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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

CONSUELO JASSO AYALA and NANCY  
GOMEZ, on behalf of themselves and all others  
similarly situated;

Plaintiffs,

v.

FABFITFUN, INC., a Delaware Corporation;  
and DOES 1-50, inclusive;

Defendants.

CASE NO.: CIVDS2006687

*Assigned to the Hon. David Cohn*

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

*[Declarations of Joshua Falakassa, Mehrdad  
Bokhour, and David Yeremian and [Proposed]  
Order filed concurrently herewith]*

**HEARING INFO**

Date: June 11, 2021

Time: 10:00 a.m.

Dept.: S26

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

2 **PLEASE TAKE NOTICE** that on June 11, 2021 at 10:00 a.m., or as soon thereafter as  
3 this matter may be heard by the Hon. Judge of the San Bernardino County Superior Court for the  
4 State of California, located at 247 W. Third Street, , San Bernardino, CA 92415, Plaintiffs  
5 Consuelo Jasso Ayala and Nancy Gomez (“Plaintiffs”) will and hereby do move this Court for an  
6 order approving a settlement pursuant to the Private Attorneys General Act of 2004, California  
7 Labor Code § 2698 *et seq.* (“PAGA”).

8 This motion is based upon this Memorandum of Points and Authorities; the Declarations of  
9 Joshua Falakassa, Mehrdad Bokhour, and David Yeremian in support thereof; the Private  
10 Attorneys General Act Settlement Agreement and Release (the “Settlement Agreement” and/or the  
11 “Settlement”); the [Proposed] Order granting approval of PAGA Representative Action  
12 Settlement; all other records, pleadings, and papers on file in this action; and upon such other  
13 evidence or argument as may be presented to the Court at the hearing of this motion.

14 Dated: May 19, 2021

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BOKHOUR LAW GROUP, P.C.

16 BY: \_\_\_\_\_

17 JOSHUA FALAKASSA  
18 MEHRDAD BOKHOUR  
19 *Attorneys for Plaintiffs and all others similarly*  
20 *aggrieved employees*  
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**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.....3

III. PAGA AND ITS REQUIREMENTS.....5

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES.....7

    A. Allegedly Aggrieved Employees & Terms of Settlement .....7

    B. Settlement Allocation to LWDA and Allegedly Aggrieved Employees.....8

    C. Individual Payments and the Notice.....9

    D. The Limited Release.....11

    E. The Fee Amount and Cost Amount.....11

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

    A. Standards for Approval of a PAGA Settlement.....12

    B. The Civil Penalties Are Appropriate Under the Circumstances.....13

VI. THE REQUESTED FEE AMOUNT IS FAIR AND REASONABLE.....16

    A. Attorneys’ Fees Are Recoverable Under the Common Fund Doctrine.....17

    B. A Fee of One-Third of the Total Settlement Sum is Fair and Reasonable.....18

VII. THE REQUESTED COST AMOUNT IS FAIR AND REASONABLE.....21

VIII. SUBMISSION TO THE LWDA.....22

IX. THE SETTLEMENT ADMINISTRATOR.....22

X. CONCLUSION.....22

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Amaral v. Cintas Corp.* No. 2, 163 Cal.App.4th 1157, 1209 (2008).....14

4 *Arias v. Superior Court*, 46 Cal.4th 969 (2009).....2, 5, 7, 11

5 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66 .....18

6 *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL

7 1182822 (Super. Ct. L.A. County, March 12, 2013).....16

8 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110.....18

9 *Consumer Advocacy Group v. Kintetsu Enterprises of America* (2006) 141

10 Cal.App.4th 46, 63.....16

11 *Fleming v. Covidien Inc.*, 2011 WL 7563047, at \*4 (C.D. Cal. Aug. 12, 2011) ....14, 15

12 *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16 .....21

13 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.....13

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18 (Super. Ct. L.A. County, May 20, 2013).....16

19 *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487 .....17

20 *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410.....21

21 *Serrano III v. Priest* (1977) 20 Cal.3d 25.....21

22 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135.....14

23 *Villalobos v. Calandri Sonrise Farms LP* (C.D. Cal. July 2015) 2015 WL 12732709, at \*5....13

24 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043 .....18

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. INTRODUCTION**

27 This PAGA representative action stems from Defendant FabFitFun, Inc. (“Defendant” or

28 “FabFitFun”) alleged Labor Code violations and resulting civil penalties under the Private

1 Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”). The PAGA  
2 action is a type of qui tam action filed on behalf of the state to assist it with labor law enforcement.  
3 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4<sup>th</sup> 348, 380-382. As such, the state is  
4 the real party in interest in a PAGA action. *Id.* at 382. The State of California was timely served  
5 with a copy of the Settlement Agreement concurrently filed with this instant Motion to Approve  
6 the PAGA Settlement.

7 Plaintiffs and the aggrieved employees are all individuals employed by FabFitFun or by  
8 any of the temporary agencies and assigned to work at FabFitFun as non-exempt employees at its  
9 California fulfillment(s) center at any time between February 28, 2019, and January 31, 2021.  
10 (“PAGA Period”). (the “Allegedly Aggrieved Employees”). (See Settlement Agreement, p. 2, ¶1)

11 Plaintiffs contend that Defendant (1) failed to pay minimum wages; (2) failed to pay  
12 overtime compensation; (3) failed to provide meal periods; (4) failed to provide rest periods; (5)  
13 failed to furnish accurate itemized wage statements; and (6) failed to pay all wages upon  
14 separation of employment. Specifically, the Representative PAGA Claims are claims for civil  
15 penalties for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512,  
16 516, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698,  
17 2699, as well as the applicable provisions of the Industrial Wage Orders (Plaintiffs’  
18 “Representative PAGA Claims”).

19 Defendant denies these claims, denies any fault or wrongdoing, and disputes Plaintiff’s  
20 characterization of liability, and damages/penalties. Thus, the Parties fully dispute the merits of the  
21 claims and defenses.

22 Following extensive discussions, as well as negotiations and the exchange of informal  
23 discovery, the Parties engaged in a full session of mediation on September 24, 2020 with Steve  
24 Serratore, Esq. serving as the mediator. Mr. Serratore has extensive experience in wage and hour  
25 class and PAGA actions. After the conclusion of the mediation, the parties continued to negotiate  
26 with the aid of the mediator, who eventually issued a proposal that was accepted by both parties.  
27 The Parties subsequently memorialized the terms in the long-form Settlement Agreement as set  
28 forth in the Settlement Agreement (“Settlement Agreement”) attached at **Exhibit “A”** to

1 Declaration of Joshua Falakassa (“Falakassa Decl.”) filed concurrently herewith.

2 Now with a comprehensive Settlement Agreement that resolves the claims alleged in this  
3 case, Plaintiffs seek this Court’s approval of the \$820,000 Settlement Sum involving  
4 approximately 7,000 Allegedly Aggrieved Employees. For estimation purposes only, assuming  
5 *arguendo* that distribution was pro rata across the approximately 7,000 Allegedly Aggrieved  
6 Employees (in reality, it is pro rata based on proportionate pay periods worked), the average  
7 payment to each Allegedly Aggrieved Employee is approximately \$17.50. This Settlement merits  
8 approval because it fulfills the purpose of PAGA (*i.e.*, to deter violations of the Labor Code and  
9 secure obedience of California’s labor laws; and to provide relief that is genuine, meaningful, and  
10 consistent with California’s goal of benefitting the public through enforcement of labor laws).

11 Because this is a PAGA-only settlement, the process for approval is straight-forward: “The  
12 superior court shall review and approve any settlement of any civil action filed pursuant to this  
13 part.” (Labor Code § 2699(1)(2).) Based on the California Supreme Court’s holdings in *Arias v.*  
14 *Superior Court*, 46 Cal.4th 969 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59  
15 Cal.4th 348 (2014), there is no requirement under PAGA for Plaintiff to establish the requirements  
16 of class certification (*i.e.* numerosity, typicality, commonality and adequacy) nor is there the usual  
17 two-step preliminary and final approval process as found in class actions. Rather, this PAGA-only  
18 settlement merely requires a one-step review and approval process. For these reasons and those  
19 discussed below, the Parties now seek the Court’s approval of the Settlement.

## 20 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

### 21 **A. Factual Background**

22 FabFitFun offers a quarterly subscription box of beauty, fashion, fitness and wellness  
23 products. As an expanding company, it continues to hire non-exempt employees through various  
24 staffing agencies, including JobSource, Select Staffing, Coretech, and various other temporary  
25 staffing agencies to work at its fulfillment centers in California. Plaintiffs and other similarly  
26 aggrieved employees worked out of FabFitFun’s 600,000 square foot distribution center, and  
27 served various roles, including but not limited to, packers/pickers, shippers, quality control and  
28 other similarly situated positions. (Falakassa Decl. Par. 12)

1 Plaintiffs' primary allegation relates to FabFitFun's uniform security and loss prevention  
2 policies/procedures which required Plaintiffs and similarly aggrieved employees to go through a  
3 security checkpoint process, which included checking bags/personal belongings when entering  
4 Defendant's facility at the beginning of each shift, and when leaving the facility at the end of each  
5 shift. Plaintiffs further allege that aggrieved employees were also subject to security checkpoints  
6 when they attempted to leave and/or re-enter the facility during meal and rest periods. Despite  
7 being subject to Defendant's control while waiting to go through these security checkpoints,  
8 Defendant did not provide any compensation to Plaintiffs and other aggrieved employees for the  
9 time it took to complete this security screening process. (Falakassa Decl. Par. 13)

10 As a result, Plaintiffs and other similarly aggrieved employees were not fully compensated  
11 for all minimum and overtime wages and were also unable to take compliant meal and rest periods.  
12 (See *Frlekin v. Apple, Inc.* (Feb. 13, 2020) S243805 at \*23 [employees "must be paid" during  
13 security checks since "it is clear that [employees] are subject to [the employer's] control while  
14 awaiting, and during, [the] exit searches"].) (Falakassa Decl. Par. 14)

15 However, during the informal exchange of documents and information for mediation,  
16 Plaintiffs discovered that the wait to go through the security line did not last more than a minute  
17 and Defendant had instituted a policy that paid employees an additional seven minutes of  
18 compensation as an offset for any alleged off-the-clock work that was required prior to each shift.  
19 (*Id.*)

## 20 **B. Procedural History**

21 On March 2, 2020, Plaintiff Ayala sent notice to the California Labor & Workforce  
22 Development Agency ("LWDA") of her intent to pursue a representative action pursuant to  
23 PAGA, on behalf of herself and the State of California, as well as on behalf of a group of  
24 aggrieved employees (the "PAGA Notice"). (Falakassa Decl. ¶ 15.)

25 On August 12, 2020, Plaintiff Gomez also sent notice to the California Labor & Workforce  
26 Development Agency ("LWDA") of her intent to pursue a representative action pursuant to  
27 PAGA, on behalf of herself and the State of California, as well as on behalf of a group of  
28 aggrieved employees (the "PAGA Notice"). The PAGA Notice is required under Labor Code §

1 2699.3(a)(1)(A) as a prerequisite to bringing a PAGA representative claim against an employer.  
2 The LWDA did not respond to either notice, thus allowing Plaintiffs to file the instant lawsuit.  
3 Labor Code § 2699.3(a)(2)(A). (Falakassa Decl. ¶ 16.)

4       Thereafter, Plaintiff Ayala filed her PAGA Representative Action Complaint in the San  
5 Bernardino Superior Court. Likewise, on July 13, 2020, Plaintiff Gomez filed her PAGA  
6 Representative Action Complaint in the San Bernardino Superior Court alleging similar Labor  
7 Code violations. (Falakassa Decl. ¶ 17.)

8       On October 30, 2020, Plaintiffs filed their Second Amended Representative Action  
9 Complaint consolidating both actions. Through their PAGA claim, Plaintiff seeks penalties for  
10 Defendant's violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 206(e), 226.3, 226.6, 226.7,  
11 510, 512, 516, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698. (Falakassa Decl. ¶ 18.)

12       Although Defendant denies the allegations and vowed to vigorously defend against them,  
13 the Parties agreed to attend mediation. (Falakassa Decl. ¶ 19.) In preparation for mediation, the  
14 Parties exchanged documents and information that allowed both sides to evaluate the potential  
15 exposure and potential risk, such as reviewing and analyzing all time and payroll records for the  
16 Allegedly Aggrieved Employees, review Defendant's employee handbook and relevant meal and  
17 rest break policies, along with timekeeping procedures, surveillance footage, wage statements, and  
18 the total number of employees and workweeks during the PAGA Period. (*Id.*) During this process,  
19 Plaintiffs' counsel analyzed, researched, and investigated the potential issues, including matters  
20 related to the calculation of damages, trial management, and appellate issues and risks. (*Id.*)

21       On September 4, 2020, the Parties attended mediation with Steve Serratore, Esq., an  
22 experienced mediator in wage and hour matters. (Falakassa Decl. ¶ 20.) During that mediation, the  
23 Parties exchanged further information and discussed all aspects of the case, including the risks and  
24 delays of litigation, the risk associated with proceeding in a representative capacity, liability under  
25 the claims asserted, and the ability to recover and measure damages and/or penalties. (*Id.*)

26       The Settlement negotiations were at all times at arm's length and although conducted in a  
27 professional manner, were adversarial. (*Id.*) By way of a mediator's proposal, the Parties reached  
28 agreement regarding the major terms of the Settlement and subsequently finalized those terms in a

1 long-form Settlement Agreement. (Falakassa Decl. ¶ 21.) This Settlement was the culmination of  
2 protracted discussions between the Parties following a thorough analysis of the pertinent facts and  
3 law at issue. The Parties now present the Settlement Agreement to this Court for approval.  
4 (Falakassa Decl. ¶ 22.) The Settlement confers a substantial monetary benefit to the State of  
5 California, the Aggrieved Employees as well as Defendant’s current employees who are not  
6 compensated for any additional time they spend going through a security checkpoint upon entering  
7 and exiting Defendant’s facility. (Id.)

### 8 **III. PAGA AND ITS REQUIREMENTS**

9 PAGA provides an enforcement mechanism for California’s labor laws by enlisting  
10 individual plaintiffs as private attorneys general to recover civil penalties for the state, with a share  
11 also going to the aggrieved employees. Due to the lack of financing for California’s agencies, and  
12 the substantial number of Labor Code violations by California employers, the California  
13 Legislature found that it was in the public interest to allow aggrieved employees to act as “private  
14 attorneys general” to enforce and recover civil penalties on behalf of the State of California for  
15 Labor Code violations committed by employers. *Arias, supra*, 46 Cal.4th at 980. As the  
16 Legislature that adopted PAGA observed, “the only meaningful deterrent to unlawful conduct is  
17 the vigorous assessment and collection of civil penalties as provided in the Labor Code.” Stats.  
18 2003 ch. 906, § 1(b).

19 Moreover, the Labor Code’s primary purpose is to “ensure employees are not required or  
20 permitted to work under substandard unlawful conditions ... and to protect employers who comply  
21 with the law from those who attempt to gain a competitive advantage at the expense of their  
22 workers by failing to comply with minimum labor standards.” Labor Code § 90.5(a). Therefore,  
23 the Legislature determined that “adequate financing of labor law enforcement was necessary to  
24 achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement  
25 agencies had declined and were unlikely to keep pace with the future growth of the labor market,  
26 and that it was therefore in the public interest to allow aggrieved employees, acting as private  
27 attorneys general, to recover civil penalties for Labor Code violations, with the understanding that  
28 labor law enforcement agencies were to retain primacy over private enforcement efforts.” Thus,

1 Plaintiff, acting as a private attorney general and proxy for the State of California, filed this action  
2 seeking civil penalties for Defendant's alleged violations of the Labor Code.

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

7 Before filing a PAGA action, an aggrieved employee must first provide written notice to  
8 the LWDA and the employer of the particular Labor Code violations the aggrieved employee  
9 alleges the employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA  
10 with the opportunity to investigate and prosecute the claim. The employee may only sue on the  
11 state's behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not  
12 intend to investigate, or investigates and does not issue a citation within 185 days. Labor Code §§  
13 2699.3(a)(2), 2699(h).

14 In this case, Plaintiff provided the LWDA with the PAGA Notice advising it of the alleged  
15 Labor Code violations, but the LWDA deferred the prosecution of these violations to Plaintiff and  
16 his attorneys. Accordingly, the Settlement and the \$145,000 common fund created by it for the  
17 benefit of the State and Allegedly Aggrieved Employees, is solely the result of the work performed  
18 by Plaintiff and his attorneys on this case—all while the Allegedly Aggrieved Employees will  
19 preserve their own separate individual claims should they wish to pursue them.

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

1 Thus, the Court reviews any proposed settlement and approves it if it is deemed to be fair and  
2 reasonable. Accordingly, the Parties to this current PAGA action have reached such an agreement  
3 and now seek this Court's approval of the Settlement.

#### 4 **IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

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

##### 6 **A. Allegedly Aggrieved Employees and Terms of Settlement**

7 Allegedly Aggrieved Employees are defined as all individuals employed by FabFitFun or  
8 by the temporary agencies identified in the Settlement Agreement and assigned to work at  
9 FabFitFun as non-exempt employees at its California fulfillment center(s) at any time between  
10 February 28, 2019 and January 31, 2021. ("PAGA Period"). (*See Settlement Agreement* p. 2.)  
11 The number of Allegedly Aggrieved Employees is estimated to be about 7,000 individuals who  
12 worked approximately 112,625 pay periods during the PAGA period. This number would be 50%  
13 lower if the Aggrieved Employees were paid on a bi-weekly basis, but staffing agencies are  
14 required to pay their employees on a weekly basis. (*Falakassa Decl.* ¶ 23.)

15 The Settlement provides that Defendant will pay a Settlement Sum of Eight Hundred And  
16 Twenty Thousand Dollars (\$820,000) (the "Settlement Sum"), inclusive of payments to the  
17 LWDA and Allegedly Aggrieved Employees, payment of Plaintiffs' Enhancement Awards, the  
18 Attorneys' Fee Amount and Cost, and the third-party Settlement Administration Fee. (*Settlement*  
19 *Agreement*, p. 4, section 5.) After these payments, approximately \$487,666.67 will remain to be  
20 distributed to the LWDA and the Aggrieved Employees (the "Net PAGA Payment"). (*Falakassa*  
21 *Decl.* ¶¶ 24-25.)

##### 22 **B. Settlement Allocation to LWDA and Allegedly Aggrieved Employees**

23 Pursuant to the Settlement Agreement, the Net PAGA Payment in the amount of  
24 approximately \$487,666.67 shall be designated as PAGA penalties to be allocated between the  
25 LWDA and the Allegedly Aggrieved Employees pursuant to Labor Code section 2699(i) with  
26 75% paid to the LWDA (the "LWDA Payment") and 25% paid to the Allegedly Aggrieved  
27 Employees (the "Individual PAGA Payment") on a pro-rata basis.

28 The following chart reflects the estimated payments from the Settlement Agreement:

|                                                          | <b>Total Amount</b> |
|----------------------------------------------------------|---------------------|
| <b><i>Total Settlement Payment</i></b>                   | <b>\$820,000.00</b> |
| Plaintiff's Counsel's fees (1/3)                         | \$273,333.33        |
| Plaintiff's Counsel's litigation costs                   | \$14,291.51         |
| Plaintiffs' Enhancement Awards (\$7,500 each)            | \$15,000.00         |
| Administration Costs ( <i>not to exceed</i> \$24,000.00) | \$23,950.00         |
| <b><i>The PAGA Fund (PAGA Penalties)</i></b>             | <b>\$493,425.16</b> |
| • 75% to the LWDA                                        | \$370,068.87        |
| • 25% to the PAGA Members                                | \$123,356.29        |

Based on these distributions, the LWDA Payment will be approximately \$370,068.87 (75 percent of the PAGA Penalties) and the amount paid to Allegedly Aggrieved Employees for civil penalties under PAGA is estimated to be \$123,356.29 (25 percent). (Falakassa Decl. ¶ 26.) Assuming *arguendo* that distribution was pro rata to the Allegedly Aggrieved Employees (in reality, it is pro rata based on proportionate pay periods worked), the average payment to each Allegedly Aggrieved Employee is estimated to be approximately \$17.50. (Falakassa Decl. ¶ 27.)

However, as discussed earlier, only a small amount of pay periods represent the timeframe where the security checkpoint had caused employees to work off-the-clock and current (and future) employees will be paid at least 7 minutes of additional time per shift and compliant meal and rest breaks. Thus, to the extent, Defendant is now complying with California law due to the policy change, employees have already received benefits in the form of additional compensation for every shift worked that they have otherwise not received. (Id.)

### **C. Individual Payments and the Notice**

As noted, twenty-five percent (25%) of the PAGA penalties will be allocated to the Allegedly Aggrieved Employees. (Settlement Agreement, p.4 §5(d).) Based on the numbers provided by Defendant, approximately 7,000 seasonal and/or temporary current and former Allegedly Aggrieved Employees will share in their pro-rate portion of the Net PAGA Payment. The Settlement Agreement provides a very fair and equitable means of allocating this fund. Each Allegedly Aggrieved Employee shall receive a portion of the PAGA penalties on a pro-rata basis based on the number of pay periods that each Allegedly Aggrieved Employee received a paycheck from Defendant during the PAGA Period. The Individual PAGA Payment for each Aggrieved

1 Employee shall be based on the number of pay periods each Allegedly Aggrieved Employee  
2 worked during the PAGA Period as a percentage of the total pay periods worked by all Allegedly  
3 Aggrieved Employees during the PAGA Period, multiplied by 25% of the Net PAGA Payment.  
4 (Settlement Agreement, p. 5, section 7) All Individual Payments made to Allegedly Aggrieved  
5 Employees will be reported on an IRS Form 1099. (Settlement Agreement, p.5, § 8)

6 The Settlement is non-reversionary and does not require Allegedly Aggrieved Employees  
7 to submit a claim form to reap financial benefit from the Settlement. Within fourteen (14) calendar  
8 days after the Effective Date<sup>1</sup>, Defendant shall provide the Settlement Administrator with a list of  
9 the names, addresses and number of pay periods/paychecks issued to each of the Allegedly  
10 Aggrieved Employees during the PAGA Period. (Settlement Agreement, p. 6, §10(a).)

11 Further, within seven days after receipt of the employee list, the Settlement Administrator  
12 shall pay to the LWDA an amount equivalent to Seventy-Five percent (75%) of the Net PAGA  
13 Fund, or as otherwise directed by the Court and shall also remit a total of Twenty-Five percent  
14 (25%) of the Net PAGA Fund to the Allegedly Aggrieved Employees. A letter approved by the  
15 Parties will be included in the mailing of the Individual PAGA Payment to each Allegedly  
16 Aggrieved Employee. (Settlement Agreement, p. 6, §10(a).) The Individual PAGA Payment  
17 checks shall be sent to each Allegedly Aggrieved Employee by U.S. First Class mail to the  
18 Allegedly Aggrieved Employee's address. (*Id.*) The Settlement Administrator shall distribute  
19 Plaintiffs' Enhancement Award (as approved by the court) and the court approved Fee Amount  
20 and Cost Amount.

21 Individual PAGA Payments issued to Allegedly Aggrieved Employees pursuant to the  
22 Settlement Agreement will expire one hundred and eighty (180) days from the date they are  
23 mailed by the Settlement Administrator. Any unclaimed funds after the 180-day period shall be

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24 <sup>1</sup> Effective Date" refers to the date upon which both of the following have occurred: (a) the date of service  
25 of notice of entry of the order approving this Agreement and the PAGA Settlement if no objections are  
26 filed to this settlement or if all objections are withdrawn prior to the Court ruling on them, (b) sixty-one  
27 (61) days after the date of service of notice of entry of the settlement approval order if objections are filed  
28 and overruled and no appeal is taken from the order approving the settlement; or (c) if a timely appeal is  
made, ten (10) business days after the final resolution of that appeal if the appeal is rejected, the settlement  
is upheld, and the settlement approval order is no longer subject to further judicial review. (Settlement  
Agreement, paragraph 1).)

1 sent to the Controller of the State of California to be held pursuant to the Unclaimed Property  
2 Law, California Civil Code § 1500, *et. seq.* for the benefit of the Allegedly Aggrieved Employee.  
3 (Settlement Agreement, p. 7 §10(b)) The costs of the Settlement Administrator shall be paid out of  
4 the Gross Settlement Amount. (*Id.*)

5 **D. The Limited Release**

6 Importantly, the California Supreme Court has explained that other employees are bound  
7 by a PAGA adjudication only with respect to civil penalties, just as they would be “bound by a  
8 judgment in an action brought by the government.” *Arias, supra*, 46 Cal.4<sup>th</sup> at 986. In accordance  
9 with this rule, the release of the Allegedly Aggrieved Employees herein is narrowly tailored to incl  
10 ude, release from liability for claims seeking *civil penalties* under California Labor Code Section  
11 2698 *et seq.* predicated on the alleged California Labor Code and Wage Order No. 1-2001  
12 violations asserted in the operative Complaint. Specifically, the release states as follows:

13 The Parties agree and acknowledge that, to the maximum extent permitted by law,  
14 the final judgment entered pursuant to this settlement will bind all those who would  
15 be bound by a judgment if the action had been brought by the LWDA, including  
16 Plaintiffs, the LWDA, and the Aggrieved Employees, with respect to the recovery  
17 of civil penalties under PAGA only, against the Released Parties. It is expressly  
18 understood and agreed that this settlement (except as set forth in paragraph 3  
19 below) only includes a full release of the PAGA claim for penalties the period of  
20 February 28, 2019 through January 31, 2021 for violations of Labor Code §§ 201,  
21 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5,  
22 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, as well as the  
23 applicable provisions of the Industrial Wage Orders and for any other PAGA  
24 violations that could have been asserted in the action based on the factual assertions  
25 and legal assertions in the Second Amended Complaint. However, other than as to  
26 the Named Plaintiffs, this settlement agreement shall not impact Aggrieved  
27 Employees ability to assert Labor Code claims other than PAGA claims.  
28 Specifically, the Aggrieved Employees may assert Labor Code claims (other than a  
PAGA claim for penalties) for unpaid wages. (Settlement Agreement, p. 2, § 2.)

25 **E. The Fee Amount and Cost Amount**

26 Plaintiffs’ Counsel request one-third of the Settlement Sum, or up to \$273,333.33, in  
27 attorneys’ fees, and \$13,809.28 of actual litigation costs. (Settlement Agreement, p. 4, section  
28 5(a)) Further discussion and support for the requested awards is set forth in Sections VI and VII,

1 *infra*, and the accompanying Falakassa Decl. ¶¶ 43-51 and Declaration of Mehrdad Bokhour  
2 (“Bokhour Decl.”) ¶¶ 15-22, and the Declaration of David Yeremian (“Yeremian Decl.”) ¶¶ 18-22  
3 filed concurrently herewith.

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

5 In 2016, PAGA was amended to require the Court to “review and approve any settlement  
6 of any civil action filed pursuant to this part.” Labor Code § 2699(1)(2). The amendment also  
7 requires that the “proposed settlement shall be submitted to the agency at the same time that it is  
8 submitted to the court.” As such, on the day of filing of this Motion, the Settlement is also being  
9 concurrently submitted to the LWDA in accordance with this section. (Falakassa Decl. ¶ 36, Ex.  
10 B)

11 **A. Standards for Approval of a PAGA Settlement**

12 The legislative history of PAGA makes little mention of the approval requirements in §  
13 2699, subdivision (l). PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was  
14 signed by the Governor and filed with the Secretary of State on October 12, 2003. *See*, Legislative  
15 Digest re Senate Bill No. 796. It took effect on January 1, 2004.

16 The original version of the act did not contain the court approval requirement now codified  
17 in § 2699(1). That subdivision was added as part of the amendments to the Act that were  
18 introduced as SB 1809 in February 2004 and signed by the Governor on August 11, 2004. *See*,  
19 Legislative Digest re Senate Bill No. 1809. Those amendments took effect immediately, and the  
20 Court approval requirement of § 2699(1) was one of the provisions that the legislature made  
21 retroactive to January 1, 2004. *Id.*

22 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the  
23 amendments (SB 1809). On July 29, 2004, during the consideration of the amendments in SB  
24 1809, Senator Dunn sent a letter addressed to the President Pro Tem of the Senate, which was  
25 published in the Senate Daily Journal, “to clarify the extent of subdivision (1)” of what is now  
26 section 2699. He was sending this letter “in response to an issue raised by the Judicial Council of  
27 California.” *Id.* In the letter, Senator Dunn stated,

1 The purpose of court review of the penalties in subdivision (l) is to ensure that  
2 settlements involving penalties arising out of Labor Code Section 2699 do not  
3 undercut the dual statutory purposes of punishment or deterrence, or result in  
unjust, arbitrary, and oppressive, or confiscatory settlements. *Id.*

4 The broad criteria appear to give the Court wide latitude in determining whether to approve  
5 the penalties proposes as part of a PAGA settlement. Interestingly, the criteria focus on the effect  
6 the penalties may have on the defendant-employer rather than the LWDA or the aggrieved  
7 employees who will receive the penalties. *See, Iskanian, supra*, 59 Cal.4<sup>th</sup> at 313 (stating that  
8 while the State clearly has an interest “in receiving the proceeds of civil penalties,” the penalties  
9 are “used to deter violations.”) This is different than the analysis of a class action settlement,  
10 which typically focuses on the amount received by the class and compares that to the reasonable  
11 range of potential outcomes in this case. *C.f., e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168  
12 Cal.App.4<sup>th</sup> 116, 130. Moreover, “there is not requirement that the Court certify a PAGA claim for  
13 representative treatment” as in a class action. *Villalobos v. Calandri Sonrise Farms LP* (C.D. Cal.  
14 July 2015) 2015 WL 12732709, at \*5.

15 **B. The Civil Penalties are Appropriate Under the Circumstances**

16 Here, the penalties are appropriate when considered in light of the aforementioned  
17 principles. Plaintiffs thus contend that a *non-reversionary* Settlement Sum of \$820,000 represents  
18 an excellent recovery that is large enough to punish or deter Defendant. The proposed Settlement  
19 provides a fair and reasonable monetary recovery for the LWDA and Allegedly Aggrieved  
20 Employees in the face of hotly disputed claims. (Falakassa Decl. ¶ 37.)

21 First, although PAGA and its legislative history do not seem to require a comparison with  
22 the “maximum value” of the claims to the actual settlement amount, the penalties are reasonable  
23 when considered in this context as well. Based on Plaintiff’s review of the payroll, timekeeping  
24 records and surveillance footage, aggrieved employees did not often spend long periods waiting in  
25 the security checkpoints. Any off the clock time spent was *de minimus*. Further, Defendant’s  
26 security screening was not applicable to meal and rest breaks, as Defendant did not deprive  
27 aggrieved employees of meal and rest breaks. Defendant also maintained compliant meal and rest  
28 policies during the relevant liability period. Therefore, Plaintiffs applied appropriate discounts to

1 reach a settlement based on the mediator's proposal. The number of Allegedly Aggrieved  
2 Employees in the PAGA covered period is approximately 7,000 and the number of PAGA-eligible  
3 workweeks is approximately 112,625 pay periods during the PAGA period. This number would  
4 be 50% lower if the Aggrieved Employees were paid on a bi-weekly basis, but staffing agencies  
5 are required to pay their employees on a weekly basis. Further, while Plaintiffs believe the claims  
6 are meritorious, Defendant asserts numerous factual and legal defenses to the claims. (Falakassa  
7 Decl. ¶ 38.)

8 For example, a significant factor in evaluating the value of a PAGA-only case is that all  
9 PAGA awards are discretionary and subject to potentially significant reduction by the Court.  
10 Defendant maintains that given its good faith and *de minimis* defenses, this Court would exercise  
11 its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for  
12 any of Plaintiff's claims. (Falakassa Decl. ¶ 39.) *See also*, Labor Code §§ 203, 2699(e)(2);  
13 *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction  
14 of PAGA penalties); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011, No. (OPX)) 2011 WL  
15 7563047, at \*4 (reducing PAGA penalties from \$2.8 million to \$500,000). Additionally,  
16 Defendant could argue that Plaintiff could only seek PAGA penalties at the \$100 "initial"  
17 violation rate, as opposed to the \$200 "subsequent" violation rate, since before Plaintiffs initiated  
18 this action, Defendant had never been put on notice by a court or the Labor Commissioner that its  
19 practices violated the Labor Code. *See, Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209  
20 (2008) (finding "initial" violation rate applies until employer has been notified that it is violating a  
21 Labor Code provision). As a result, Plaintiffs took this into consideration in calculating penalties.  
22 (Id.)

23 Further, many of the claims were derivative of each other, which tended to undermine any  
24 stacking of penalties. In light of the foregoing, Plaintiffs' Counsel took into consideration, when  
25 valuing the merits of these claims, the chances of prevailing on the derivative violations, as well as  
26 the additional hurdles of prevailing under each standalone violation in light of the defenses raised,  
27 and applied the appropriate discounts. (Falakassa Decl. ¶ 43.)

28 Based on the data provided by Defendant, the proposed maximum exposure for the PAGA

1 claims for Allegedly Aggrieved Employees is \$5,631,250. During the PAGA covered period, there  
2 were approximately 112,625 pay periods during the PAGA period. This number would be 50%  
3 lower if the Aggrieved Employees were paid on a bi-weekly basis, but staffing agencies are  
4 required to pay their employees on a weekly basis. PAGA penalties are assessed at the \$100.00  
5 penalty for a total of \$5,631,250. (Falakassa Decl. ¶¶ 38, 44.)

6 The proposed Settlement of \$820,000 represents **15% of the potential maximum exposure.**  
7 (Falakassa Decl. ¶ 45.) However, as noted above, Plaintiffs' allegation were at issue for a small  
8 percentage of the liability period and Defendant has agreed to change its policies moving forward  
9 and has continued to pay additional compensation to its employees as a result of Plaintiffs'  
10 lawsuit. Furthermore, courts can exercise their discretion to reduce the amount of PAGA penalties.  
11 *See, e.g., Fleming v. Covidien Inc.*, 2011 WL 7563047, at \*4 (C.D. Cal. Aug. 12, 2011) (reducing  
12 PAGA penalties to \$500 per employee prior to the 75-25 split). (*Id.*) The Settlement Sum here is  
13 already analogous to that awarded by the Court in *Covidien*. Accordingly, the proposed Settlement  
14 approximates or provides the same or similar result than some actual PAGA trials that were  
15 litigated to completion, though other cases also provided for a greater award than *Covidien*. (*Id.*)  
16 Thus, the Settlement Sum is reasonable in light of significant risks and uncertainties associated  
17 with the PAGA claims in this case. (*Id.*)

18 Defendant vigorously disputed the merits of Plaintiffs' claims. Based on Plaintiffs'  
19 Counsel's review of the payroll, timekeeping records and surveillance footage, aggrieved  
20 employees did not often spend long periods of waiting in the security checkpoints. Any off the  
21 clock time spent was *de minimus*. Further, Defendant's security screening was not applicable to  
22 meal breaks, as Defendant did not deprive aggrieved employees of meal breaks. Defendant also  
23 maintained compliant policies during the relevant liability period. Therefore, Plaintiff applied  
24 appropriate discounts to reach a settlement based on the mediator's proposal. The number of  
25 Allegedly Aggrieved Employees in the PAGA covered period is 7,000 and the number of PAGA-  
26 eligible workweeks is approximately 112,625 pay periods during the PAGA period. This number  
27 would be 50% lower if the Aggrieved Employees were paid on a bi-weekly basis, but staffing  
28 agencies are required to pay their employees on a weekly basis so the actual number is

1 approximately 61,300 pay periods. Further, while Plaintiffs believe the claims are meritorious,  
2 Defendant asserts numerous factual and legal defenses to the claims. Defendant contends that  
3 Plaintiff's allegations regarding failure to provide compliant off-duty rest breaks are entirely false.  
4 Defendant further argued it was prepared to call numerous current employees to testify that they  
5 were never denied a compliant off-duty rest break. (Falakassa Decl. ¶ 38-45.)

6 Second, the scope of the release of the PAGA Settlement is necessarily strictly confined to  
7 those PAGA civil penalties that were or could have been alleged in the operative Complaint. The  
8 PAGA Released Claims do not release any Allegedly Aggrieved Employees' non-PAGA claims  
9 for alleged violations of the Labor Code. Individual Allegedly Aggrieved Employees who believe  
10 they have been denied, for example, overtime wages and rest breaks, can maintain those rights to  
11 pursue those claims in another proceeding. (Falakassa Decl. ¶ 40.)

12 Third, the proposed Settlement, even with deductions, provides a substantial sum of  
13 \$370,068.87 to the State and \$123,356.29 to the Allegedly Aggrieved Employees. The Settlement  
14 secured by Plaintiffs here is equal to or greater than other PAGA penalty awards approved by  
15 California state courts, which often range between \$7,500 and \$15,000 for PAGA claims  
16 impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments  
17 on a per capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL  
18 2917624 at \*2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00  
19 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259,  
20 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of  
21 \$10,000.00 for class of approximately 3,000 members). (Falakassa Decl. ¶ 41.)

22 Fourth, public policy strongly favors the settlement of litigation. *Consumer Advocacy*  
23 *Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4<sup>th</sup> 46, 63. Because the proposed  
24 Settlement is neither unjust nor ignores the public interest, it should be approved. (Falakassa Decl.  
25 ¶ 42.)

## 26 **VI. THE REQUESTED FEE AMOUNT IS FAIR AND REASONABLE**

27 For their efforts and the risk that they undertook in obtaining a common fund settlement  
28 that benefits the LWDA and the Allegedly Aggrieved Employees, the Parties allocated one-third

1 of the Settlement Sum up to \$273,333.33, to Plaintiffs' Counsel for reasonable attorneys' fees.  
2 (Settlement Agreement, p. 4, section 5(a)) These fees are warranted under the law and within the  
3 range of fees commonly awarded in similar cases.

4 **A. Attorneys' Fees Are Recoverable under the Common Fund Doctrine**

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

13 "A qui tam action is one brought under a statute that allows a private person to sue as a  
14 private attorney general to recover damages or penalties, all or part of which will be paid to the  
15 government." *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4<sup>th</sup> 487, 491-  
16 492. "A qui tam action 'is a type of private attorney general lawsuit' [citation], in which 'the qui  
17 tam plaintiff stands in the shoes of the state or political subdivision [citation].'" *Id.* at p. 501. As  
18 the name of the PAGA statute makes clear (e.g., "Labor Code Private Attorney General Act"), a  
19 PAGA action is a qui tam action because the statute allows the employee plaintiff, acting as the  
20 proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code  
21 violations and recover civil penalties that otherwise would have been assessed and collected by the  
22 Labor and Workforce Development Agency (LWDA). *Iskanian v. CLS Transp. Los Angeles, LLC*  
23 (2014) 59 Cal.4<sup>th</sup> 348, 380. "A PAGA representative action is therefore a type of *qui tam* action."  
24 *Id.* at p. 382. Here, where a common fund is created in a qui tam action by the successful litigation  
25 of a plaintiff and his attorneys, the plaintiff's attorneys are entitled to recover their fees from the  
26 common fund. *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91.

27 Moreover, a more generic application of the common fund doctrine is found "consistently  
28 in California when an action brought by one party creates a fund in which other persons are

entitled to share.” *City and County of San Francisco v. Sweet* (1995) 12 Cal.4<sup>th</sup> 105, 110. An award of fees from the gross settlement amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund through the successful efforts of plaintiff’s counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating:

The recognized advantages of the percentage method – including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement 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.*

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

**B. A Fee of One-Third the Total Settlement Sum is Fair and Reasonable**

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

First, the efforts of Plaintiffs’ Counsel resulted in a common fund Settlement amount of \$820,000. This is a good PAGA settlement considering the contested issues.

Second, Plaintiffs faced significant risks going forward with the litigation. As discussed, Defendant raised various defenses, such that Plaintiff faced risky issues going forward with this litigation, as well as the fact that it would have taken significant time to realize any recovery in this

1 action along with the possibility of post-trial appeals. (Falakassa Decl. ¶ 50.)

2 Third, Plaintiffs' Counsel are experienced representative and class action litigators, and  
3 have previously achieved significant PAGA and class action awards. This experience and  
4 expertise, combined with the high quality of work performed in this case by Plaintiffs' Counsel,  
5 resulted in the Settlement achieved. *See*, (Falakassa Decl. ¶ 5-11); (Bokhour Decl. ¶ 5-11.)

6 Fourth, Plaintiffs' Counsel represented Plaintiffs (and the State of California) in this matter  
7 on a strictly contingency basis and, as such, had to forego other financial opportunities to litigate  
8 other cases (contingency and hourly), incurred the risk of non-recovery after investment of time,  
9 money, and resources, and have done so since the inception of this case without payment or  
10 compensation. This is not an easy burden for Plaintiffs' Counsel and, if the best that could be  
11 hoped for is merely to be paid the customary hourly rate, such would not sufficiently incentivize  
12 future similar private attorney general/qui tam cases with contingency risks. (Falakassa Decl. ¶ 46-  
13 54)

14 Fifth, the request for attorney's fees in the amount of one-third of the common fund falls  
15 well within the norms accepted by state and federal courts in California in comparable  
16 representative actions. The following list shows PAGA actions and mixes PAGA/class action cases  
17 where attorney's fees were awarded on a common fund basis in a range between 33.33% and 40%:

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

20 *Robles v. DCH*, Los Angeles County Superior Court Coordination Proceeding Case No.  
21 4833 (**33.33% fee awarded** on \$4,035,600 settlement of mixed PAGA/class claims);

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

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

26  
27 *Birch v. Office Depot*, United States District Court for the Southern District of California,  
28 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**).

Moreover, the award of a one-third fee recovery under the common fund doctrine was recently approved by the California Supreme Court in *Laffitte, supra*, 1 Cal.5<sup>th</sup> 480, 503. For all of the above reasons, a common fund fee award here in the amount of one-third of the \$820,000 common fund created by Plaintiffs and their attorneys is fair and reasonable.

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

Specifically, in total, the following table summarizes Class Counsel's lodestar to date:

| Total Aggregated Lodestar of Counsel |                       |              |                    |                  |
|--------------------------------------|-----------------------|--------------|--------------------|------------------|
| <i>Timekeeper</i>                    | <i>Yrs Experience</i> | <i>Hours</i> | <i>Hourly Rate</i> | <i>Lodestar</i>  |
| Mehrdad Bokhour, Esq.                | 8                     | 112          | \$525.00           | \$58,000         |
| Joshua Falakassa, Esq.               | 7                     | 97           | \$495.00           | \$48,015         |
| Jason Rothman, Esq.                  | 5                     | 45           | \$450.00           | \$20,250         |
| David Yeremian, Esq.                 | 18                    | 36           | \$750.00           | \$27,000         |
| <b>TOTAL</b>                         |                       |              |                    | <b>\$153,265</b> |

(Bokhour Decl. ¶ ; Falakassa Decl. ¶ ; Yeremian Decl. ¶ 20.)

## **VII. THE REQUESTED COST AMOUNT IS FAIR AND REASONABLE**

Plaintiffs' 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. Plaintiff's 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

1 and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6  
2 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons  
3 discussed above with respect to the recovery of attorneys’ fees by...[Plaintiffs’] attorneys”).  
4 Furthermore, Plaintiff’s Counsel are entitled to recover “those out-of-pocket expenses that would  
5 normally be charged to a fee-paying client.” *Harris, supra*, 24 F.3d at 19.

6 The Settlement Agreement authorized Plaintiff’s Counsel to recover litigation costs not to  
7 exceed \$13,809.28. The following sets forth specific costs incurred by Plaintiffs’ Counsel to date:

8  
9

| BOKHOUR LAW GROUP, P.C. |                                        |             |
|-------------------------|----------------------------------------|-------------|
| Type                    | Description                            | Charge      |
| Mediation               | Mediation Fees                         | \$9,000.00  |
| Expert Data             | Review and analysis of payroll records | \$911.25    |
| Filing Fees             | PAGA Complaint & other filings         | \$1,980.30  |
| LWDA Filing             | PAGA Filing Fee                        | \$75.00     |
| CourtCall               | Court Appearance                       | \$188       |
| TOTAL                   |                                        | \$12,154.55 |

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| DAVID YEREMIAN & ASSOCIATES, INC. |                                  |            |
|-----------------------------------|----------------------------------|------------|
| Type                              | Description                      | Charge     |
| Filing Fee                        | Filing of Summons & Complaint    | \$1,579.73 |
| Filing Fee                        | PAGA Exhaustion Letter           | \$75.00    |
| Process Fee                       | Service of Process               | \$154.88   |
| Filing Fee                        | Rapid Legal (POS of summons)     | \$33.04    |
| Filing Fee                        | Rapid Legal (POS of summons)     | \$33.04    |
| Filing Fee                        | Rapid Legal (Ntc of Initial CMC) | \$98.09    |
| Filing Fee                        | Rapid Legal (Joint Stipulation)  | \$69.18    |
| Courtcall                         | CMC hearing                      | \$94.00    |
| TOTAL                             |                                  | \$2,136.96 |

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24 (Bokhour Decl. ¶ 21; see also Yeremian Decl. ¶ 22.)

25 Accordingly, Plaintiffs’ Counsel seek \$14,291.51 in litigation cost reimbursement.

26 **VIII. SUBMISSION TO THE LWDA**

27 As set forth in the Falakassa Decl. at ¶ 36, the Settlement and this Motion are concurrently  
28

1 being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of  
2 electronic submission is attached as **Exhibit “B”** to the Falakassa Decl.

3 **IX. THE SETTLEMENT ADMINISTRATOR**

4 The Parties have agreed to use Phoenix Class Action Administration Solutions as the  
5 Settlement Administrator. The Settlement Administrator will be responsible for processing any  
6 payments to be made under the Settlement and providing notice to the Allegedly Aggrieved  
7 Employees. A true and correct copy of the Phoenix Class Action Administration Solutions’ cost-  
8 estimate bid for settlement administration is attached at **Exhibit “C”** to the Falakassa Decl.

9 **X. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request the Court approve the PAGA  
11 Settlement.

12 Dated: May 19, 2021

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

13  
14  
15 BY: \_\_\_\_\_  
16 JOSHUA FALAKASSA  
17 MEHRDAD BOKHOUR  
18 *Attorneys for Plaintiffs and all others similarly*  
19 *aggrieved employees*  
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