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10 on behalf of herself and others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

13 JULIETA MORALES, an individual, on
14 behalf of herself and all others similarly
15 situated,

16 Plaintiff,

17 v.

18 SAN DIEGO SUNRISE MANAGEMENT
COMPANY, a California corporation;
19 TRILAR MANAGEMENT GROUP, a
California corporation; and DOES 1 through
20 50, inclusive

21
22 Defendants.

Case No.: 37-2020-00015694-CU-OE-CTL

REPRESENTATIVE ACTION

Assigned for All Purposes To:
Hon. Timothy Taylor
Dept.: C-72

**NOTICE OF MOTION AND MOTION TO
APPROVE THE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
RELEASE UNDER CALIFORNIA LABOR
CODE §§ 2698 *et seq.***

*[filed concurrently with Declaration of David
Yeremian; Declaration of Natalie Haritounian;
Declaration of Walter Haines; [Proposed]
Order; and [Proposed] Final Judgment]*

Date: December 17, 2021
Time: 1:30 p.m.
Dept.: C-72

1 **TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 17, 2021 at 1:30 p.m. in Department C-72 of
3 the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff
4 Julieta Morales (“Plaintiff” or “Class Representative”), on behalf of herself and all persons similarly
5 situated, will and hereby do move this Court pursuant to California Labor Code § 2698 *et seq.* for an
6 order approving the settlement agreement between Plaintiff and Defendant San Diego Sunrise
7 Management Company (“Defendant”), which will accomplish the following: approve the
8 representative action settlement embodied in the Private Attorneys General Act Settlement
9 Agreement and General Release; approve PAGA Counsel’s application for attorney’s fees and
10 litigation costs; and enter judgment approving the representative action settlement and release.

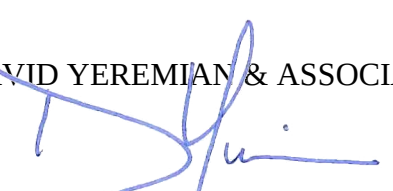
11 The grounds for this Motion, as set forth in the attached memorandum of points and
12 authorities and supporting declaration, are that this is a fair and reasonable settlement that benefits
13 the PAGA Aggrieved Employees and was the product of informed, non-collusive negotiations by
14 Parties who were represented by experienced and able counsel. (*See Wershba v. Apple Computer,*
15 *Inc.* (1996) 91 Cal. App 4th 224, 244-45; *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
16 1802; *Manual for Complex Litigation*, (Second), § 30.44 (1985).)

17 Defendant does not oppose this motion or the requests made herein.

18 Plaintiff bases this Motion on this Notice and the accompanying Memorandum of Points and
19 Authorities, the Declaration of David Yeremian, the declaration of Natalie Haritonian, the
20 declaration of Walter Haines, the complete pleadings, records and files in the case, and such other
21 further oral and documentary evidence which may be submitted at or before the hearing on this
22 Motion.

23
24 DATED: November 23, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

25
26 By 

David Yeremian

Natalie Haritonian

Attorneys for JULIETA MORALES on behalf of
herself and others similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 This Motion to Approve Settlement and Release of PAGA Claims (the “Motion for
4 Approval”) is made to enforce the terms of the settlement entered into by and between Plaintiff
5 Julieta Morales (“Plaintiff” or “Class Representative”), and San Diego Sunrise Management
6 Company (“Defendant”). Plaintiff and Defendant shall be collectively referred to as the “Parties.” A
7 copy of the Stipulation Regarding the Settlement of the Representative Private Attorneys General
8 Act Action (hereinafter “Settlement” or “Stipulation”) entered into by the Parties is attached to the
9 concurrently filed Declaration of David Yeremian as **Exhibit 2**. Plaintiff seeks, without opposition
10 from Defendant, an order from the Court approving the Settlement under Labor Code §§ 2698 *et seq.*

11 The proposed Settlement will dispose of the Private Attorneys General Act (“PAGA”) claim
12 alleged in the Action, which is predicated upon various alleged violations of the California Labor
13 Code, stemming from Defendant’s alleged employment practices with regard to the employees of
14 Defendant (hereinafter “Aggrieved Employees”).

15 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
16 statute, which states that the “court shall review and approve any penalties sought as part of a
17 proposed settlement agreement pursuant to this part.” (See Labor Code § 2699(l).) In deciding
18 whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the
19 Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties
20 to which the Parties have agreed provide “genuine and meaningful” relief, “consistent with the
21 underlying purpose of the statute to benefit the public” (*Villalobos v. Calandri Sunrise Farm LP*
22 (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 12732709, at 5), and whether the
23 penalties are reasonable in light of the potential verdict value in this case (*O’Connor v. Uber*
24 *Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135). As set forth herein, the proposed
25 Settlement embodies all of the features of a settlement that is fair, adequate and reasonable, as it is
26 the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and
27 hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative
28 strength and value of the PAGA claim, and (4) it reflects a reasoned compromise based directly on

1 the relative strength and value of the PAGA claims, as well as the risks, expense, complexity and
2 likely duration of further litigation.

3 Aggrieved Employees are defined as: “all individuals who are or were employed by
4 Defendant as non-exempt employees within the State of California from April 22, 2019 through
5 April 30, 2021.” In this case, there are 320 Aggrieved Employees, and approximately 9,500 pay
6 periods.

7 The value achieved by the Settlement may be gleaned from the fact that the gross Settlement
8 is \$190,000.00 and that the LWDA and the Aggrieved Employees encompassed by the Settlement
9 will receive no less than \$97,024.39 under the terms of the Settlement, which, pursuant to the
10 operative statute, shall be allocated “75 percent to the Labor and Workforce Development Agency...
11 and 25 percent to the aggrieved employees.” (See Cal. Lab. Code § 2699(i).) This is a significant
12 recovery, not only because further litigation may have resulted in a net-zero recovery based on the
13 defenses asserted by Defendant, but because the amount secured by Plaintiff is exponentially above
14 other PAGA penalty awards approved as reasonable in these types of cases.

15 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this Court
16 enter the proposed Order submitted herewith.

17 **II. Statement of the Case**

18 **A. Procedural History**

19 On April 22, 2020, Plaintiff filed a claim notice online with the California Labor &
20 Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699.3(a)(1), giving notice
21 of violations by Defendant of various Labor Code violations. (See Declaration of David Yeremian
22 (“Yeremian Decl.”), filed concurrently herewith, ¶ 4; Exhibit 1.) The LWDA declined to investigate
23 the violations alleged. (*Id.*) Pursuant to Labor Code § 2699.3(a)(2), after 65 days from the mailing of
24 the notice to the LWDA, Plaintiff had a private right of action to bring the instant case. Plaintiff have
25 also given notice of this stipulation for settlement to the LWDA. (See Yeremian Decl. ¶ 4; Exhibit
26 5.)

27 On May 26, 2020, Plaintiff filed a class action complaint against Defendant in the Superior
28 Court for the State of California, in San Diego County, Case Number 37-2020-00015694-CU-OE-

CTL, alleging claims for (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to furnish accurate itemized wage statements; (6) failure to timely pay final wages upon termination or separation; and (7) failure to reimburse necessary business expenses. (See Yeremian Decl. ¶ 5.) On July 15, 2020, after 65 days from the mailing of the notice to the LWDA, Plaintiff filed a First Amended Complaint for claims pursuant to the Private Attorneys General Act (“PAGA”) under Labor Code § 2699 *et seq.* (Id.) On November 6, 2020, Plaintiff filed a Second Amended Complaint which dismissed the class claims. (Id.)

B. PAGA Counsel’s Investigation

The Parties engaged in formal and informal discovery, and PAGA Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including the exchange of documents, meeting and conferring, reviewing and analyzing pay time and records, employment handbooks, Plaintiff’s personnel files, and Defendant’s relevant policies and other documentation. (See Yeremian Decl. at ¶ 6.) Informal discovery revealed Plaintiff, as well as many other Aggrieved Employees, signed an arbitration agreement during their employment with Defendant, precluding them from pursuing class action claims. (See Yeremian Decl. at ¶ 8.) Given the releases signed by the class members, Plaintiff continued proceeding with the claims under Labor Code § 2699. (Id. at ¶ 9.) With the discovery in hand, the Parties were able to engage in meaningful settlement discussions in an attempt to resolve the claims remaining in the Action. (Id.)

C. Settlement Negotiations

On March 11, the Parties mediated the matter and entered into a settlement agreement. (See Yeremian Decl. at ¶ 10.) The Parties discussed all aspects of the case, including the risks of litigation and exchanged further information. (Id.) The Parties reached an agreement as embodied in the Settlement, which is attached as Exhibit 2 to the Yeremian Declaration.

The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation would lead to inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. (Id.) The Parties took into account the risk and uncertainty of the outcome inherent in any

1 litigation in reaching this agreement. (*Id.*)

2 **D. Settlement Agreement and Accompanying Documents**

3 The Settlement requires Defendant to pay a total settlement amount of One Hundred Ninety
4 Thousand Dollars and Zero Cents (\$190,000.00) in exchange for a release of the Plaintiff's
5 Representative PAGA Claims asserted in the PAGA Complaint. (*See* Yeremian Decl. at ¶ 13;
6 Exhibit 2 at ¶ 4). From the total settlement amount the following deductions shall be made, if
7 approved by the Court:

- 8 a. Attorneys' fees in the amount of Seventy Six Thousand Dollars and Zero Cents
9 (\$76,000.00) ("PAGA Counsel's Fees") and Ten Thousand Two Hundred Twenty
10 Five Dollars and Sixty-One Cents (\$10,225.61) for PAGA Counsel's actual
11 litigation expenses incurred to date ("PAGA Counsel's Costs") (*see id.*; Exhibit 2,
12 at ¶ 4(a) and Exhibit 3);
- 13 b. Administration costs of no more than Six Thousand Seven Hundred Fifty Dollars
14 and Zero Cents (\$6,750.00) to be paid to the Settlement Administrator
15 ("Administration Costs") for sending notices and for calculating settlement shares
16 and preparing all checks and mailings (*see* Yeremian Decl. at Exhibit 2, at ¶4(b);
17 Exhibit A to the settlement agreement);
- 18 c. Distribution of the remainder Ninety Seven Thousand Twenty Four Dollars and
19 Thirty Nine Cents (\$97,024.39) to the LWDA and the Aggrieved Employees per
20 statute: 75% (\$72,768.29) must be paid to the Labor and Workforce Development
21 Agency per Labor Code § 2699 *et seq.* and 25% (\$24,256.10) shared by the
22 Aggrieved Employees on a pro-rata basis (*see id.*; Exhibit 2 at ¶ 4(d)).

23 From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, the risks
24 and delays posed by further litigation, and PAGA Counsel's own prior litigation experience, PAGA
25 Counsel believes that the recovery for each aggrieved employee is fair and reasonable, taking into
26 consideration the amounts received in other PAGA actions, the risks inherent in litigation of this
27 genre, and the reasonable tailoring of each aggrieved employee's claim to the settlement award he or
28 she will receive. (*See* Yeremian Decl. at ¶ 14). Defendant, for its part, vigorously contests liability

1 and damages. (*Id.* at ¶ 8.) Further, and based on the settlement negotiations, which were hard-fought
2 and conducted in good faith and at arm's length between attorneys with substantial experience
3 litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement
4 process in which the parties were forced to make significant compromises in the interest of reaching
5 a full and complete settlement of the lawsuit. (*Id.* at ¶ 14.)

6 **III. Discussion**

7 **A. The Relief Obtained Through the PAGA Settlement is Genuine, Meaningful,** 8 **and Consistent with the Underlying Purpose of the Statute to Benefit the Public**

9 Plaintiff alleges that Defendant violated California law and various provisions of the Labor
10 Code during the course of Plaintiff and Aggrieved Employees' employment. (*See* Yeremian Decl. at
11 ¶ 5.) Plaintiffs claim civil penalties under PAGA pursuant to Labor Code § 2699 *et seq.* (*Id.*)

12 Under Labor Code § 2699, specifically, Plaintiff alleged that the Aggrieved Employees were
13 not paid all wages they were owed, including for all work performed and for all overtime hours
14 worked. (*See* Yeremian Decl. at ¶ 16.) Specifically, Plaintiff alleged that Aggrieved Employees were
15 required to perform pre-shift and post-shift off the clock work and also were pressured into
16 recording hours that conformed to their scheduled shifts as opposed to all hours actually worked.
17 (*Id.*) On top of these violations, Plaintiff alleged that Aggrieved Employees often were not allowed
18 to take meal and rest breaks due to the demands of the job. To the extent they were able to take a
19 break, it was allegedly interrupted often. (*Id.*) Additionally, Plaintiff alleged that Aggrieved
20 Employees were not reimbursed for their cellular phone expenses and internet usage despite
21 incurring this expense in the course of performing their required job duties for Defendant. (*Id.*)

22 Plaintiff also contended that Defendant failed to provide their employees with accurate,
23 itemized wage statements, in writing, as required by California Labor Code § 226(a). (Yeremian
24 Decl. at ¶ 17.) Section 226(a) requires an employer to furnish each of his or her employees with an
25 accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and
26 the corresponding number of hours worked at each hourly rate. (Labor Code § 226(a).) These
27 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
28 serves to pay the employee's wages, or, if wages are paid by cash or personal check, these

1 statements may be given to the employee separately from the payment of wages. (*Id.*) In either case,
2 the employer must give the employee these statements twice a month or each time wages are paid.
3 (*Id.*) As a direct and proximate cause of Defendant’s alleged violation of Labor Code § 226(a),
4 employees allegedly suffered injuries, including not being paid their wages and overtime, confusion
5 over whether they received all wages owed them, the difficulty and expense involved in
6 reconstructing pay records, and forcing them to make mathematical computations to analyze whether
7 the wages paid in fact compensated them for all hours worked. (Yeremian Decl. at ¶ 17.)
8 Specifically, the wage statements allegedly failed to accurately account for unpaid wages and
9 overtime due to the off the clock work. (*Id.*) Moreover, the wage statements allegedly failed to
10 account for premium pay for deficiently provided meal and rest periods. (*Id.*) As a result, Defendant
11 allegedly failed to provide employees with accurate, itemized wage statements in writing, as
12 required by the Labor Code. (*Id.*)

13 By allegedly failing to pay the Plaintiff and Aggrieved Employees their minimum wages,
14 overtime wages, and premium pay for deficiently provided meal periods, all discussed above,
15 Plaintiff and formerly employed Aggrieved Employees would be due all wages at the time of
16 termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.
17 (*Id.* at ¶ 18,)

18 Regarding the alleged “off-the-clock” work, Defendant contends that Aggrieved Employees
19 were instructed to clock in before attending to any duties and to stop all work after clocking out. (Yeremian Decl. at ¶ 19.) Accordingly, Defendant contends that they paid for all reported hours
20 worked, that Aggrieved Employees were trained to record all hours worked, and that it paid proper
21 overtime and minimum wages to the Aggrieved Employees. (*Id.*) Defendant further contends that
22 given its written policies and practices, any unrecorded hours are likely subject to individualized
23 inquiry and are not manageable as a representative action. (*Id.*) Finally, Defendant contends that
24 Aggrieved Employees were provided with an opportunity to timely take their meal periods. (*id.*)
25 Similarly, Defendant further contends that Aggrieved Employees were provided the opportunity to
26 timely take 10-minute rest breaks for every four hours worked. (*Id.*) As a result of Defendant’s
27 arguments, Plaintiff’s Counsel had to apply appropriate discounts in light of the facts and law as
28

1 discussed above. (*Id.*)

2 The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil
3 penalties on behalf of herself and other aggrieved employees for Defendant's violation of any
4 provision of the Labor Code enumerated under Labor Code § 2699.5. (*See id.* at ¶ 20.) Where civil
5 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
6 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved
7 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
8 employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-
9 five (75) percent of the penalties recovered must be allocated to the Labor and Workforce
10 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the
11 affected employees. (*See also Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-2122 CAS (CWx),
12 2013 WL 3233211, at *7 (C.D. Cal. Jun. 25, 2013) (“[A] PAGA plaintiff pursues civil penalties on
13 behalf of the government and receives a twenty-five percent portion of the recovered penalty as a
14 bounty.”.) The limitations period as for all penalties is one year prior to the filing of the complaint.
15 However, under *Amaral v. Cintas* (2008) 163 Cal.App.4th 1157, 1207-09, the Court held that a
16 lower penalty amount of \$100 per violation applies in the absence of a determination that a violation
17 actually occurred.

18 Based on the foregoing facts and law, PAGA Class Counsel estimated Defendant's maximum
19 total exposure on the PAGA claim at approximately \$815,200. (*See Yeremian Decl.* at ¶ 21.) The
20 provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not
21 limited to Labor Code §§ 201, 202, 203, 204, 218.6, 226, 226.7, 510, 512, 558, 1174, 1185, 1194,
22 1194.2, 1197, 2698, 2699, and 2802. (*Id.*) Specifically, the total exposure on the PAGA claim was
23 calculated by multiplying the total number of pay periods (9,500) by 100 per violation. (*Id.*)
24 Plaintiff's calculation of the total exposure on the PAGA claim is for one PAGA penalty per pay
25 period (*i.e.*, Plaintiff did not stack the penalties in their calculation). (*Id.*) Plaintiff's claims giving
26 rise to the penalties include the following: (1) Defendant's alleged failure to pay minimum wages
27 and overtime due to off the clock work; (2) Defendant's alleged failure to provide all the legally
28 required unpaid, off-duty meal periods to the Aggrieved Employees; (3) Defendant's alleged failure

1 to provide all the legally required paid, off-duty rest periods; (4) Defendant’s alleged failure to
2 provide accurate wage statements; (5) Defendant’s alleged failure to timely pay all wages due and
3 certain at the time of termination or within seventy-two hours of resignation as required by Labor
4 Code §§ 201-203; and (6) Defendant’s alleged failure to reimburse Aggrieved Employees for their
5 alleged cellular phone and internet expenses. (*Id.*)

6 Case law supports the notion that it is inappropriate to “stack” penalties for multiple
7 violations, particularly when those violations all stem from the same alleged “injury.” (*Aguirre v.*
8 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.* (2010) 189
9 Cal.App.4th 562, 577 (“One injury gives rise to only one claim for relief...The violation of one
10 primary right constitutes a single cause of action.”); *Crowley v. Katleman* (1994) 8 Cal.4th 666, 681-
11 82); *Li v. A Perfect Day Franchise, Inc.* (N.D. Cal.2012) 2012 WL 2236752, *17 (“There is no
12 authority that “would permit double recovery of essentially the same penalties.”).)

13 Defendant asserted that if PAGA penalties were mandatory, an employer’s PAGA liability
14 would be huge because of the possibility of collecting multiple civil penalties for a single violation,
15 and thus such penalties would almost always dwarf the damages available under the causes of action
16 proper. (See *Yeremian Decl.* at ¶ 23.) However, PAGA penalties are not mandatory but permissive.
17 Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum civil
18 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
19 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
20 (See *Thurman v. Bayshore* (2012) 203 Cal.App.4th 1112 (*substantially* reducing PAGA penalties by
21 30% under this provision) (emphasis added); see also *Carrington v. Starbucks Corp.* (2018) 30
22 Cal.App.5th 504, 529 (affirming penalty reduction of 90% for practice that resulted in meal periods
23 occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald’s Corp.* (2017),
24 LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ*
25 *Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000);
26 *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction
27 from \$2.8 million to \$375,000).) Defendant maintains that it would be unjust to award maximum
28 PAGA penalties.

1 **B. The Requested Attorney Fees And Cost Award Should Be Approved**

2 **1. The Payment of Attorneys' Fees Is Reasonable and Therefore Falls**
3 **within the Range of Approval by the Court**

4 The California Supreme Court has recently held that “when class action litigation establishes
5 a monetary fund for the benefit of the class members, and the trial court in its equitable powers
6 awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee
7 by choosing an appropriate percentage of the fund created.” (*Laffitte v. Robert Half Intern. Inc.*
8 (2016) 205 Cal.Rptr.3d 555, 573.) Indeed, courts may use the “percentage method for its primary
9 calculation of the fee award. The choice of a fee calculation method is generally one within the
10 discretion of the trial court, the goal under either the percentage or lodestar approach being the
11 award of a reasonable fee to compensate counsel for their efforts.” (*Id.*)

12 Pursuant to the Settlement Agreement, the PAGA Counsel is entitled to 40% of the
13 Maximum Settlement Amount, or Seventy Six Thousand Dollars and Zero Cents (\$76,000), as
14 attorneys' fees for its representation of Plaintiff in this Matter. (See Yeremian Decl., Exhibit 2 at ¶ 4
15 (d).) PAGA Counsel respectfully requests an order approving its attorneys' fees in the amount of
16 \$76,000 pursuant to the Settlement Agreement. (See Yeremian Decl. at ¶¶ 24-25.)

17 In settlements where a definite monetized fund is created, it is appropriate for courts to
18 evaluate the lodestar amount as a percentage of the recovery and adjust it accordingly if the lodestar
19 differs from the range of percentage fees freely negotiated in comparable litigation. (See *Lealao v.*
20 *Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 49-50.)

21 PAGA Counsel took this case on a contingent-fee basis against a corporation represented by
22 a reputable defense firm. (See Yeremian Decl. at ¶ 27.) When taking on contingent cases, careful
23 attention must be paid to the economics involved or one bad case can destroy years of work. (*Id.*)
24 Accordingly, in such cases, PAGA Counsel anticipate that they shall, if successful, receive a fee that
25 exceeds their normal hourly rate; otherwise the risk is often too great to bear. (*Id.*) Even with long
26 hours of work, the number of hours in a day is limited. (*Id.*) Because of this, when one particular
27 matter is handled, other matters are turned away. (*Id.*) When firms become involved in cases like
28 this, they must realize the time commitment entailed and are forced to turn down other matters that

1 otherwise could have been handled. (*Id.*)

2 Contingent-fee cases present the very real risk of working hundreds if not thousands of hours
3 that may never be entirely compensated. (*See id.* at ¶ 28.) Moreover, while the case is being litigated,
4 counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases
5 pay the out-of-pocket expenses incurred on the plaintiff’s behalf. (*Id.*) And the prospect of a court-
6 awarded fee does not greatly reduce the risk posed by these cases. (*Id.*) In many cases, the prospect
7 is nothing more than a potential that never materializes. (*Id.*) First, PAGA Counsel must win the case
8 to get a court-awarded fee; even those cases that seem strongest at the onset can be lost and
9 sometimes are lost. (*Id.*) Second, there are always the pitfalls and unforeseen obstacles that arise
10 along the way, such as settlement offers that the client may accept without ensuring that PAGA
11 Counsel receive a reasonable fee or changes in the law that substantially affect the merits of the case,
12 or other uncertainties involving the client. (*Id.*) Finally, there is the great risk inherent in advancing
13 tens if not hundreds of thousands of dollars in out-of-pocket expenses. (*Id.*) If that money were to be
14 invested in some sort of financial investment, one would expect a reasonable rate of return on that
15 investment. (*Id.*) Here, however, the best PAGA Counsel can hope to recover is money, and then
16 only if they are substantially successful; if they are not, all or part of this “investment” can be lost.

17 PAGA Counsel is well-acquainted with the contingent-fee market throughout California,
18 particularly as it pertains to PAGA and class-action litigation. (*See id.* at ¶ 29.) PAGA Counsel has
19 negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
20 representatives in class-action and PAGA suits. Many of those agreements required that counsel
21 receive a fee under certain scenarios that exceeds 40% of the recovery. PAGA Counsel’s recent
22 attorneys’ fees awards in similar wage-and-hour class and PAGA actions have been 40% of the
23 recovery.

24 Attorney’s fees payable from this settlement amount to PAGA Counsel in no way
25 undermined their fiduciary duties to the putative class. (*See id.* at ¶ 30).

26 PAGA counsel in contingency-fee cases typically receive attorneys’ fees equal to or greater
27 than forty percent of the gross settlement amount. (*See Crandall v. U-Haul* (Los Angeles County
28 Super. Ct., Case No. BC178775) (the Honorable Steven Czuleger awarded a 40% attorney fee

1 request in an overtime-exemption class action); *Bushnell v. Cremar, Inc.* (Orange County Super. Ct.,
2 Case No. 657778) (the Honorable Donald E. Smallwood awarded attorneys' fees in the amount of
3 38%); *Abzug v. Kerkorian* CA000981 (Los Angeles County Super.Ct., November 1990) (the
4 Honorable R. William Schoettler awarded a 45% fee); *Haitz v. Meyer, et al.*, Alameda County
5 Super. Court, 8-20-1990 No. 572968-3 (the court awarded a 40% fee); in *Elliott v. Clothestime*
6 (Orange County Super. Ct., Case No. 01-CC00333) (the Honorable Jonathan Cannon awarded a
7 40% fee in a wage-and-hour class action which had not yet proceeded to the class certification
8 stage); *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359 BTM (JMA) (the Honorable
9 Judge Barry T. Moskowitz awarded a 40% fee to plaintiff's counsel in wage-and-hour class actions
10 that had not proceeded to the class-certification stage); *Barile v. Boston Market Corporation*, Case
11 No.: 05 CV 1360 BTM (JMA) (same).) (See Yeremian Decl. ¶ 32.)

12 Moreover, PAGA Counsel, in both prior wage-and-hour class action and PAGA lawsuits that
13 received final approval similar to this one, received awards of forty percent (40%) of the settlement
14 amount for attorneys' fees. The requested amount is also in line with the foregoing case authority as
15 well as the practice in most wage-and-hour class actions. (*Id.* at ¶¶ 31-33; Exhs. 4, 5 and 6.)

16 The amount requested here will fairly compensate PAGA Counsel for their successful
17 vindication of aggrieved employee rights, taking into account the quality, nature, and extent of
18 counsel's efforts, and the fact that the amount of fees for which approval is sought is consonant with
19 legal precedent. PAGA Counsel's diligent, efficient, and creative pursuit of this matter positioned
20 Plaintiff to settle this action successfully, affording redress to the PAGA Aggrieve Employees and
21 avoiding the inevitable expense and risk attendant to protracted litigation. In sum, it was through the
22 efforts of Plaintiff and PAGA Counsel that the considerable benefits of the settlement were obtained.

23 PAGA Counsel spent adequate time on this matter. Aside from drafting the initial complaint,
24 PAGA Counsel conducted formal and informal discovery, reviewed and analyzed time and pay
25 records, employment handbooks, the Plaintiff's personnel files, relevant policies and other
26 documentation, researched the applicable law and potential defenses, constructed damage models
27 based on interpretations of California law, reviewed information provided by Defendant at the
28 mediation, engaged in meet and confer efforts with Defendant, and ultimately drafted and revised the

1 settlement agreement. (*See id.* at ¶31.) PAGA Counsel conservatively estimates that it invested over
2 151.4 hours of attorney time in this matter. David Yeremian’s billing rate is \$750.00 per hour (18
3 years out of law school and is less than the Laffey Matrix rate of \$759.00), and he spent 38 hours on
4 this matter. Jason Rothman’s billing rate was \$450.00 (5 years out of law school and is less than the
5 Laffey Matrix rate of \$465.00), and he spent 57 hours on this matter. Natalie Haritounian’s billing
6 rate is \$450.00 (4 years out of law school and is less than the Laffey Matrix rate of \$465.00), and she
7 spent 44 hours on this matter. (*See* Declaration of Natalie Haritounian in Support of Final Approval
8 (“Haritounian Decl.”), at ¶ 5.) Walter Haines’ billing rate is \$675 per hour and he spent 12.4 hours
9 on this matter. (*See* Declaration of Walter Haines filed concurrently herewith (“Haines Decl.”) at ¶¶
10 8-10.) The lodestar for Plaintiff’s counsel \$82,320 (\$28,500 for David Yeremian’s time on the case,
11 \$25,650 for Jason Rothman’s time on the case; \$19,800 for Natalie Haritounian’s time on the case;
12 and \$8,370 for Walter Haines’ time on the case). (*See* Yeremian Decl. at ¶ 31.) The fee request of
13 \$76,000 results in a multiplier of approximately 0.92 further evidencing the reasonableness of the
14 request.

15 In light of the foregoing, the fee request in an amount equal to forty percent of the settlement
16 in this case is well within the bounds that have been established by the above-cited authority. (*See*
17 Yeremian Decl. at ¶34.) **Defendant has no objection** to an award of fees in the amount requested.

18 **2. The Request For PAGA Counsel’s Costs Are Reasonable**

19 PAGA Counsel requests reimbursement for costs, totaling Ten Thousand Two Hundred
20 Twenty Five Dollars and Sixty-One Cents (\$10,225.61). The total costs for Plaintiff’s Counsel is
21 \$10,225.61 (\$10,202.91 for David Yeremian & Associates, Inc. and \$22.70 for the United
22 Employees Law Group, P.C.). (Haines Decl. at ¶ 12.) Attached to the concurrently filed of
23 Declaration of David Yeremian as Exhibit 3, is his cost log, showing total costs of \$10,202.91. All of
24 these costs are and were reasonable and necessary in the prosecution of the Action, for the benefit of
25 the State and the Aggrieved Employees. (*See* Yeremian Decl., Exhibit 3). Moreover, the expenses
26 for which reimbursement is sought are recoverable in common fund cases. (*See In re United Energy*
27 *Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig.*, 1989 U.S. Dist. LEXIS 19146, 16 (C.D.
28 Cal. Mar. 9, 1989) (“[R]eimbursement of ... filing fees, postage, telephone bills, photocopying, legal

1 research assistance, deposition costs, witness fees, and similar items... [are] appropriate for cost
2 reimbursement in common fund cases.”); *Bond v. Ferguson Enters. Inc.*, 2011 U.S. Dist. LEXIS
3 70390, at 36-37 (E.D. Cal. June 29, 2011) (finding that the incurred costs, including payment to
4 court reporters for depositions, mediation costs, legal research, and in-house copies of documents,
5 are routinely reimbursed in these types of cases); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
6 482, at 493 (E.D. Cal. 2010) (“The costs billed, which include ground transportation, copy and
7 scanning costs, computer research, and expert witness fees, are reasonable.”.)

8 Based thereon, PAGA Counsel respectfully requests that the Court approve its cost
9 reimbursement request.

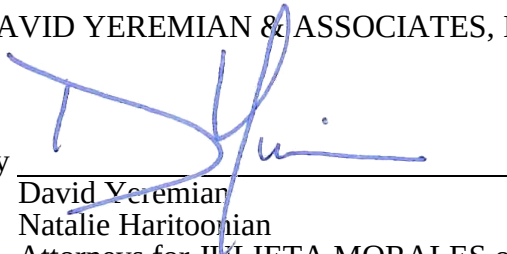
10 **IV. CONCLUSION**

11 For the reasons set forth herein, Plaintiff respectfully requests that this Court grant this
12 Motion, and issue an order approving the PAGA Settlement Agreement and Release between the
13 Parties.

14
15 DATED: November 23, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

16
17 By


David Yeremian

Natalie Haritounian

Attorneys for JULIETA MORALES on behalf of
herself and others similarly situated