defendant's alleged violations of the Labor Code.

23 Penalties recovered under PAGA "shall be distributed as follows: 75 percent to the Labor
24 and Workforce Development Agency for enforcement of labor laws and education of employers
25 and employees about their rights and responsibilities under this code ...; and 25 percent to the
26 aggrieved employees." Lab. Code § 2699(i).

27 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
28 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges

1 the employer has violated. Labor Code § 2699.3(a)(l). This notice provides the LWDA with the
2 opportunity to investigate and prosecute the claim. The employee may only sue on the state's
3 behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not intend to
4 investigate, or investigates and does not issue a citation within 185 days. Labor Code §§
5 2699.3(a)(2), 2699(h).

6 In this case, Plaintiffs provided the LWDA with the aforementioned PAGA Notices advising
7 it of the alleged Labor Code violations, but the LWDA deferred the prosecution of these violations
8 to Plaintiffs and PAGA Counsel. Accordingly, the settlement and the \$500,000.00 common fund
9 created by it for the benefit of the State and PAGA Members, is solely the result of the work
10 performed by Plaintiffs and PAGA Counsel on this case – all while the PAGA Members will
11 preserve their own separate individual claims should they wish to pursue them.

12 Any settlement of a PAGA action brought by an aggrieved employee must be approved by
13 the court. Lab. Code § 2699(1)(2). In 2009, the California Supreme Court considered the PAGA
14 approval process and, more specifically, whether an aggrieved employee needs to meet class
15 certification requirements. *Arias, supra*, 46 Cal.4th at 976. After a substantial review of the
16 legislative history of PAGA, the Court held that an aggrieved employee's representative action
17 brought on behalf of the state and other aggrieved employees against an employer for PAGA
18 violations **does not** need to meet the requirements for class certification nor does there need to be
19 notice to the other employees. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under
20 PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986.
21 Thus, the Court reviews any proposed settlement and approves it if it is deemed to be fair and
22 reasonable.

23 Accordingly, the Parties to this current PAGA action have reached such an agreement and
24 now seek this Court's approval of the Settlement.

25 **IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

26 The following is a summary of the principal terms of the Settlement Agreement.

27 **A. PAGA Members and Terms of the Settlement**

28 PAGA Members are defined as, "any non-exempt hourly employees of Defendant [and

Greystar Real Estate, LLC] in California, who worked for Alliance from January 15, 2019 through the date the settlement is approved by the Court.” (Settlement Agreement § I(O).) The number of PAGA Members, including Plaintiffs, is estimated to be 1,154 individuals, *see*, (Bokhour Decl. ¶ 28), who worked approximately 33,029 pay periods during the relevant time period. (*Id.*)

The Settlement provides that Defendant will pay a ***Total Settlement Amount of Five Hundred Thousand Dollars (\$500,000.00)*** (the “Total Settlement Amount”). (Settlement Agreement § I(AA). The Total Settlement Amount is the maximum amount Defendant can be required to pay under this Settlement, including all: (1) penalty payments to the PAGA Members by virtue of payments through a settlement administrator; (2) PAGA Counsel’s Fees; (3) PAGA Counsel’s Costs; (4) settlement expenses, including payment to the Settlement Administrator; (5) PAGA penalties paid to the State of California; and (6) service payments to Plaintiffs. (*Id.*) After payment of the PAGA Counsel’s Fees, PAGA Counsel’s Costs, Plaintiffs’ Service Awards and Settlement Administration Costs, approximately \$255,000.00 remains (the “Net Settlement Amount”). (Settlement Agreement § I(I)).

B. Settlement Allocation to the LWDA and PAGA Members

Pursuant to the Settlement Agreement, the Net Settlement Amount is approximately \$255,000.00 and shall be designated as PAGA Penalties to be allocated between the LWDA and the PAGA Members pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (the “PAGA Amount”) and 25% paid to the PAGA Members as Individual Settlement Payments on a pro-rata basis.

The following chart reflects the estimated payments pursuant to the Settlement Agreement:

	Total Amount
<i>Settlement Amount</i>	\$500,000.00
PAGA Counsel’s Fees (35%)	\$175,000.00
PAGA Counsel’s Costs (<i>not to exceed</i> \$25,000)	\$23,544.46
Plaintiffs’ Service Award (\$10,000 each)	\$30,000.00
Administration Costs (<i>not to exceed</i> \$15,000)	\$15,000.00
<i>The PAGA Fund (PAGA Penalties)</i>	\$256,455.54
• 75% to the LWDA	\$192,341.65
• 25% to the PAGA Members	\$64,113.89

1 Based on these distributions, the LWDA PAGA Amount will be approximately \$192,341.65 (75
2 percent of the Net Settlement Amount) and the amount paid to PAGA Members as Individual
3 Settlement Payments for civil penalties under PAGA is estimated to be \$64,113.89 (25 percent of
4 the Net Settlement Amount). (Bokhour Decl. ¶ 52.) Assuming *arguendo* that distributions were pro
5 rata across the 1,154 PAGA Members (in reality, it is pro rata based on proportionate Pay Periods³
6 worked), the average payment to each PAGA Member is estimated to be \$56. (Bokhour Decl. ¶ 32.)

7 **C. Individual Settlement Payments and Notice**

8 Subject to Court approval, the Parties agree that an amount equal to twenty-five percent
9 (25%) of the Net Settlement Amount (the “PAGA Member Portion”) will be paid to the PAGA
10 Members in settlement of the PAGA Released Claims. Individual Settlement Payments will be
11 calculated and apportioned from the PAGA Member Portion based on the number of Pay Periods a
12 PAGA Member worked. The Settlement Administrator will determine the total number of Pay
13 Periods worked by each PAGA Member based on the data provided by Defendant in the PAGA
14 Member List and the aggregate number of Pay Periods worked by all PAGA Members. To
15 determine each PAGA Member’s Individual Settlement Payment, the Settlement Administrator will
16 use the following formula: Individual Settlement Payment = (PAGA Member’s Pay Periods during
17 the Settlement Period⁴ / Aggregate Number of PAGA Member’s Pay Periods) x (0.25 x Net
18 Settlement Amount). Defendant agrees this formula is reasonable and that the payments are
19 designed to provide a fair settlement to each PAGA Member in light of the uncertainties regarding
20 the penalties alleged to be owed and the calculation of such amounts. (Settlement Agreement §
21 II(F).)

22 Defendant shall pay the Total Settlement Amount to settle this Action. The Total Settlement
23 Amount will be to satisfy all of Defendant’s liabilities arising from the Settlement. No portion of
24 the Total Settlement Amount shall revert to Defendant. (Settlement Agreement § III(B).) The
25 settlement does not require PAGA Members to submit a claim form to reap financial benefit from

26 ³ “Pay Periods” is defined as means a pay period that a PAGA Member was employed by Defendant in a non-exempt,
27 hourly-paid position during the Settlement Period (as defined in the Settlement Agreement), based on hire dates, re-
hire dates, and termination dates.

28 ⁴ “Settlement Period” means the period from January 15, 2019, through the date the settlement is approved by the
Court.

1 the settlement. The Total Settlement Amount shall be deposited with the Settlement Administrator
2 within seven (7) calendar days of the Effective Date⁵. However, no funds will be distributed to
3 anyone until all deadlines to appeal have passed, or if an appeal is filed, after all appeals have been
4 resolved without impacting the effectiveness of this Settlement, whichever is later. (Settlement
5 Agreement § III(K)(3).) Within fifteen (15) days after the Effective Date, Defendant shall provide
6 to the Settlement Administrator a list of PAGA Members that identifies for each PAGA Member
7 his/her Social Security number, last known address, home telephone and phone numbers, the dates
8 of his/her employment with Alliance during the Settlement Period, and the number of Pay Periods
9 for each PAGA Member. (Settlement Agreement § III(K)(2).)

10 Within seven (7) days after all deadlines to appeal the Settlement have passed, or if an
11 appeal is filed, after all appeals have been resolved without impacting the effectiveness of the
12 settlement, whichever is later, the Settlement Administrator shall issue payments to: a) the PAGA
13 Members; b) the LWDA; and c) PAGA Counsel for the Attorneys' Fees and Costs payment. The
14 Settlement Administrator will mail Individual Settlement Payments to the PAGA Members, along
15 with the PAGA Payment Letter (attached as Exhibit 1 to the Settlement Agreement), via regular
16 First-Class U.S. Mail, using the most current, known mailing addresses identified in the PAGA
17 Member List. The Settlement Administrator will also issue a payment to itself for Court-approved
18 services performed in connection with the Settlement on the tenth (10th) day after the Effective
19 Date. The Settlement Administrator shall perform a skip trace and re-mail any PAGA Payment
20 returned by the Post Office with a forwarding address. (Settlement Agreement § III(K)(4).)

21 Checks for Individual Settlement Payments shall be negotiable for one hundred eighty (180)
22 calendar days from the date of their issuance. If a check is returned to the Settlement Administrator
23 as undeliverable during the 180-day period, the Settlement Administrator shall take all reasonable
24 efforts to identify the PAGA Member's correct address, including the performance of a "skip-
25

26 ⁵ "Effective Date" means the later of: (a) the date the Court signs an Order granting approval of this Settlement and
27 Judgment; (b) if any objections or motions to intervene are filed prior to the date the Court signs an Order granting
28 approval of this Settlement, sixty (60) days from the later of the date the Court signs an order granting approval of the
Settlement or the date the Court enters final judgment so long as no appeal is filed within that time frame; and (c) to the
extent any appeals have been filed, the date on which they have been resolved or exhausted. (Settlement Agreement
§ I(E).)

1 trace.” If an updated address can be identified, the Settlement Administrator shall issue another
2 check to the PAGA Members and mail it to the PAGA Members at his or her updated address. A
3 PAGA Member who failed to receive their Individual Settlement Payment check despite the
4 procedures described herein shall nevertheless remain bound by the Settlement and the release of
5 the PAGA Released Claims contained herein. The funds represented by Individual Settlement
6 Payment checks remaining uncashed for more than 180 days after issuance (collectively, the
7 “Uncashed Settlement Checks”) shall be canceled and funds associated with such checks shall be
8 considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure
9 section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest shall be remitted to the
10 State Controller’s Office, Unclaimed Property Fund, in the name of each PAGA Member.
11 (Settlement Agreement § III(K)(6).)

12 **D. The Limited Release**

13 Importantly, the California Supreme Court has explained that other employees are bound by
14 a PAGA adjudication only with respect to civil penalties, just as they would be “bound by a
15 judgment in an action brought by the government.” *Arias, supra*, 46 Cal.4th at 986. In accordance
16 with this rule, the release of the PAGA Members herein is narrowly tailored to include release from
17 liability for claims seeking *civil penalties* under California Labor Code Section 2698 *et seq.*
18 predicated on the alleged California Labor Code and Wage Order No. 1-2001 violations asserted in
19 the operative Complaint. Specifically, the release states as follows:

20 The claims settled, fully released and forever discharged by the LWDA and the
21 PAGA Members, including Plaintiffs, constitute any and all claims for civil
22 penalties under PAGA, Labor Code section 2698 *et seq.*, that are asserted in, arise
23 from, or relate to the factual allegations and legal assertions made in the Actions
24 (“PAGA Released Claims”). The PAGA Released Claims include all claims and
25 causes of action that could have been asserted in the Actions based on the factual
26 allegations and legal assertions alleged, whether or not specifically delineated as a
27 claim or cause of action in the Actions, including but not limited to those alleged
28 in all Plaintiffs’ notices provided to the LWDA, the operative Complaint in the
Action, and any amended Complaint in the Action, including claims that
reasonably arise out of or arise in connection with the claims and facts alleged in
the Action, and any claims which could have reasonably been asserted in the
Action arising from the alleged facts and/or primary rights alleged to have been
invaded, and any claims that are premised upon or that allege claims for failure to
pay all wages due, failure to provide minimum wages or pay for all hours worked,

1 including off-the-clock work, failure to pay straight time compensation, overtime
2 compensation, double-time compensation, failure to pay interest, failure to
3 properly calculate the regular rate of pay, failure to pay wages related to alleged
4 illegal time rounding, failure to provide meal and/or rest periods, failure to pay
5 wages during employment and provide timely pay at separation, failure to pay
6 reporting time wages, failure to keep accurate time records, failure to provide and
7 maintain accurate itemized wage statements, failure to keep accurate employee
8 payroll records, failure to keep accurate employee timekeeping records, failure to
9 timely pay wages due during or at separation of employment, failure to reimburse
10 for all necessary business-related expenses, failure to provide paid sick leave at
11 the proper rate, failure to provide lawful, written commission agreements, failure
12 to pay proper meal or rest period penalties, failure to pay record keeping
13 penalties, failure to pay wage statement penalties, failure to pay minimum-wage
14 penalties, failure to pay waiting-time penalties, and claims arising under or
15 relating to the alleged violations of California Labor Code sections 200, 201,
16 201.1, 201.3, 201.5, 202, 203, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 206,
17 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3,
18 226.7, 226.8, 227.3, 246, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174,
19 1174.1, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5, 1198,
20 2751; 2802, 2810.5, 2698 et seq., and 2699 et seq.), and applicable California
21 Industrial Welfare Commission ("IWC") Wage Orders, including but not limited
22 to IWC Wage Order No. 7 (Cal. Code Regs., tit. 8, § 11070), against the Released
23 Parties. The release extends to all remedies that could be claimed for any PAGA
24 Released Claims, including but not limited to statutory, constitutional,
25 contractual, and common law claims for interest, attorney fees and costs,
26 injunctive relief, punitive damages, liquidated damages, restitution, disgorgement,
27 and civil and/or statutory penalties, including under Labor Code sections 218.5,
28 203, 206, 226(e) and 558(a), which includes penalties recoverable under PAGA in
an amount equal to underpaid wages. Upon approval of the Settlement, Plaintiff
and the PAGA Members will be forever barred from pursuing against the
Released Parties any and all claims for civil penalties under PAGA based upon
alleged violations of the California Labor Code, Wage Orders, regulations, and/or
other provisions of law alleged to have been violated in the Actions or that could
have been alleged based upon the factual allegations and legal assertions made in
the Actions. (Settlement Agreement § III(J)(1).)

22 The PAGA Released Claims expressly exclude all individual claims of PAGA Members,
23 other than the PAGA Released Claims, including but not limited to claims for damages, claims for
24 vested benefits, wrongful termination, unemployment insurance, disability, social security, workers'
25 compensation, and any other claims outside of the PAGA Released Claims arising during the
26 Settlement Period to the extent permitted by law. (Settlement Agreement § III(J)(2).) Because the
27 Action is pursuant to PAGA, the Parties agree that no PAGA Member has the right to exclude
28 themselves from the Settlement. All PAGA Members will be bound by the Settlement Agreement,

1 upon its approval by the Court, regardless of whether they negotiate their settlement check.
2 (Settlement Agreement § III(J)(3).

3 In addition to the forgoing, the Settlement Agreement, Plaintiffs are providing a general
4 release in exchange for their enhancement and service awards.

5 **E. PAGA Counsel Fees and Costs**

6 PAGA Counsel requests thirty-five (35%) of the Total Settlement Amount, or up to
7 \$175,000.00, in attorneys' fees, and up to \$25,000.00 in reimbursement of actual litigation costs.
8 (Settlement Agreement §§ I(N), I(M).) Further discussion and support for the requested awards is
9 set forth in Sections VI and VII, *infra*, and the accompanying Bokhour Decl. ¶¶ 54-66, Declaration
10 of Mehrdad Bokhour ("Bokhour Decl.") ¶ 15-22, Declaration of Paul K. Haines ("Haines Decl."),
11 and Declaration of James R. Hawkins ("Hawkins Decl.") filed concurrently herewith.

12 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND SHOULD BE APPROVED**

13 In 2016, PAGA was amended to require the Court to "review and approve any settlement of
14 any civil action filed pursuant to this part." Labor Code § 2699(l)(2). The amendment also requires
15 that the "proposed settlement shall be submitted to the agency at the same time that it is submitted
16 to the court." As such, on the day of filing of this Motion, the Settlement is also being concurrently
17 submitted to the LWDA in accordance with this section. (Bokhour Decl. ¶ 41.)

18 **A. The Civil Penalties are Appropriate Under the Circumstances**

19 Here, Plaintiffs contend that a *non-reversionary* Total Settlement Amount of \$500,000.00
20 represents an excellent recovery that is large enough to punish or deter Defendant. The proposed
21 settlement provides a fair and reasonable monetary recovery for the LWDA and PAGA Members in
22 the face of hotly disputed claims.

23 **First**, although PAGA and its legislative history do not seem to require a comparison with
24 the "maximum value" of the claims to the actual settlement amount, the penalties are reasonable
25 when considered in this context as well. The number of PAGA Members in the PAGA covered
26 period is 1,154 and the number of PAGA-eligible pay periods is estimated to be 33,029. (Bokhour
27 Decl. ¶ 43.) Further, while Plaintiffs believes the claims are meritorious and that they would have
28 recovered unreduced penalties, Defendant asserts numerous defenses to the claims. For example, a

1 significant factor in evaluating the value of a PAGA-only case is that all PAGA awards are
2 discretionary and subject to potentially significant reduction by the Court. Defendant maintains that
3 given its good faith and *de minimis* defenses, this Court would exercise its discretion to
4 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiffs'
5 claims. (Bokhour Decl. ¶ 44.) *See also*, Labor Code §§ 203, 2699(e)(2); *Thurman v. Bayshore*
6 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties);
7 *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 (reducing
8 PAGA penalties from \$2.8 million to \$500,000). Additionally, Defendant could argue that Plaintiffs
9 could only seek PAGA penalties at the \$100 "initial" violation rate, as opposed to the \$200
10 "subsequent" violation rate, since before Plaintiffs initiated the Action, Defendant has never been
11 put on notice by a court or the Labor Commissioner that its practices violated the Labor Code. *See*,
12 *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (finding "initial" violation rate
13 applies until employer has been notified that it is violating a Labor Code provision). As a result,
14 Plaintiffs took this into consideration in calculating penalties. (Bokhour Decl. ¶ 45.) Finally, many
15 of the claims were derivative of each other, which tended to undermine any stacking of penalties. In
16 light of the foregoing, PAGA Counsel took into consideration, when valuing the merits of these
17 claims, the chances of prevailing on the derivative violations, as well as the additional hurdles of
18 prevailing under each standalone violation in light of the defenses raised and applied the
19 appropriate discounts. (Bokhour Decl. ¶ 48.)

20 Based on the data provided by Defendant, the proposed maximum exposure for the PAGA
21 claims for PAGA Members is \$3,302,900 calculated as follows. (Bokhour Decl. ¶ 49.) During the
22 PAGA covered period, there were approximately 33,029 PAGA pay periods. (*Id.*) PAGA penalties
23 are assessed at the \$100.00 penalty for a total of \$3,302,900.

24 The proposed settlement of \$500,000.00 represents ***15% of the potential maximum***
25 ***exposure.*** (*Id.*) However, courts can exercise their discretion to reduce the amount of PAGA
26 penalties. *See, e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011)
27 (reducing PAGA penalties to \$500 per employee prior to the 75-25 split). (*Id.*) (*Id.*) Accordingly,
28 the proposed settlement approximates or provides an even better result than some actual PAGA

1 trials that were litigated to completion, though other cases also provided for a greater award than
2 *Covidien. (Id.)* Thus, the Total Settlement Amount is reasonable in light of significant risks and
3 uncertainties associated with the PAGA claims in this case.

4 Defendant vigorously disputed the merits of Plaintiffs' claims. Specifically, Defendant
5 argued that Plaintiffs' rest period claim fails because Defendant maintain express written policies,
6 found in the applicable employee handbook, providing employees with a rest break compliant with
7 applicable law. (Bokhour Decl. ¶ 46.) Defendant contends that Plaintiffs' allegations regarding
8 denied rest breaks are entirely false. Defendant further argued that it was prepared to call every
9 single current employee to testify as witnesses at trial that not a single employee was ever denied a
10 rest break. (Bokhour Decl. ¶ 47.)

11 **Second**, the scope of the release of the PAGA settlement is necessarily strictly confined to
12 those PAGA civil penalties that were or could have been alleged in the operative Complaint(s). The
13 PAGA Released Claims do not release any PAGA Members' non-PAGA claims for alleged
14 violations of the Labor Code. Individual PAGA Members who believe they have been denied, for
15 example, minimum wage or overtime, can maintain those rights to pursue those claims in another
16 proceeding. In that respect, the Settlement also requires that each PAGA Member receive a notice,
17 *i.e.*, the PAGA Payment Letter⁶, which describes this litigation and the Settlement sum. Plaintiff
18 contends that this notice will educate PAGA Members as to the requirements of the Labor Code,
19 something that is in the public interest and consistent with PAGA's purposes. *See*, Labor Code §
20 2699(j) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for
21 [among other things] "education of employers and employees about their rights and responsibilities
22 under this code.") (Bokhour Decl. ¶ 51.)

23 **Third**, the proposed settlement, even with deductions, provides a substantial sum of
24 \$191,250.00 to the State and \$63,750.00 to PAGA Members. The settlement secured by Plaintiffs
25 here is greater than other PAGA penalty awards approved by California state courts, which often
26 range between \$7,500.00 and \$15,000.00 for PAGA claims impacting hundreds or thousands of

27 _____
28 ⁶ "PAGA Payment Letter" means a letter that the Settlement Administrator will send to each PAGA Member with his or
her Individual Settlement Payment, which explains the reason for the Individual Settlement Payment, substantially in
the form attached hereto as Exhibit 1, subject to revisions by the Court. (Settlement Agreement § I(Q).)

1 individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g.,*
2 *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A.
3 County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of 667 members);
4 *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct.
5 L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class of
6 approximately 3,000 members). (Bokhour Decl. ¶ 52.)

7 **Fourth**, public policy strongly favors the settlement of litigation. *Consumer Advocacy*
8 *Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63. Because the proposed
9 settlement is neither unjust nor ignores the public interest, it should be approved. (Bokhour Decl. ¶
10 53.)

11 **VI. THE REQUESTED PAGA COUNSEL FEES ARE FAIR AND REASONABLE**

12 For their efforts and the risk that they undertook in obtaining a common fund settlement that
13 benefits the LWDA and PAGA Members, the Parties allocated thirty-five (35%) of the Total
14 Settlement Amount, up to \$175,000.00, to PAGA Counsel for reasonable attorneys' fees.
15 (Settlement Agreement § I(N).) These fees are warranted under the law and within the range of fees
16 commonly awarded in similar cases.

17 **A. Fees Are Recoverable under the Common Fund Doctrine**

18 PAGA provides that a Plaintiff is entitled to recover reasonable attorneys' fees, expenses,
19 and costs under section 2699(g)(1) of the California Labor Code, which states that, "Any employee
20 who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs,
21 including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or
22 subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. As discussed below, in a
23 qui tam action, reasonable attorneys' fees and costs are typically awarded under the common fund
24 doctrine where, as here, the litigation creates a common fund of money in a specific amount for the
25 benefit of others.

26 "A qui tam action is one brought under a statute that allows a private person to sue as a
27 private attorney general to recover damages or penalties, all or part of which will be paid to the
28 government." *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-

1 492. “A qui tam action ‘is a type of private attorney general lawsuit’ [citation], in which ‘the qui
2 tam plaintiff stands in the shoes of the state or political subdivision [citation].’” *Id.* at p. 501. As the
3 name of the PAGA statute makes clear (e.g. “Labor Code Private Attorney General Act”), a PAGA
4 action is a qui tam action because the statute allows the employee plaintiff, acting as the proxy of
5 the state’s labor law enforcement agency, to sue his or her employer for Labor Code violations and
6 recover civil penalties that otherwise would have been assessed and collected by the Labor and
7 Workforce Development Agency (LWDA). *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59
8 Cal.4th 348, 380. “A PAGA representative action is therefore a type of *qui tam* action.” *Id.* at p. 382.
9 Here, where a common fund is created in a qui tam action by the successful litigation of plaintiffs
10 and their attorneys, the plaintiffs’ attorneys are entitled to recover their fees from the common fund.
11 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. (Bokhour Decl. ¶ 55.)

12 Moreover, a more generic application of the common fund doctrine is found “consistently in
13 California when an action brought by one party creates a fund in which other persons are entitled to
14 share.” *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110. An award of fees
15 from the gross settlement amount under the common fund doctrine prevents unjust enrichment of
16 those who benefit from the common fund through the successful efforts of plaintiff’s counsel and
17 furthers the important goal of attracting competent counsel to handle representative actions
18 enforcing minimum labor standards. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.
19 (Bokhour Decl. ¶ 56.) In affirming the use of the common fund doctrine in California, the
20 California Supreme Court summarized the benefits of the percentage method of recovery stating:

21 The recognized advantages of the percentage method – including relative ease of
22 calculation, alignment of incentives between counsel and the class, a better
23 approximation of market conditions in a contingency case, and the encouragement
24 it provides counsel to see an early settlement and avoid unnecessarily prolonging
the litigation [citations] – convince us the percentage method is a valuable tool that
should not be denied our trial courts. *Id.*

25 See also, *Lealao v. Beneficial Cal. Ins.* (2000) 82 Cal.App.4th 19, 48 (observing that the key
26 advantage of the common-fund method is that it focuses on the total benefit conferred on the
27 beneficiaries resulting from the efforts of counsel). Thus, the common fund approach is the most
28 reasonable one here given the nature of the case and of the Parties’ settlement.

1 **B. The Requested PAGA Counsel Fees are Fair and Reasonable**

2 Among the factors considered in determining whether the requested fee percentage is
3 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of
4 plaintiff's counsel and the quality of work performed by plaintiff's counsel; (4) the contingent
5 nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar
6 cases. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support
7 an award here of thirty-five (35%) of the common fund.

8 First, the efforts of PAGA Counsel resulted in a common Total Settlement Amount of
9 \$500,000.00. This is a good PAGA settlement considering the contested issues.

10 Second, Plaintiffs faced significant risks going forward with the litigation. As discussed,
11 Defendants raised various defenses, such that Plaintiffs faced risky issues going forward with this
12 litigation, as well as the fact that it would have taken significant time to realize any recovery in this
13 action along with the possibility of post-trial appeals. (Bokhour Decl. ¶ 58.)

14 Third, PAGA Counsel are experienced wage and hour class action litigators and have
15 previously achieved significant PAGA and class action awards. This experience and expertise,
16 combined with the high quality of work performed in this case by PAGA Counsel, resulted in the
17 settlement achieved.

18 Fourth, PAGA Counsel represented Plaintiffs (and the State of California) in this matter on a
19 strictly contingency basis and, as such, had to forego other financial opportunities to litigate other
20 cases (contingency and hourly), incurred the risk of non-recovery after investment of time, money,
21 and resources, and have done so since the inception of this case without payment or compensation.
22 This is not an easy burden for PAGA Counsel and, if the best that could be hoped for is merely to
23 be paid the customary hourly rate, such would not be sufficiently incentivize future similar private
24 attorney general/qui tam cases with contingency risks.

25 Fifth, the request for PAGA Counsel fees in the amount of thirty-five percent (35%) of the
26 common fund falls well within the norms accepted by state and federal courts in California in
27 comparable representative actions. The following list shows PAGA actions and mixes PAGA/class
28 action cases where attorney's fees were awarded on a common fund basis in a range between

33.33% and 40%:

Banda v. Verizon California, Inc., Los Angeles Superior Court Case No. BC434587 (**35% fee awarded** on \$15,000,000 settlement of mixed PAGA/class claims);

Robles v. DCH, Los Angeles County Superior Court Coordination Proceeding Case No. 4833 (**33.33% fee awarded** on \$4,035,600 settlement of mixed PAGA/class claims);

Padilla v. Staffmark Investment, Inc., San Bernardino County Superior Court Case No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of a **PAGA only case**);

Bengel v. Career Strategies Temporary, Inc., Los Angeles County Superior Court Case No. BC 565227 (**33.33% fee awarded** on \$750,000 settlement of PAGA/class claims);

Birch v. Office Depot, United States District Court for the Southern District of California, Case No. 06cv1690 DMS (**40% fee awarded** on \$16,000,000 settlement of mixed PAGA/class claims);

Brewer v. Connell Chevrolet, Orange County Superior Court Case No. 30-2016-00852123-CU-OC-CXC (**33.33% fee awarded** on a **PAGA only case**);

Garcia v. The Pep Boys, Orange County Superior Court Case No. 30-20014-007205740-CU-OE-CJC (**33.33% fee awarded** on \$1,030,000 settlement of a **PAGA only case**);

Perez v. Staffmark Investment, LLC, Riverside County Superior Court Case No. MCC1401137 (**33.33% fee awarded** on a \$650,000 settlement of a **PAGA only case**).

For all of the above reasons, a common fund fee award here in the amount of the PAGA Counsel Fees requested here is fair and reasonable.

Sixth, PAGA Counsel have also provided the hourly rate and hours expended information requested by the Court in their concurrently filed declarations.

Specifically, in total, the following table summarizes Class Counsel's lodestar to date which amounts to a negative multiplier of the request fees:

Total Aggregated Lodestar of Class Counsel				
<i>Timekeeper</i>	<i>Yrs Experience</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Lodestar</i>
Mehrdad Bokhour, Esq.	10	46.2	\$550.00	\$25,410
Joshua Falakassa, Esq.	9	37.5	\$525.00	\$19,687.50
Paul K. Haines, Esq.	17	30.3	\$750.00	\$22,725

Tuvia Korobkin	14	48.7	\$725	\$35,307.50
Neil M. Larsen	13	27.8	\$650	\$18,070
Diana M. Martinez	4	22.5	\$425	\$9,562.50
Haines Law Group Paralegals		4.2	\$175	\$735
James Hawkins, Esq.	26	\$750	141	\$105,750
TOTAL				\$237,247.50

VII. THE REQUESTED PAGA COUNSEL COSTS ARE FAIR AND REASONABLE

PAGA Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees. *See, Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. PAGA Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. *See, Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys’ fees by...[Plaintiffs’] attorneys”). Furthermore, PAGA Counsel are entitled to recover “those out-of-pocket expenses that would normally be charged to a fee-paying client.” *Harris, supra*, 24 F.3d at 19.

The Settlement Agreement authorized PAGA Counsel to recover litigation costs not to exceed \$25,000.00. The following sets forth specific costs incurred by each firm to date:

Firm	Costs
Bokhour Law Group, P.C.	\$5,500
Haines Law Group, P.C.	\$5,580.49
James Hawkins, APLC	\$12,463.97

Thus, the total litigation costs for PAGA Counsel **to date** is, collectively, **\$23,544.46**. However, PAGA Counsel anticipates additional expenses in connection with: (1) filing and serving this motion, (2) travelling to/from and appearing at the approval hearing, (3) shepherding this settlement through funding and disbursement, and (4) filing and service fees for the anticipated compliance review statement but will forego recovering those costs. Accordingly, PAGA Counsel seeks **\$23,463.97** in litigation cost reimbursement.

1 **VIII. THE REQUESTED SERVICE PAYMENTS ARE REASONABLE**

2 Courts routinely approve enhancement awards to compensate named plaintiffs for the
3 services they provide and the risks they incur during representative litigation. *See, e.g., Bell v.*
4 *Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named
5 plaintiffs); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
6 \$50,000 incentive payment). Here, Plaintiffs seek a service payment of \$10,000.00 each, for a total
7 of \$30,000, for their service to the Aggrieved Employees and the State of California. (Settlement
8 Agreement § I(H); III(D)). These requests are reasonable given Plaintiffs’ efforts in this case and
9 the risks they undertook on behalf of Aggrieved Employees and the State of California. See
10 Attaway Decl. Montano Decl. ; Woods Decl..

11 Plaintiffs provided substantial factual information and documents to counsel, assisted in
12 identifying potential witnesses, and participated in numerous discussions with PAGA Counsel
13 regarding the case. *Id.* Moreover, Plaintiffs have agreed to a much broader general release of claims
14 subject to a waiver of Cal. Civil Code section 1542. (Settlement Agreement § I(H)). Accordingly,
15 Plaintiffs’ requested service payments are appropriate and justified as part of the Settlement.

16 **IX. SUBMISSION TO THE LWDA**

17 As set forth in the Bokhour Decl. at ¶ 41, the settlement and this Motion are concurrently
18 being submitted to the LWDA in accordance with Labor Code § 2699(l)(2). The proof of electronic
19 submission is attached as **Exhibit B** to the Bokhour Decl.

20 **X. THE SETTLEMENT ADMINISTRATOR**

21 The Parties have agreed to use ILYM Group, Inc. as the Settlement Administrator. The
22 Settlement Administrator will be responsible for processing the settlement payments and providing
23 notice to the PAGA Members.

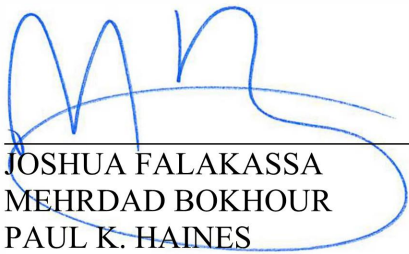
24 **XI. CONCLUSION**

25 For the foregoing reasons, Plaintiffs requests the Court approve the PAGA Settlement.
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Dated: April 28, 2023

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.
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BY: 

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