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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LATOIA SMITH, an individual, and
RAYMOND JONES, an individual on behalf
of the State of California, as private attorney
generals

PLAINTIFFS,

v.

BURLINGTON MERCHANDISING
CORPORATION, a Delaware Corporation;
BURLINGTON COAT FACTORY DIRECT
CORPORATION, a New Jersey Corporation;
BURLINGTON DISTRIBUTION CORP., a
Delaware Corporation; and DOES 3-50,

DEFENDANTS.

JASMINE SPIVEY, on behalf of herself and
all others similarly situated, and on behalf of
the general public,

PLAINTIFF,

v.

BURLINGTON COAT FACTORY OF
TEXAS, INC.; BURLINGTON COAT
FACTORY WAREHOUSE
CORPORATION; and DOES 1-100,

DEFENDANTS.

CONSOLIDATED CASE NO. CIVDS1929684

[Assigned to the Hon. David Cohn, Dept. S-26]

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION TO APPROVE
PAGA SETTLEMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: October 23, 2020

Time: 10:00 am

Complaint Filed: October 3, 2019

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

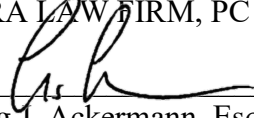
2 YOU ARE HEREBY NOTIFIED THAT at 10:00 a.m. on October 23, 2020, or as soon
3 thereafter as the matter can be heard, in Department S-26 of the above entitled Court before the
4 Honorable David Cohn, Plaintiffs Latoia Smith, Raymond Jones, and Jasmine Spivey
5 (“Plaintiffs”) will apply for an Order Approving PAGA Settlement and entry of the Proposed
6 Final Judgment, which are filed concurrently herewith. Defendants do not oppose Plaintiffs’
7 Motion.

8 This unopposed Motion will be made on the grounds that the proposed PAGA Settlement
9 is fair, adequate, reasonable, and in the best interests of the State of California and the aggrieved
10 employees. This Motion will be based on this notice, the accompanying points and authorities, the
11 Declarations of Craig Ackermann, David Winston, and David Mara, and the complete files and
12 records in this action.

13 Plaintiffs respectfully request that, pursuant to the specific terms (including timing and
14 manner) as set forth in the executed PAGA Settlement and Release Agreement (the “Settlement
15 Agreement”) and assuming conditions are met therein, the Court (1) grant approval of the PAGA
16 Settlement; (2) appoint ILYM Group, Inc. as the Settlement Administrator; (3) direct that the
17 Notice of Settlement be sent to aggrieved employees with their settlement share checks in the
18 manner set forth in the Settlement Agreement; (4) award Plaintiffs’ Service Awards, and (5)
19 award PAGA Counsel their fees’ and litigation costs. Plaintiffs also request that the Court sign
20 and enter the PAGA Settlement Approval Order and Final Judgment, filed concurrently herewith.

21
22 Dated: September 28, 2020

ACKERMANN & TILAJEF, P.C.
WINSTON LAW GROUP, P.C.
MARA LAW FIRM, PC

23
24 By: 
25 Craig J. Ackermann, Esq.
26 David Winston, Esq.
27 David Mara, Esq.
28 Attorney for Plaintiffs and the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Latoia Smith, Raymond Jones, and Jasmine Spivey (“Plaintiffs”) reached a
4 settlement of their consolidated actions under the California Private Attorneys General Act, Labor
5 Code section 2699, *et seq.* (“PAGA”) against Defendants Burlington Merchandising Corporation,
6 Burlington Coat Factory of Texas, Inc., Burlington Coat Factory Warehouse Corporation,
7 Burlington Coat Factory Direct Corporation and Burlington Distribution Corp. (“Defendants”). In
8 accordance with California Labor Code section 2699(l), Plaintiffs now seek this Court’s approval
9 of the terms sought as part of the parties’ settlement of Plaintiffs’ PAGA action.¹

10 In light of Defendants’ arbitration agreements and class action waivers with Plaintiffs and
11 the aggrieved employees, this is a settlement of claims for penalties under PAGA.² A true and
12 correct copy of the Settlement Agreement (the “Settlement Agreement”), which sets forth the
13 terms for the settlement of the PAGA action, is attached as **Exhibit 1** to the Declaration of Craig
14 J. Ackermann, filed herewith.

15 **II. RELEVANT FACTS**

16 On September 11, 2018, Plaintiff Spivey submitted her PAGA letter to the LWDA and to
17 Defendants Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory Warehouse
18 Corporation, wherein she described the facts and theories supporting her and the aggrieved
19 employees’ allegations of Defendants Burlington Coat Factory of Texas, Inc. and Burlington
20 Coat Factory Warehouse Corporation’s violations, including of Labor Code §§ 201, 202, 203,
21 204, 226, 226.7, 510, 512, 558, 1194, 1197.1, and 1199, as well as corresponding violations of
22 IWC Wage Orders.

23 On April 15, 2019, Plaintiff Spivey filed her representative action complaint in San
24 Bernardino County Superior Court, Case No. CIVDS1911341 (the “*Spivey Action*”) wherein she
25 alleged Defendants Burlington Coat Factory of Texas, Inc. and Burlington Coat Factory

26 ¹ Section 2699(l) provides as follows: “The superior court shall review and approve any penalties sought as part of a
27 proposed settlement agreement pursuant to this part.”

28 ² Defendants contend any purported class action would be barred by the arbitration agreement and class action
waivers Defendants’ employees signed. Defendants believe Plaintiffs brought these actions as PAGA-only matters
given this fact.

1 Warehouse Corporation's liability for PAGA penalties based on underlying violations of Labor
2 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197.1, and 1199, as well as
3 corresponding violations of IWC Wage Orders.

4 On July 29, 2019, Plaintiff Smith submitted her PAGA letter to the LWDA and to
5 Defendant Burlington Merchandising Corporation, wherein she described the facts and theories
6 supporting her and the aggrieved employees' allegations of Defendant Burlington Merchandising
7 Corporation's alleged violations of Labor Code §§ 204, 210, 221, 226(a), 226(e), 226.3, 226.7,
8 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1199.5 as well as corresponding
9 violations of IWC Wage Order No. 7-2001. (Declaration of Craig J. Ackermann ["CJA Decl."], ¶
10 15.)

11 On October 3, 2019, Plaintiff Smith filed her representative action complaint in San
12 Bernardino County Superior Court, Case No, CIVDS1929684 (the "*Smith* Action") wherein she
13 alleged Defendant Burlington Merchandising Corporation's liability for PAGA penalties based
14 on underlying alleged violations of Labor Code §§ 204, 210, 221, 226(a), 226(e), 226.3, 226.7,
15 510, 512, 558, 1194, 1197, 1197.1, and 1198 as well as corresponding violations of IWC Wage
16 Orders. (*Id* at ¶ 16.)

17 On November 6, 2019, Plaintiff Jones submitted a PAGA Notice to the LWDA and
18 Defendant Burlington Merchandising Corporation raising similar claims to those alleged by
19 Plaintiff Smith. (*Id* at ¶ 17.) Thereafter, the Parties stipulated to Plaintiff Smith filing a First
20 Amended Complaint to add Plaintiff Jones as an additional PAGA Plaintiff to the *Smith* Action.
21 (*Id.*) The crux of Plaintiffs' claims allege that Defendants did not pay for employees' time spent
22 on security checks, and there were also various violations relating to meal and rest breaks,
23 itemized wage statements and payment to employees upon termination from employment.

24 Subsequently, on February 2, 2020, the Parties in the *Smith* Action as well as Plaintiff
25 Spivey in the *Spivey* Action stipulated to the consolidation of the *Smith* and *Spivey* Actions (the
26 "Consolidated Action"). (*Id* at ¶ 18.)³

27 The Parties then agreed to forego formal discovery and to engage in an extensive

28 ³ The Court ultimately signed the order consolidating these matters on June 1, 2020.

1 exchange of informal discovery and to attempt to resolve the Actions through private mediation.
2 (*Id* at ¶ 19.) As part of the informal discovery exchange, Defendants provided Plaintiffs’ counsel
3 with the number of aggrieved employees and the total number of pay periods worked by the
4 aggrieved employees from July 29, 2018 through May 1, 2020 (May 1, 2020 reflects the last date
5 of work before the distributions centers temporarily closed due to COVID-19 shelter-in-place
6 orders). (*Id.*) Defendants also provided various policy documents, wage statements and employee
7 personnel files and time records. (*Id.*)

8 On June 18, 2020, the Parties attended an all-day Zoom-video mediation session presided
9 over by experienced wage and hour mediator, Jeffrey A. Ross, Esq. (*Id* at ¶ 22.) The mediation
10 resulted in a settlement that is memorialized in the Settlement Agreement attached to the CJA
11 Decl. as **Exhibit 1**. (*Id.*), On July 8, 2020 Plaintiffs Smith and Jones submitted Amended PAGA
12 Notices to the LWDA and on July 17, 2020 submitted two Doe Amendments to add Burlington
13 Coat Factory Direct Corporation and Burlington Distribution Corp., as additional Defendants.
14 (*Id.*) A notice of settlement and request to lift the stay for purposes of filing approval motion was
15 executed by the parties on July 30, 2020 and approved by the Court on August 5, 2020.

16 **III. TERMS OF THE PAGA SETTLEMENT**

17 The Settlement Agreement requires Defendants to pay a Maximum Settlement Amount
18 (“MSA”) of **TWO MILLION U.S. DOLLARS AND 00/100 CENTS** (\$2,000,000.00).
19 (Settlement Agreement (S.A.) ¶ II.17) In entering into the Settlement Agreement, Defendants
20 have not made any admission of liability or wrongdoing, and instead the parties have agreed to
21 settle solely for the purpose of compromising highly-disputed claims and avoiding further
22 litigation.

23 The PAGA Payment is the total of the MSA less Plaintiffs’ Service Awards (\$10,000.00
24 for each of the three Plaintiffs, totaling \$30,000.00), attorneys’ fees (\$666,666.67), actual
25 litigation costs (\$13,931.67), and settlement administration costs (\$14,925.00). The MSA is
26 valuable consideration for the settlement of the Covered Claims.⁴ (*Id.*) After the deductions, the

27 ⁴ “Covered Claims” is defined to include “any and all PAGA claims or PAGA causes of action arising under Labor
28 Code section 2698, et seq. during the PAGA Period that were alleged, or that reasonably could have been alleged in
the Action based on the facts alleged in any and all of Plaintiffs’ LWDA letters (including the amended LWDA
letters) or in the complaints and amendments that constitute the Complaint. The Covered Claims include, but are not

1 PAGA Payment will be approximately \$1,274,476.66. (CJA Decl., at ¶ 34.)

2 The PAGA Payment shall be distributed as follows: Seventy-five percent of the PAGA
3 Payment (\$955,857.50) will be paid to the State of California's LWDA as required by Labor
4 Code section 2699(i). The remaining 25% of the PAGA Payment (\$318,619.16) will be
5 distributed to Aggrieved Employees using a distribution formula based on the number of pay
6 periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total
7 number of pay periods worked by all Aggrieved Employees during the PAGA Period. Each
8 Aggrieved Employee's pro-rata share of the PAGA Payment represents their Individual
9 Settlement Payment. (*Id.* at ¶ 36.)

10 Within fifteen calendar days after the "Effective Date" as defined in the Settlement
11 Agreement,⁵ Defendants shall pay the MSA to the Settlement Administrator. (S.A. at ¶ V.9.1-
12 2.))

13 A letter approved by the Parties explaining this Settlement will be included in the mailing
14 of each check and is hereby submitted to the Court for its review and approval.⁶ (CJA Decl., ¶
15 53.) The settlement checks issued to Aggrieved Employees shall remain valid for one hundred
16 eighty (180) days. Thereafter, all uncashed checks shall be void and the funds represented thereby

17 _____
(continued...)

18 limited to, PAGA claims or PAGA causes of action relating to any and all theories of liability regarding or related to
19 any and all possible compensable time that Aggrieved Employees spent going through, or related in any way to a bag
20 check, security check, security process, or security procedure in order to enter or leave a facility (including but not
21 limited to walk time, wait time or checking and/or inspection by security personnel), and any and all allegations that
22 such conduct was unlawful or led to any derivative liability (including but not limited to wage statement violations,
23 failure to pay wages timely upon termination or any other monies owed or penalties of any kind). Covered Claims
24 also include, but are not limited to, PAGA claims or PAGA causes of action relating to any and all theories of
25 liability regarding or relating to meal or rest period obligations or alleged violations thereof, and any and all
26 allegations that such conduct was unlawful or led to any derivative liability (including but not limited to wage
27 statement violations, failure to pay wages timely upon termination or any other monies owed or penalties of any
28 kind). The Covered Claims include any and all violations of Labor Code sections 201, 202, 203, 204, 210, 218.5,
221, 224, 225.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and
1199.5, and the applicable Wage Order (including but not limited to Paragraph 4 of the applicable Wage Order),
regardless of theory of recovery."

⁵ "Effective Date" means "the date the Court enters final judgment as to all complaints and causes of action in the
Action in connection with an order granting and entering approval of PAGA settlement pursuant to this Agreement
("Final Judgment") and shall be the later of the day after (a) the expiration of the time for any notice of intention of a
post-judgment motion or appeal to be filed following Final Judgment or (b) if a post-judgment motion or appeal has
been filed, the date the Final Judgment is no longer appealable and constitutes a "final judgment" for purposes of res
judicata and collateral estoppel." (S.A. at ¶ III.12.)

⁶ The Notice of PAGA Settlement is attached to the Declaration of Craig J. Ackermann as **Exhibit 4**.

1 shall be paid to the State Controller in the name of the Aggrieved Employee. (S.A. at ¶ VII.40).

2 The Settlement Administrator shall also ensure that 75% of the PAGA Payment is paid to
3 the LWDA. (*Id.* at ¶ VII.39).

4 Aggrieved Employees means all individuals who are or previously were employed by
5 Burlington Merchandising Corporation and/or Burlington Distribution Corp. in California as non-
6 exempt employees at any time from February 7, 2018, through the date of approval of the
7 settlement (the “PAGA Period”). (*Id.* at ¶ II.1).

8 The LWDA is being served with a copy of this motion and the Settlement Agreement
9 through the online process as required by Labor Code section 2699(l), and therefore has notice of
10 this PAGA settlement and motion.⁷ (CJA Decl., ¶ 54.)

11 **IV. REQUESTED APPROVAL OF THE PAGA SETTLEMENT**

12 Labor Code section 2699(l) requires that the Court “review and approve any settlement of
13 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to
14 the agency at the same time that it is submitted to the court.” Consequently, Plaintiffs
15 respectfully ask the Court to approve the PAGA Settlement filed herewith.

16 **A. The PAGA Penalties to Be Paid Are Fair and Reasonable**

17 The Parties believe that the \$2,000,000.00 MSA is fair and reasonable and therefore
18 should be approved. (CJA Decl., ¶ 14; Declaration of David Winston [“DW Decl.”] ¶ 8;
19 Declaration of David Mara [“DM Decl.”] ¶ 40.) The MSA compares favorably to the total
20 potential estimated amount of PAGA penalties which Plaintiffs calculated as the maximum
21 amount recoverable. Specifically, Plaintiffs calculated the maximum unstacked PAGA penalties
22 for the Aggrieved Employees at \$13,778,400.00⁸, a number that Defendants vigorously dispute
23 for several reasons. (CJA Decl., ¶ 19.).

24 The maximum PAGA penalties potentially available is not a realistic outcome of the
25 litigation because it does not take into account Defendants’ defenses. Specifically, Defendants

26 ⁷ The confirmation received from the LWDA of the filing of the proposed PAGA settlement through their online
27 system is attached to the Declaration of Craig J. Ackermann as **Exhibit 5**.

28 ⁸ Plaintiff’s Counsel calculated this figure as follows: \$13,778,400.00 (137,784 initial pay periods * \$100 initial
penalty) based on one underlying violation of the Labor Code and assuming all Aggrieved Employees only suffered
an initial violation. CJA Decl., ¶ 19.

1 contended, among other things, that employees did not incur any off-the-clock work time
2 associated with time spent in security lines because: (1) most employees do not carry a bag and
3 can simply walk through the security line; (2) Defendants encourage employees to use clear
4 plastic bags to expedite the process of going through the security line; (3) in the event that
5 employees bring a bag that is not clear, employees simply walk through the security line with
6 their bag open and do not “break stride”; (4) employees come in to the distribution centers at
7 staggered times thereby alleviating any issues with long lines at security checkpoints; (5) there
8 are several security lines also alleviating any issue with long lines at security checkpoints; and (6)
9 the time spent in security lines is de minimis.. Defendants also contend that their conduct was
10 otherwise lawful, including with respect to its wage statements and payments to terminated
11 employees.

12 Additionally, with respect to Plaintiffs’ claims of meal and rest period violations,
13 Defendants contended, among other things: (1) employees received 15 minute rest breaks and 45
14 minute meal breaks thereby alleviating any issues with employee transit time from their work
15 stations to designated break areas (since the amounts allocated included an “extra” five minutes
16 and fifteen minutes beyond statutory requirements); (2) the bell indicating the end of employees’
17 rest breaks would only ring at the end of the rest break meaning that transit time from break areas
18 to work stations was time spent on the clock; and (3) Defendants’ conduct did not otherwise
19 result in meal and rest break violations. See CJA Decl., ¶ 20. Defendants also contend that their
20 conduct was otherwise lawful, including with respect to its wage statements and payments to
21 terminated employees.

22 Defendants also stated that this matter is not subject to representative action treatment and
23 is highly “unmanageable” under PAGA, as a multitude of individualized inquires and variations
24 exist, such that Defendants had intended to file the appropriate motion to strike to eliminate the
25 representative claims that Plaintiffs purported to bring.

26 In order to recover any civil penalties, Plaintiffs would be required at trial to prove the
27 underlying Labor Code violations. (*Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
28 LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA], a plaintiff cannot

1 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
2 Labor Code by the defendant.”].) To do this, Plaintiffs would need to prove each and every
3 aggrieved employee was subject to the alleged Labor Code violation, which would be difficult to
4 do, since Defendants deny any liability or wrongdoing of any kind associated with the claims
5 alleged in this action. (CJA Decl., ¶ 20.).

6 Furthermore, Plaintiffs’ estimated \$13,778,400.00 maximum penalty figure does not take
7 into account any of Defendants’ other legal defenses, including that Courts should not award the
8 “stepped up” \$200.00 penalty until after a legal finding is made in favor of Plaintiffs and the
9 violations continue and the fact that Courts have complete discretion to “award a lesser amount
10 than the maximum civil penalty amount specified [by PAGA] if, based on the facts and
11 circumstances of the particular case, to do otherwise would result in an award that is unjust,
12 arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)); and that Courts have
13 discretion to reduce PAGA penalties specifically on other factors such as the basis of a
14 Defendants’ financial situation. *See e.g. Thurman v. Bayshore Transit Management, Inc.*, 203
15 Cal. App. 4th 1112 (4th District Court of Appeal February 27, 2012) (“The evidence supports the
16 trial court's penalty reduction even under Thurman's view that section 2699, subdivision
17 (e)(2) requires evidence of inability to pay, because the trial court made the undisputed finding
18 that defendants' loss of the NCT contract in March 2007 rendered them unable to pay penalties
19 from ongoing revenues.”). Here, there had not been any findings against Defendants and the
20 COVID-19 pandemic has created a significant amount of uncertainty for businesses nationwide.
21 See CJA Decl., ¶ 38.

22 Even when plaintiffs have prevailed at trial on PAGA claims, courts have routinely
23 exercised their discretion to reduce significantly the amount of PAGA penalties awarded to as
24 little as \$5.00 per pay period or down to 5% of the available PAGA penalties. *See e.g., Kileigh*
25 *Carrington v. Starbucks Corporation, et al.*, San Diego Superior Court Case No. 37-2014-
26 00018637-CU-OE-CTL (Apr. 3, 2017) (holding that the plaintiff was only entitled to collect the
27 reduced penalty amount of \$5.00 for each pay period in which a meal period violation occurred or
28 5% of the PAGA penalties at issue); *compare Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12,

1 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%). Here, the gross amount
2 obtained by PAGA Counsel per pay period is approximately \$14.51 (\$2,000,000.00 Maximum
3 Settlement Amount / 137,784 pay periods).

4 Given Defendants' defenses to the claimed Labor Code violations at issue, and the risks
5 and costs of continued litigation, Plaintiffs and their attorneys believe that the MSA is fair and
6 reasonable. (CJA Decl., ¶ 14; DW Decl., ¶ 8; DM Decl. ¶ 40.) This settlement was negotiated by
7 experienced counsel at arm's length before an experienced wage and hour mediator, Jeffrey A.
8 Ross, Esq.). (CJA Decl., ¶ 22.). The LWDA has been provided notice of this motion and the
9 PAGA settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the
10 motion should be given considerable weight. Moreover, the LWDA is a sophisticated government
11 entity that is capable of asserting, and preserving, its own rights.

12 Finally, the PAGA Payment here exceeds amounts that have been approved by courts in
13 other cases. For instance, in *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801 (E.D. Cal.
14 2012), the court approved a total PAGA penalty amount of \$10,000, with the \$2,500 employee
15 portion divided between as many as 2,055 current and former employees. In *Schiller v. David's*
16 *Bridal, Inc.*, 2012 WL 217001 (E.D. Cal. 2012), the court also approved a PAGA penalty amount
17 of \$10,000, with the \$2,500 employee portion divided between as many as 3,326 individuals.

18 Here, the parties have agreed to an MSA of \$2,000,000.00, with \$955,857.50 going to the
19 LWDA, and \$318,619.16 divided among at least 3,613 aggrieved employees. As noted, no
20 Aggrieved Employees' individual Labor Code claims are released by this PAGA settlement, other
21 than Plaintiffs' individual claims.

22 **B. The Remaining Settlement Terms Are Fair and Reasonable**

23 Although PAGA requires court approval of penalties sought as part of a proposed
24 settlement, the remaining settlement terms are also fair and reasonable. The attorneys' fees at
25 one-third of the Maximum Settlement Amount are fair and reasonable (See CJA Decl., ¶ 50; DW
26 Decl., ¶ 8; DM Decl. ¶ 32). Recently, the California Supreme Court approved trial courts' usage
27 of the common fund method of awarding attorneys' fees in cases like this one, and upheld a fee
28 awarded of 1/3 of the total settlement amount obtained for the class. See *Laffitte v. Robert Half*

1 *Int'l Inc.*, 1 Cal. 5th 480, 506 (2016); *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee
2 awards in class actions average around one-third of the recovery”). Specifically, in *Laffitte*, the
3 Court wrote: “[w]e join the overwhelming majority of federal and state courts in holding that
4 when class action litigation establishes a monetary fund for the benefit of the class members, and
5 the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
6 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
7 created”). *Id.* at 503. The California Supreme Court also noted that trial courts have the discretion
8 to award fees as a percentage of the common fund, with or without the necessity to conduct a
9 lodestar cross-check. *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and
10 use other means to evaluate the reasonableness of a requested percentage fee.”).

11 The California Supreme Court’s recent *Laffitte* decision was consistent with its prior
12 rulings recognizing that “when a number of persons are entitled in common to a specific fund,
13 and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation
14 of that fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v.*
15 *Priest*, 20 Cal.3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A]
16 lawyer who recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as
17 a whole”).

18 The requested fees of up to one-third of the MSA are also consistent with awards obtained
19 in similar cases granted approval by courts in California. *See e.g.*, *Miller, et al. v. Mattress Firm,*
20 *Inc.*, Santa Clara County Superior Court Case No. 17CV313148, Order Re: Motion to Approve
21 PAGA Settlement, December 17, 2018 (the Honorable Thomas E. Kuhnle granted approval to a
22 PAGA settlement and awarded PAGA Counsel’s attorneys’ fees in the amount of one-third of the
23 total settlement); *Singletary v. Guard Management, Inc.*, San Diego County Superior Court Case
24 No. 37-2018-00017663-CU-OE-NC, Order Approving Representative Action Settlement, June
25 21, 2018 (the Honorable Timothy M. Casserly granted approval to a PAGA settlement and
26 awarded PAGA Counsel’s attorneys’ fees in the amount of one-third of the total settlement);
27 *Peysakhovich v. Perry Automotive Group, Inc., et al.*, San Diego County Superior Court Case
28 No. 37-2018-00025183-CU-OE-NC, Final Judgment, November 15, 2018 (the Honorable Ronald

1 Frazier granted approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in
2 the amount of one-third of the total settlement); *Dominguez v. Scandinavian Designs, Inc., et al.*,
3 Sonoma County Superior Court Case No. SCV-263531, Final Judgment, January 22, 2019 (the
4 Honorable Patrick M. Broderick granted approval to a PAGA settlement and awarded PAGA
5 Counsel's attorneys' fees in the amount of one-third of the total settlement); *Freeman v. Redwood*
6 *Wise Riders, Inc., et al.*, Solano County Superior Court Case No. FSC050140, Order Approving
7 Representative Action Settlement, December 3, 2018 (the Honorable Wendy G. Getty granted
8 approval to a PAGA settlement and awarded PAGA Counsel's attorneys' fees in the amount of
9 one-third of the total settlement).

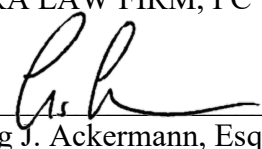
10 Moreover, the service awards to the three Plaintiffs of \$10,000.00 each for, among other
11 things, their general releases, and the actual costs at approximately \$13,931.67, which are all
12 documented in the accompanying declarations of Plaintiffs' counsel, are also both fair and
13 reasonable, and should, respectfully, be approved. The \$14,925.00 designated as payment to
14 ILYM Group Inc. for settlement administration costs is also fair and reasonable, and should,
15 respectfully, be approved. Accordingly, all of these deductions are fair and reasonable and should
16 be approved.

17 **V. CONCLUSION**

18 Based on the foregoing, the Parties respectfully request this Court approve the proposed
19 PAGA settlement.

20 Dated: September 28, 2020

ACKERMANN & TILAJEF, P.C.
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25 Attorney for Plaintiffs and the Aggrieved Employees
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