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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

**DECLARATION OF JOSHUA
FALAKASSA IN SUPPORT OF MOTION
TO APPROVE PAGA SETTLEMENT**

HEARING INFO

Date: June 11, 2021

Time: 10:00 a.m.

Dept.: S26

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I, Joshua Falakassa, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would competently testify to them.

2. I am the founding and managing shareholder of Falakassa Law, P.C. and co-counsel, along with Bokhour Law Group, P.C., for Plaintiff Consuelo Jasso Ayala in the above-captioned litigation (collectively, “Plaintiffs’ Counsel”). I am submitting this Declaration in support of the Private Attorneys General Act Settlement Agreement and Release (the “Settlement Agreement” and/or the “Settlement”) entered into between Plaintiffs Consuelo Jasso Ayala and Nancy Gomez (“Plaintiffs”) individually, in their capacity to act on behalf of the State of California’s Labor Workforce Development Agency (“LWDA”), and on behalf of similarly-situated hourly, non-exempt aggrieved employees who were employed by Defendant or by any of the temporary agencies and assigned to work at Defendant as non-exempt employees at its California fulfillment(s) center at any time between February 28, 2019, and January 31, 2021. (“PAGA Period”) Plaintiff and Defendant are collectively referred to herein as “the Parties.”

3. Plaintiffs' Counsel has been responsible for the pursuit of claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"). Plaintiff claims that Defendant owes these PAGA penalties as a result of its alleged violations of various Labor Code sections and Industrial Welfare Commission Wage Order No. 1-2001. Plaintiffs' operative Complaint seeks these penalties on behalf of the State of California and similarly situated aggrieved employees as authorized by the PAGA.

4. The Parties have reached a Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement, and Plaintiffs as “aggrieved employees” under the PAGA, respectfully now move this Court for an Order granting approval of the Settlement Agreement. A true and correct copy of the Settlement Agreement entered by the Parties is attached as **Exhibit A** hereto.

Attorney Experience

5. I graduated with a Bachelor of Arts with a major in History and a minor in Public Affairs from the University of California, Los Angeles (UCLA) in 2009. I graduated from the University of California, Berkeley School of Law (Boalt Hall) in 2013 wherein I focused my studies on employment law and was awarded a *Prosser Prize* for my academic achievement. I have been a member, in good standing, of the State Bar of California since 2013.

6. I am admitted to practice before all California state courts, and the United States District Court for the Central and Eastern Districts and have litigated class action and Private Attorney General Act (“PAGA”) representative action cases in various superior courts in California.

7. I opened my law firm in 2016 with a concentration in representation of plaintiff-employees to recover unpaid wages and vindicate wrongful termination in various contexts. During my seven plus years of law practice, I have handled over 100 employee versus employer litigation matters. Over the last 5 years, my practice has almost entirely consisted of representing plaintiff-employees, the majority of which has included class action and PAGA representative action wage and hour matters.

8. In total, I have handled upwards of 80 class action and representative action wage/hour cases and have been appointed by the court as class counsel and have received final court approval and judgment in several of those actions to date. I was selected as a “Super Lawyer Rising Star” in Employment Litigation during the years 2017, 2018 2019, 2020 and 2021, a distinction that is reserved for the top 2.5% of lawyers in the practice area.

9. My firm has the experience, resources, and means necessary to allow us to provide adequate representation as Class Counsel to all aggrieved employees in this litigation. Currently, my firm is acting as co-counsel in at least twenty wage-and-hour class actions. I am experienced and qualified to evaluate the PAGA claims and viability of the defenses. I have extensive experience in prosecuting employment litigation and have focused my practice

1 primarily on cases regarding wage and hour class actions and representative PAGA actions.

2 10. Plaintiffs' Co-counsel, Mehrdad Bokhour of Bokhour Law Group, P.C., sets forth
3 his firm's experience and qualification in his own declaration also submitted concurrently herewith

4 11. In sum, Plaintiffs' Counsel are experienced representative and class action litigators,
5 and have previously achieved significant PAGA and class action awards. This experience and
6 expertise, combined with the high quality of work performed in this case by Plaintiffs' Counsel,
7 resulted in the Settlement achieved.

8 *Factual Background of Case*

9 12. **Factual History.** FabFitFun offers a quarterly subscription box of beauty, fashion,
10 fitness and wellness products. As an expanding company, it continues to hire non-exempt
11 employees through various staffing agencies, including JobSource, Select Staffing, Coretech, and
12 various other temporary staffing agencies to work at its fulfillment centers in California. Plaintiffs
13 and other similarly situated aggrieved employees were employed as fulfillment center employees,
14 including but not limited to, packers/pickers, shippers, quality control and other similarly situated
15 positions.

16 13. Plaintiffs' primary allegation relates to FabFitFun's uniform security and loss
17 prevention policies/procedures which required Plaintiffs and similarly aggrieved employees to go
18 through a security checkpoint process, which included checking bags/personal belongings when
19 entering Defendant's facility at the beginning of each shift, and when leaving the facility at the end
20 of each shift. Plaintiffs further allege that aggrieved employees were also subject to security
21 checkpoints when they attempted to leave and/or re-enter the facility during meal and rest periods.
22 Despite being subject to Defendant's control while waiting to go through these security
23 checkpoints, Defendant did not provide any compensation to Plaintiffs and other aggrieved
24 employees for the time it took to complete this security screening process.

25 14. As a result, Plaintiffs and other similarly aggrieved employees were not fully
26 compensated for all minimum and overtime wages and were also unable to take compliant meal
27 and rest periods. (See *Frlekin v. Apple, Inc.* (Feb. 13, 2020) S243805 at *23 [employees "must be
28 paid" during security checks since "it is clear that [employees] are subject to [the employer's]

1 control while awaiting, and during, [the] exit searches”).)

2 15. **Procedural History.** On March 2, 2020, Plaintiff Ayala sent notice to the
3 California Labor & Workforce Development Agency (“LWDA”) of his intent to pursue a
4 representative action pursuant to PAGA, on behalf of herself and the State of California, as well as
5 on behalf of a group of aggrieved employees (the “PAGA Notice”).

6 16. On August 12, 2020, Plaintiff Gomez also sent notice to the California Labor &
7 Workforce Development Agency (“LWDA”) of his intent to pursue a representative action
8 pursuant to PAGA, on behalf of herself and the State of California, as well as on behalf of a group
9 of aggrieved employees (the “PAGA Notice”). The PAGA Notice is required under Labor Code §
10 2699.3(a)(1)(A) as a prerequisite to bringing a PAGA representative claim against an employer.
11 The LWDA did not respond to either notice, thus allowing Plaintiffs to file the instant lawsuit.
12 Labor Code § 2699.3(a)(2)(A).

13 17. On March 4, 2020, Plaintiff filed her PAGA Representative Action Complaint in
14 the action which was filed in the San Bernardino Superior Court. Likewise, on July 13, 2020,
15 Plaintiff Gomez filed her PAGA Representative Action Complaint in the San Bernardino Superior
16 Court alleging similar Labor Code violations.

17 18. On October 30, 2020, Plaintiffs filed their Second Amended Representative Action
18 Complaint in the Superior Court of California, County of San Bernardino entitled Ayala et al. v.
19 FabFitFun, Inc., Case No. CIVDS2006687 (the “Lawsuit”). The Court ordered the Lawsuit
20 consolidated with *Gomez v. FabFitFun, Inc.*, Case No. CIVDS2014783. Through his PAGA
21 claim, Plaintiff seeks penalties for Defendant’s violation of Labor Code §§ 201, 202, 203, 204,
22 210, 226, 206(e), 226.3, 226.6, 226.7, 510, 512, 516, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698.

23 19. Although Defendant denies the allegations and vowed to vigorously defend against
24 them, the Parties agreed to attend mediation. In preparation for mediation, the Parties exchanged
25 documents and information that allowed both sides to evaluate the potential exposure and potential
26 risk, such as reviewing and analyzing all time and payroll records for the Allegedly Aggrieved
27 Employees, review Defendant’s employee handbook and relevant meal and rest break policies,
28 along with timekeeping procedures, surveillance footage, wage statements, and the total number of

1 employees and workweeks during the PAGA Period. During this process, Plaintiffs' counsel
2 analyzed, researched, and investigated the potential issues, including matters related to the
3 calculation of damages, trial management, and appellate issues and risks.

4 20. On September 4, 2020, the Parties attended mediation with Steve Serratore, Esq.,
5 an experienced mediator in wage and hour matters. During that mediation, the Parties exchanged
6 further information and discussed all aspects of the case, including the risks and delays of
7 litigation, the risk associated with proceeding in a representative capacity, liability under the
8 claims asserted, and the ability to recover and measure damages and/or penalties.

9 21. The Settlement negotiations were at all times at arm's length and although
10 conducted in a professional manner, were adversarial. (*Id.*) By way of a mediator's proposal, the
11 Parties reached agreement regarding the major terms of the Settlement and subsequently finalized
12 those terms in a long-form Settlement Agreement.

13 22. This Settlement was the culmination of protracted discussions between the Parties
14 following a thorough analysis of the pertinent facts and law at issue. The Parties now present the
15 Settlement Agreement to this Court for approval. The Settlement confers a substantial monetary
16 benefit to the State of California, the Aggrieved Employees as well as Defendant's current
17 employees who are not compensated for any additional time they spend going through a security
18 checkpoint upon entering and exiting Defendant's facility.

19 Summary of PAGA Settlement Terms

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

1 24. **Total Settlement Payment.** The Settlement provides that Defendant will pay a
2 non-reversionary Settlement Sum of Eight Hundred And Twenty Thousand Dollars (\$820,000) (the
3 “Settlement Sum”), inclusive of payments to the LWDA and Allegedly Aggrieved Employees,
4 payment of Plaintiff’s Enhancement Awards, the Fee Amount and Cost Amount, and the third-
5 party Settlement Administration Fee. Plaintiffs’ Counsel seeks a standard 33-1/3 percent
6 (\$273,333.33) of the Settlement Sum, plus reimbursement of actual litigation costs (which is less
7 than the allocated \$20,000 provided for in the Settlement Agreement) and Plaintiffs seek
8 Enhancement Awards in the amount of \$7,500 each.

9 25. **The PAGA Fund.** After payment of Plaintiffs’ Counsel fees and litigation costs,
10 Plaintiffs’ Enhancement Awards and Settlement Administration Costs, it is currently estimated
11 that approximately \$487,666.67 will remain as the estimated net proceeds for distribution to the
12 LWDA and Allegedly Aggrieved Employees (the “Net PAGA Payment”).

13 26. **Settlement Allocations.** Pursuant to Settlement Agreement, the entire Net PAGA
14 Payment shall be designated as PAGA civil penalties pursuant to Labor Code § 2699 to be
15 allocated as follows: 75% (\$370,430.54) to the LWDA and 25% (\$122,476.84) to the Allegedly
16 Aggrieved Employees (divided on a *pro rata* basis on each employee’s proportionate number of
17 pay periods during the PAGA Period).

18 27. Assuming *arguendo* that distribution were pro rata across the 7,000 Allegedly
19 Aggrieved Employees (in reality, it is pro rata based on proportionate pay periods worked), the
20 average payment to each Allegedly Aggrieved Employee is estimated to be \$17.50. However, as
21 discussed earlier, only a small amount of pay periods represent the timeframe where the security
22 checkpoint had caused employees to work off-the-clock and current (and future) employees will
23 be paid at least 7 minutes of additional time per shift and compliant meal and rest breaks. Thus, to
24 the extent, Defendant is now complying with California law due to the policy change, employees
25 have already received benefits in the form of additional compensation for every shift worked that
26 they have otherwise not received.

27 28. **Settlement Share Payments.** The Settlement is non-reversionary and does not
28 require Allegedly Aggrieved Employees to submit a claim form to reap financial benefit from the

1 Settlement. Within fourteen (14) calendar days after the Effective Date, Defendant shall provide
2 the Settlement Administrator with a list of the names, addresses and number of pay periods issued
3 to each of the Allegedly Aggrieved Employees during the PAGA Period.

4 29. **Explanatory Letter.** The Settlement Administrator shall also mail a Notice of
5 PAGA Settlement informing the Allegedly Aggrieved Employees of the nature of the payment,
6 together with the Individual PAGA Payment check, by first-class United States mail, postage
7 prepaid, to each and every Allegedly Aggrieved Employee.

8 30. **Uncashed Checks.** Individual PAGA Payments issued to Allegedly Aggrieved
9 Employees pursuant to the Settlement Agreement will expire one hundred and eighty (180) days
10 from the date they are mailed by the Settlement Administrator. Any unclaimed funds after the 180-
11 day period shall be sent to the Controller of the State of California to be held pursuant to the
12 Unclaimed Property Law, California Civil Code § 1500, *et. seq.* for the benefit of the Allegedly
13 Aggrieved Employee.

14 31. **Schedule of Settlement Funding and Disbursement.** Further, within seven (7)
15 calendar days after the Settlement Administrator receives the list of employees, it shall pay a total
16 of Twenty-Five percent (25%) of the Net PAGA Fund to the Allegedly Aggrieved Employees. A
17 letter approved by the Parties will be included in the mailing of the Individual PAGA Payment to
18 each Allegedly Aggrieved Employee. Within the same time frame, Settlement Administrator shall
19 distribute Plaintiffs' Enhancement Awards (as awarded by the court) and the court approved Fee
20 Amount and Cost Amount. Within this same time period, the Settlement Administrator shall also
21 deduct an amount equivalent to the Settlement Administration Fee from the Gross Settlement
22 Amount.

23 32. **Administration Costs.** The Parties have agreed to pay the Settlement
24 Administrator for the Settlement Administration Costs from the Gross Settlement Sum. Based on
25 its bid, the Settlement Administrator has agreed to perform all services in connection with
26 providing notice and disbursements to Allegedly Aggrieved Employees for \$23,950.00. See
27 Exhibit C.

28 33. **The PAGA Release Claims.** Importantly, the California Supreme Court has

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

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

26 34. **Attorneys’ fees And litigation costs.** Plaintiff’s Counsel request one-third of the
27 Settlement Sum, or up to \$273,333.33, in attorneys’ fees, and up to \$20,000.00 in reimbursement
28 of actual litigation costs.

Defendant Denies Liability

29 35. From the case’s inception, Defendant has and continues to deny any liability or
30 wrongdoing as to all of the claims alleged, and the Settlement is not an admission by Defendant of
31 any fault, wrongdoing, or liability. There has been no determination by this court or any court as
32 to the merits of the claims asserted by Plaintiffs against Defendant. Defendant states that it
33 concluded that given the risks and costs of litigation, it is desirable that the action be fully and
34 finally settled in the manner and upon the terms and conditions set forth in the Settlement

1 Agreement.

2 *The PAGA Settlement Should be Approved*

3 36. **Notice to LWDA.** In 2016, PAGA was amended to require the Court to “review
4 and approve any settlement of any civil action filed pursuant to this part.” Labor Code §
5 2699(1)(2). The amendment also requires that the “proposed settlement shall be submitted to the
6 agency at the same time that it is submitted to the court.” As such, on the day of filing of this
7 Motion, the Settlement is also being concurrently submitted to the LWDA in accordance with this
8 section. A true and correct copy of the proof of electronic submission is attached as **Exhibit B**
9 hereto.

10 *The Civil Penalties are Appropriate Under the Circumstances*

11 37. Here, the penalties are appropriate when considered in light of the principles
12 discussed in Senator Dunn’s letter. Plaintiffs contend that a ***non-reversionary*** Settlement Sum of
13 \$820,000.00 represents a good recovery that is large enough to punish or deter Defendant. The
14 proposed Settlement provides a fair and reasonable monetary recovery for the LWDA and
15 Allegedly Aggrieved Employees in the face of hotly disputed claims.

16 38. **First**, although PAGA and its legislative history do not seem to require a
17 comparison with the “maximum value” of the claims to the actual settlement amount, the penalties
18 are reasonable when considered in this context as well. Based on Plaintiffs’ Counsels’ review of
19 the payroll, timekeeping records and surveillance footage, aggrieved employees did not often
20 spend long periods of waiting in the security checkpoints. Any off the clock time spent was *de*
21 *minimus*. Further, Defendant’s security screening was not applicable to meal breaks, as Defendant
22 did not deprive aggrieved employees of meal breaks. Defendant also maintained compliant
23 policies during the relevant liability period. Therefore, Plaintiff applied appropriate discounts to
24 reach a settlement based on the mediator’s proposal. The number of Allegedly Aggrieved
25 Employees in the PAGA covered period is approximately 7,000 and the number of PAGA-eligible
26 pay periods is approximately 112,625 during the PAGA period. This number would be 50% lower
27 if the Aggrieved Employees were paid on a bi-weekly basis, but staffing agencies are required to
28 pay their employees on a weekly basis Further, while Plaintiffs believe the claims are meritorious,

1 Defendant asserts numerous factual and legal defenses to the claims. PAGA penalties are assessed
2 at the \$100.00 penalty for a total of \$5,631,250.

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

23 40. Second, the scope of the release of the PAGA Settlement is necessarily strictly
24 confined to those PAGA civil penalties that were or could have been alleged in the operative
25 Complaint. The PAGA Released Claims do not release any Allegedly Aggrieved Employees' non-
26 PAGA claims for alleged violations of the Labor Code. Individual Allegedly Aggrieved
27 Employees who believe they have been denied, for example, overtime wages and rest breaks, can
28 maintain those rights to pursue those claims in another proceeding.

1 41. Third, the proposed Settlement, even with deductions, provides a substantial sum of
2 \$370,430.54 to the State and \$122,476.84 to the Allegedly Aggrieved Employees. The Settlement
3 secured by Plaintiffs here is equal to or greater than other PAGA penalty awards approved by
4 California state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims
5 impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments
6 on a per capita basis. See, e.g., *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL
7 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00
8 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259,
9 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of
10 \$10,000.00 for class of approximately 3,000 members).

11 42. Fourth, public policy strongly favors the settlement of litigation. Consumer
12 Advocacy Group v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 46, 63. Because the
13 proposed Settlement is neither unjust nor ignores the public interest, it should be approved.

14 43. Finally, many of the claims were derivative of each other, which tended to
15 undermine any stacking of penalties. In light of the foregoing, Plaintiffs' Counsel took into
16 consideration, when valuing the merits of these claims, the chances of prevailing on the derivative
17 violations, as well as the additional hurdles of prevailing under each standalone violation in light
18 of the defenses raised and applied the appropriate discounts.

19 44. Based on the data provided by Defendant, the proposed maximum exposure for the
20 PAGA claims for Allegedly Aggrieved Employees is \$5,631,250. During the PAGA covered
21 period, there were approximately 112,625 pay periods. PAGA penalties are assessed at the
22 \$100.00 penalty for a total of \$5,631,250.

23 45. The proposed Settlement of \$820,000 represents ***15% of the potential maximum***
24 ***exposure***. However, courts can exercise their discretion to reduce the amount of PAGA penalties.
25 See, e.g., *Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
26 PAGA penalties to \$500 per employee prior to the 75-25 split). The Settlement Sum here is
27 already analogous to that awarded by the Court in *Covidien*. Accordingly, the proposed
28 Settlement approximates or provides the same or similar result than some actual PAGA trials that

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

4 *The Attorneys' Fees Request is Fair and Reasonable*

5 46. Plaintiff moves for approval of the Fee Amount of 33-1/3% of the common fund, or
6 \$273,333.33 Pursuant to Labor Code section 2699(g)(1) "the prevailing party in a PAGA action is
7 entitle to reasonable attorneys' fees and litigation costs."

8 47. Here, where a common fund is created in a qui tam action by the successful
9 litigation of a plaintiff and his attorneys, the plaintiff's attorneys are entitled to recover their fees
10 from the common fund. *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. "A qui tam
11 action is one brought under a statute that allows a private person to sue as a private attorney
12 general to recover damages or penalties, all or part of which will be paid to the government."
13 *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492. *See also*,
14 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382 (holding "A PAGA
15 representative action is therefore a type of *qui tam* action."); *Bank of America v. Cory* (1985) 164
16 Cal.App.3d 66, 89-91.

17 48. An award of fees from the gross settlement amount under the common fund
18 doctrine prevents unjust enrichment of those who benefit from the common fund through the
19 successful efforts of plaintiff's counsel and furthers the important goal of attracting competent
20 counsel to handle representative actions enforcing minimum labor standards. *Laffitte v. Robert*
21 *Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.

22 49. A one-third common fund attorney fee award is also consistent with what courts
23 have awarded in other representative action cases. The following list shows PAGA actions and
24 mixes PAGA/class action cases where attorney's fees were awarded on a common fund basis in a
25 range between 33.33% and 40%:

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

- 1 • *Robles v. DCH*, Los Angeles County Superior Court Coordination Proceeding Case
2 No. 4833 (**33.33% fee awarded** on \$4,035,600 settlement of mixed PAGA/class
3 claims);
- 4 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court Case
5 No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of a PAGA
6 only case);
- 7 • *Bengel v. Career Strategies Temporary, Inc.*, Los Angeles County Superior Court
8 Case No. BC 565227 (**33.33% fee awarded** on \$750,000 settlement of mixed
9 PAGA/class claims);
- 10 • *Birch v. Office Depot*, United States District Court for the Southern District of
11 California, Case No. 06cv1690 DMS (**40% fee awarded** on \$16,000,000
12 settlement of mixed PAGA/class claims);
- 13 • *Brewer v. Connell Chevrolet*, Orange County Superior Court Case No. 30-2016-
14 00852123-CU-OC-CXC (**33.33% fee awarded** on \$190,000 of a PAGA only
15 case);
- 16 • *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-20014-
17 007205740-CU-OE-CJC (**33.33% fee awarded** on \$1,030,000 settlement of a
18 PAGA only case); and
- 19 • *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court Case No.
20 MCC1401137 (**33.33% fee awarded** on a \$650,000 settlement of a PAGA only
21 case).

22 Based on the foregoing, awarding attorneys' fees based on a one-third or higher percentage of the
23 Settlement Sum is favored by California Courts when a fund established for the common benefit is
24 created, such as here. *See, Laffitte, supra*, 1 Cal.5th 480, 503 (finding trial court did not abuse its
25 discretion in approving fee award of 1/3 of the common fund).

26 50. Here, Plaintiffs faced significant risks going forward with the litigation. As
27 discussed, Defendant raised various defenses, such that Plaintiffs faced risky issues going forward
28 with this litigation, as well as the fact that it would have taken significant time to realize any

1 recovery in this action along with the possibility of post-trial appeals.

2 51. This is not an easy burden for Plaintiffs' Counsel and, if the best that could be
3 hoped for is merely to be paid the customary hourly rate, such would not sufficiently incentivize
4 future similar private attorney general/qui tam cases with contingency risks. Given that the request
5 for attorneys' fees in the amount of 33-1/3 percent of the common fund falls well within the norms
6 accepted in comparable California court cases, Plaintiff's request for attorneys' fees is fair and
7 reasonable.

8 52. The following table summarizes the time each timekeeper at our firm expended on
9 this case, their respective years of experience, and hourly billing rates, which have been approved
10 by California state and federal Courts in other wage and hour class actions:

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
TOTAL				\$153,265

17 53. To date, both firms have expended no less than 290 hours in connection with,
18 amongst other things, investigation, interviews, research, drafting the PAGA Notice, Complaint,
19 engaging in discovery, preparing for and attending mediation, drafting mediation brief, case
20 management, preparing and negotiating the Settlement Agreement, and Plaintiffs' Motion.

21 54. Adding in the lodestar of our co-counsel as set forth in their respective declarations,
22 Plaintiffs' Counsels' total lodestar to date collectively amounts to **\$153,265**. See also Bokhour
23 Decl. and Yeremian Decl. ¶ 20.

24 *The Requested Litigation Costs are Fair and Reasonable*

25 55. The Settlement Agreement authorized Plaintiff's Counsel to recover litigation costs
26 not to exceed \$20,000. The specific costs incurred by Plaintiffs' Counsel to date total \$14,291.51.
27 See Bokhour Decl. and Yeremian Decl., filed concurrently herewith.

56. Further, the itemization breakdown does not include costs associated with Plaintiffs' Counsel's appearance at the hearing for this Motion for Settlement approval. These costs are of the type routinely billed by attorneys in such litigation and are reasonable. I have reviewed my firm's accounting records and can attest to the appropriateness and necessity of the costs. There was never a guarantee that Plaintiffs' Counsel would recoup those expenditures and because the expense reimbursements requested were reasonably incurred and unopposed, the Court should grant the request for costs.

The Settlement Administrator

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

58. For all of the reasons discussed above and in the accompanying Motion, Plaintiffs and Plaintiffs' Counsel respectfully request that the Court approve the proposed PAGA Settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th of May 2021 in Los Angeles, California


Joshua Falakassa

EXHIBIT “A”

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release (“Agreement”) is made by and between Plaintiffs Consuelo Jasso Ayala and Nancy Gomez (collectively, “Plaintiffs” or “Named Plaintiffs”), individually, and on behalf of the other aggrieved employees (the “Aggrieved Employees,” as defined below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the Private Attorneys General Act (“PAGA”) on the one hand, and FabFitFun, Inc. (“FFF”), ManpowerGroup US Inc. (“Manpower”), HRDirect Services Inc. (“HR Direct”), Cortech, LLC and Cortech West Staffing, LLC (collectively, “Cortech”), Priority Workforce, Inc. (“Priority”), JobSource North America, Inc. (“JobSource”), Corestaff Services (“Corestaff”), United Employment Solutions Inc. (“United”), THR Staffing (“THR”) (the entities other than FFF are collectively referred to as “Settling Temp Agencies”), on the other hand. FFF and Settling Temp Agencies are collectively referred to herein as “Settling Employers.” Plaintiffs and Settling Employers are collectively referred to herein as “the Parties.” This Agreement, and the settlement embodied herein, shall be binding on Plaintiffs, the Aggrieved Employees they represent, and Settling Employers subject to the approval of the Court.

WHEREAS, on October 30, 2020, Plaintiffs filed their Second Amended Representative Action Complaint in the Superior Court of California, County of San Bernardino entitled *Ayala et al. v. FabFitFun, Inc.*, Case No. CIVDS2006687 (the “Lawsuit”). The Court ordered the Lawsuit consolidated with *Gomez v. FabFitFun, Inc.*, Case No. CIVDS2014783. The Lawsuit asserts claims for civil penalties payable to Plaintiffs, other aggrieved employees, and the State of California pursuant to PAGA based on allegations that FFF: (1) failed to pay minimum wages; (2) failure to pay overtime compensation; (3) failed to provide meal periods; (4) failed to provide rest periods; (5) failed to furnish accurate itemized wage statements; and (6) waiting time penalties. Specifically, the Representative PAGA Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, as well as the applicable provisions of the Industrial Wage Orders (Plaintiffs’ “Representative PAGA Claims”).

WHEREAS, Plaintiffs timely sent notice to the Labor and Workforce Development Agency (“LWDA”) of their intent to pursue a representative action pursuant to the PAGA, on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees (the “PAGA Notice”).

WHEREAS, on September 24, 2020, Plaintiffs and FFF attended an all-day mediation with experienced wage-and-hour mediator Steven Serratore, Esq. Pursuant to the mediator’s proposal, the Parties agreed to settle Plaintiffs’ Representative PAGA claims in light of all known facts and circumstances – including the difficulty of proving some of Plaintiffs’ claims, potential defenses asserted by FFF, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: “All individuals employed by FFF or by the temporary agencies identified above and assigned to work at FFF as non-exempt employees at its California fulfillment(s) center at any time between February 28, 2019 and January 31, 2021.” (“PAGA Period”).

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiffs’ Representative PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiffs and the Aggrieved Employees have against Settling Employers and their past or present owners, parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of Settling Employers and these entities’ respective predecessors, successors, officers, directors, shareholders, employees, servants, representatives, principals, agents, advisors, consultants, vendors, partners, contractors, attorneys, agents, insurers, reinsurers, subrogees, and includes, without limitation, any other individual or entity that could be liable for the acts of omissions of Settling Employers or could have been named as a defendant in the Lawsuit (collectively, the “Released Parties”). The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Settling Employers of any wrongdoing or liability. Specifically, Settling Employers deny any liability or wrongdoing of any kind associated with the allegations and claims alleged in the consolidated Second Amended Complaint. Settling Employers, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree, and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this Agreement shall mean the following: (a) the date of service of notice of entry of the order approving this Agreement and the PAGA Settlement if no objections are filed to this settlement or if all objections are withdrawn prior to the Court ruling on them; or, (b) sixty-one (61) days after the date of service of notice of entry of the settlement approval order if objections are filed 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.

2. Released Claims/Effect of Judgment on Aggrieved Employees and LWDA. The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiffs, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under PAGA only, against the Released Parties. It is expressly understood and agreed that this settlement (except as set forth in paragraph 3 below) only includes a full release of the PAGA claim for penalties the

period of February 28, 2019 through January 31, 2021 for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, as well as the applicable provisions of the Industrial Wage Orders and for any other PAGA violations that could have been asserted in the action based on the factual assertions and legal assertions in the Second Amended Complaint. However, other than as to the Named Plaintiffs, this settlement agreement shall not impact Aggrieved Employees ability to assert Labor Code claims other than PAGA claims. Specifically, the Aggrieved Employees may assert Labor Code claims (other than a PAGA claim for penalties) for unpaid wages.

3. Release of Claims As To Named Plaintiffs. Except as specified herein, the Named Plaintiffs fully release and discharge the Released Parties, from any and all actions, causes of action, obligations, costs, expenses, damages, penalties, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, of any kind or nature whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof, including but not limited to any claims or causes of action arising out of or in any way relating to their employment or which have been or could have been made in the Lawsuit (the "Named Plaintiffs' Released Claims"). Nothing in this Settlement Agreement, precludes the Named Plaintiffs from filing an administrative charge or otherwise communicating with any federal, state, or local government office, official, or agency, including but not limited to the EEOC or DFEH. However, the Named Plaintiffs agree never to seek or accept any damages, remedies, or other relief for themselves personally with respect to any claim released by this Settlement Agreement.

The Named Plaintiffs' Released Claims by the Named Plaintiffs includes any unknown claims that they do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their settlement with, and release of, the Released Parties. With respect to the Named Plaintiffs' Released Claims, the Named Plaintiffs stipulate and agree that, upon approval by the Court, the Named Plaintiffs shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits afforded by Section 1542 of the California Civil Code, or any similar provision under federal or state law, and do so understanding the significance of that waiver. Section 1542 provides:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

The Named Plaintiffs further acknowledge and agree that they release and waive any right to become, and promise not to consent to become, a class member in any case in which claims are asserted against the Released Parties, including those that are related in any way to their employment/assignment with or separation of employment/assignment from Settling Employers and for which claims arise from the beginning of time to the date of execution hereof. The

Named Plaintiffs also acknowledge and agree that they will not assist, or in any way participate in any other proceeding against Released Parties, except as required by law.

4. **Notice to LWDA.** Pursuant to California Labor Code § 2699(k)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

5. **Total Settlement Amount.** Settling Employers agree to pay, in accordance with the terms set forth herein, the total sum of \$820,000 (the "Gross Settlement Amount") in full settlement of this Lawsuit. The Gross Settlement Amount will be allocated as follows:

- a. Plaintiffs' counsel's attorneys' fees request of up to 33.33% of the Gross Settlement Amount (\$273,333.33) ("PAGA Counsel's Fees") and PAGA Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed \$20,000. FFF will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that Plaintiffs' counsel requests, any reduced amount shall be allocated to the settlement fund for the Aggrieved Employees;
- b. Plaintiffs' counsel's request for enhancement awards for Plaintiffs Jasso Ayala and Nancy Gomez not to exceed for \$7,500.00 each to compensate them for their time, risk and effort on behalf of the Aggrieved Employees. Any enhancement awards granted shall be taken from the Gross Settlement Amount. If a lower amount is awarded for these enhancements, the difference between the maximum indicated above and the actual award will be allocated to the PAGA Fund.
- c. Administration costs of no more than \$24,000.00 to be paid to the Settlement Administrator ("Administration Costs"); and
- d. The remainder of the Gross Settlement Amount (the "PAGA Fund") after deducting items (a) through (c) is approximately \$487,666.67, and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") on a pro-rata basis.

6. **Contributions to Pay Pro Rata Share of Gross Settlement Amount.** Settling Employers shall be responsible to contribute only the following amounts towards payment of the Gross Settlement as follows:

- a. FFF shall pay \$241,494.30;
- b. Manpower shall pay \$195,697.30;

- c. Cortech shall pay \$94,751.10;
- d. JobSource shall pay \$93,743.10;
- e. HR Direct shall pay \$84,777.00;
- f. Corestaff shall pay \$27,729.00;
- g. Priority shall pay \$33,783.60;
- h. THR shall pay \$25,662.60; and
- i. United shall pay \$22,362.00.

Settling Employers will have deposited their respective contributions with the Settlement Administrator prior to their execution of the Agreement and the funds will be held in escrow. If the Court does not approve the settlement, these funds will revert back to the Settling Employers in the amounts set forth above.

7. **Allocation and Calculation of the PAGA Penalties.** Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. Settling Employers will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved Employee's payment from the Aggrieved Employees' PAGA Portion, FFF will use the following formula: Settlement Payment = 25% of Aggrieved Employees' PAGA Portion ($\approx \$121,916.67$) $\times$ [Pay Periods Worked by Individual Aggrieved Employee during the PAGA Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the PAGA Period].

8. **Tax Treatment of Settlement Amounts.** With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if applicable. IRS Form 1099s are used for payments of miscellaneous income of at least \$600 that is not considered wages such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiffs acknowledge that they have obtained no tax advice from Settling Employers and that neither Settling Employers nor their attorneys have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Settling Employers are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to Plaintiffs' counsel's fees and costs will be reflected in a Form 1099 to counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

9. **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR

PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

10. PAGA Settlement Payment Procedures.

- a. Within 14 calendar days of the Effective Date, FFF shall provide the Settlement Administrator with a list of all Aggrieved Employees with each listed employee's full name, last known mailing address, social security number, and number of pay periods worked during the PAGA period. The Settling Temp Agencies will assist FFF with collecting this data. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information.

Within 7 calendar days from the date when it receives with the list of all Aggrieved Employees from FFF, , the Settlement Administrator shall:

- i. Remit a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the employee letter (attached hereto as **Exhibit A**). Aggrieved Employees shall not be required to make claims, but shall simply be delivered a check for their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment

checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's Individual Settlement Payment check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.

- ii. Remit the Named Plaintiffs' Enhancement Awards, if applicable.
 - iii. Remit PAGA Counsel's Fees and Costs, as approved by the Court.
- b. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. All uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division.
 - c. Neither Settling Employers nor Plaintiffs shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

11. Settlement Administrator. As set forth in Paragraph 10, the Settlement Administrator shall be responsible for sending notices and for calculating Settlement Shares and preparing all checks and mailings and comply with all requirements set forth in Paragraph 10. The costs of the Settlement Administrator shall be paid out of the Gross Settlement Amount. The Parties agree to use Phoenix Class Action Administration Solutions as Settlement Administrator. Settling Employers are not responsible or liable for any errors in the calculation of paystubs or settlement amount to be awarded to each Aggrieved Employee. Settling Employers are also not liable or responsible for any errors made by the Settlement Administrator in the administration of the settlement.

12. Duties of the Parties Prior to Approval. Promptly upon execution of this Settlement, Plaintiffs shall apply to the Court for approval of the proposed Settlement. Plaintiffs shall apply to the Court for the entry of an order approving this Settlement as required by Labor Code section 2699(1). The Approval Stipulation will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to Plaintiffs' counsel, and (3) final Judgment. In conjunction with the Motion for Approval, Plaintiffs shall submit a proposed Final Judgment requesting the entry of judgment.

13. Number of Pay Periods At Issue. Settling Employers represent that the total amount of pay periods at issue is 112,625. This number would be 50% lower if the Aggrieved Employees were paid on a bi-weekly basis, but staffing agencies are required to pay their employees on a weekly basis. In the event that the actual number of pay periods during the relevant time period increases by more than 5% of the estimated 112,625 pay periods, then the Settling Employers shall increase the maximum settlement amount on a proportional basis.

14. **Non-Admission of Wrongdoing.** The Parties agree that this Agreement does not constitute an admission by Settling Employers or any Released Parties, of any of the matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiffs, Settling Employers, and their parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees, or any of the Released Parties.

15. **Nondisclosure and Nonpublication.** Plaintiffs agree not to publicize the Agreement, the fact of the Agreement, its terms or contents, and the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, beyond filing the Agreement with the Court and submitting a copy to the LWDA.

16. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

17. **Dispute Resolution.** Plaintiff and Defendants agree to seek the help of the mediator to resolve any dispute they are unable to resolve informally.

18. **Communications.** All communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

To Settling Employers: Paul Berkowitz, Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars Suite 1600, Los Angeles, CA 90067.

To Plaintiffs: Joshua S. Falakassa, Falakassa Law, P.C., 1901 Avenue of the Stars, Suite 450, Los Angeles CA 9006; Mehrdad Bokhour, Bokhour Law Group, P.C., 1901 Avenue of the Stars, Suite 450, Los Angeles CA 90067; David Yeremian, David Yeremian & Associates Inc., 535 N. Brand Blvd., Suite 705, Glendale, CA 91203.

19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

20. **Severability.** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Settlement

Agreement which can be given effect without the invalid provisions or application and to this end the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

21. **No Construction Against the Drafter.** Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

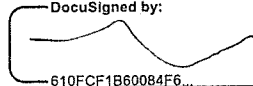
22. **Choice of Law.** This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

23. **Counterparts.** This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

24. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

4/30/2021

Dated: April __, 2021

DocuSigned by:

610FCF1B60084F6...
Counselo Jasso Ayala, PAGA Representative

Nancy Gomez, PAGA Representative

Dated: April __, 2021

Dated: April __, 2021

FabFitFun, Inc.
By: _____
Its: _____

Dated: April __, 2021

ManpowerGroup US Inc.
By: _____
Its: _____

Dated: April __, 2021

HR Direct Services Inc.
By: _____
Its: _____

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Dated: April __, 2021

Counselo Jasso Ayala, PAGA Representative

Dated: April __, 2021

Nancy Gomez, PAGA Representative

Dated: April __, 2021

FabFitFun, Inc.

By: _____

Its: _____

May
Dated: April 11, 2021

Manpower Group US Inc.

By: Renee S. Cole

Its: Associate General Counsel

Dated: April __, 2021

HR Direct Services Inc.

By: _____

Its: _____

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Dated: April __, 2021

Counselo Jasso Ayala, PAGA Representative

Dated: April __, 2021

Nancy Gomez, PAGA Representative

Dated: April 30, 2021



FabFitFun, Inc. _____

By: J. Scott Di Valerio _____

Its: JS _____

Dated: April __, 2021

ManpowerGroup US Inc.

By: _____

Its: _____

Dated: April __, 2021

HR Direct Services Inc.

By: _____

Its: _____

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Dated: April __, 2021 .

Counselo Jasso Ayala, PAGA Representative

Dated: April __, 2021

Nancy Gomez, PAGA Representative

Dated: April __, 2021

FabFitFun, Inc.

By: _____

Its: _____

Dated: April __, 2021

ManpowerGroup US Inc.

By: _____

Its: _____

Dated: April 29, 2021

HR Direct Services Inc.

By: _____

Its: President

Dated: April __, 2021

Cortech, LLC
By: _____
Its: _____

Dated: April __, 2021

Cortech West Staffing, LLC
By: _____
Its: _____

Dated: April __, 2021

Priority Workforce, Inc.
By: _____
Its: _____

Dated: April __, 2021

JobSource North America, Inc.
By: _____
Its: _____

Dated: April __, 2021

Corestaff Services
By: _____
Its: _____

Dated: April 30, 2021



United Employment Solutions Inc.
By: Alejandra Sandoval
Its: President

Dated: April __, 2021

THR Staffing
By: _____
Its: _____

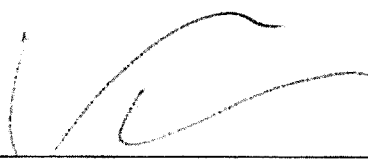
APPROVED AS TO FORM AND CONTENT:

Dated: April __, 2021

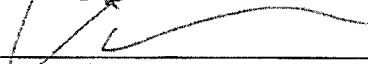
BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.
Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April 28, 2021


Cortech, LLC
By: Viv Ross
Its: CEU

Dated: April 28, 2021


Cortech West Staffing LLC
By: Viv Ross
Its: CEU

Dated: April __, 2021

Priority Workforce, Inc.
By: _____
Its: _____

Dated: April __, 2021

JobSource North America, Inc.
By: _____
Its: _____

Dated: April __, 2021

Corestaff Services
By: _____
Its: _____

Dated: April __, 2021

United Employment Solutions Inc.
By: _____
Its: _____

Dated: April __, 2021

THR Staffing
By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April __, 2021

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.
Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April __, 2021

Cortech, LLC

By: _____

Its: _____

Dated: April __, 2021

Cortech West Staffing, LLC

By: _____

Its: _____

Dated: April 30, 2021

Priority Workforce, Inc.

By: DE J. Lopez

Its: LEO

Dated: April __, 2021

JobSource North America, Inc.

By: _____

Its: _____

Dated: April __, 2021

Corestaff Services

By: _____

Its: _____

Dated: April __, 2021

United Employment Solutions Inc.

By: _____

Its: _____

Dated: April __, 2021

THR Staffing

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April __, 2021

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April __, 2021

Cortech, LLC

By: _____

Its: _____

Dated: April __, 2021

Cortech West Staffing, LLC

By: _____

Its: _____

Dated: April __, 2021

Priority Workforce, Inc.

By: _____

Its: _____

Dated: April __, 2021

JobSource North America, Inc.

By: _____

Its: _____

Dated: May 11, 2021

Corporate Employment Resources, Inc., d/b/a
Corestaff Services

By: 

Its: Director _____

Dated: April __, 2021

United Employment Solutions Inc.

By: _____

Its: _____

Dated: April __, 2021

THR Staffing

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April __, 2021

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April __, 2021

Cortech, LLC

By: _____

Its: _____

Dated: April __, 2021

Cortech West Staffing, LLC

By: _____

Its: _____

Dated: April __, 2021

Priority Workforce, Inc.

By: _____

Its: _____

Dated: April __, 2021

JobSource North America, Inc.

By: Gvette Alvarez

Its: Manager

Dated: April __, 2021

Corestaff Services

By: _____

Its: _____

Dated: April __, 2021

United Employment Solutions Inc.

By: _____

Its: _____

Dated: April __, 2021

THR Staffing

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April __, 2021

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April __, 2021

Cortech, LLC

By: _____

Its: _____

Dated: April __, 2021

Cortech West Staffing, LLC

By: _____

Its: _____

Dated: April __, 2021

Priority Workforce, Inc.

By: _____

Its: _____

Dated: April __, 2021

JobSource North America, Inc.

By: _____

Its: _____

Dated: April __, 2021

Corestaff Services

By: _____

Its: _____

Dated: April __, 2021

United Employment Solutions Inc.

By: _____

Its: _____

Dated: April __, 2021

Talent Human Resources, Inc.

By: Bernardo Hidalgo

Its: President

APPROVED AS TO FORM AND CONTENT:

Dated: April __, 2021

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April __, 2021

Cortech, LLC

By: _____

Its: _____

Dated: April __, 2021

Cortech West Staffing, LLC

By: _____

Its: _____

Dated: April __, 2021

Priority Workforce, Inc.

By: _____

Its: _____

Dated: April __, 2021

JobSource North America, Inc.

By: _____

Its: _____

Dated: April __, 2021

Corestaff Services

By: _____

Its: _____

Dated: April __, 2021

United Employment Solutions Inc.

By: _____

Its: _____

Dated: April __, 2021

THR Staffing

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

4/30/2021

Dated: April __, 2021

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

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Mehrdad Bokhour, Esq.

Attorneys for Plaintiff Consuelo Jasso Ayala
and Aggrieved Employees

Dated: April __, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian, Esq.
Attorneys for Plaintiff Nancy Gomez
and Aggrieved Employees

May
Dated: April 11, 2021

**SHEPPARD MULLIN RICHTER &
HAMPTON LLP**

Paul Berkowitz, Esq.
Attorneys for Defendant
FabFitFun, Inc.

EXHIBIT “B”

EXHIBIT “C”



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

CASE ASSUMPTIONS	
Class Members	10909
Total Claims Processed	10909
Subtotal Admin Only	\$23,950.00
WILL NOT EXCEED	\$23,950.00
\$1.92 Per Person Increase for Class Size Over 11,409	

April 5, 2021

Case: TBD - PAGA Settlement Administration

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Attorney: Paul Berkowitz
Firm: SheppardMullin
Contact Number: 1 310-228-3715
Email: PBerkowitz@sheppardmullin.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 10909 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup/ NCOA (USPS)/Language Translation				
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate	
Programming Manager	\$100.00	4	\$400.00	
Programming Database & Setup	\$100.00	3	\$300.00	
Call Center Setup	\$93.35	1	\$93.35	
Call Center & Long Distance	\$0.50	1091	\$545.45	
NCOA (USPS)	\$400.00	1	\$400.00	
		Total	\$1,738.80	

Data Merger & Scrub				
Project Action	Rate	Hours/Units	Line Item Estimate	
Notice Packet/Check Formatting	\$100.00	1	\$100.00	
Data Merge & Duplication Scrub	\$0.03	10,909	\$327.27	
		Total	\$427.27	

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.

Mailing and Case Management				
Project Action:	Rate	Hours/Units	Line Item Estimate	
Case Associate	\$100.00	3	\$300.00	
QSF Bank Account Fees	\$75.00	3	\$225.00	
Programming Calculations	\$100.00	2	\$200.00	
Disbursement Review	\$70.00	3	\$210.00	
Setup Printing Notice & Check	\$100.00	4	\$400.00	
Notice & Check	\$0.85	10,909	\$9,272.65	
Estimated Postage (up to 2 oz.)*	\$0.56	10,909	\$6,109.04	
Skip Tracing Undeliverables	\$0.50	2,182	\$1,090.90	
Remail Notice and Checks Packets	\$0.85	2,182	\$1,854.53	
Estimated Postage	\$0.56	2,182	\$1,221.81	
Programming Undeliverables	\$100.00	3	\$300.00	
Reconcile Uncashed Checks	\$75.00	2	\$150.00	
State Controller Uncashed Check QSF	\$150.00	3	\$450.00	
Annual Tax Reporting *				
		Total	\$21,783.93	

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$23,950.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are at \$10.00 per claim.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.