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11 behalf of himself and others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO**

14 GIOVANNI MANZARES, an individual, on
15 behalf of himself and all others similarly
situated,

16 Plaintiff,

17 v.

18 U GYM, LLC, a Nevada corporation; UFC
19 GYM, a business entity of unknown form; and
DOES 1 through 50, inclusive

20
21 Defendants.

Case No.: 34-2020-00284868

REPRESENTATIVE ACTION

Assigned for All Purposes To:
Hon. Richard K. Sueyoshi
Dept.: 40

**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; [Proposed] Order; and [Proposed]
Final Judgment]*

Reservation No. 2584100

Date: September 21, 2021
Time: 9:00 a.m.
Dept.: 54

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

2 **PLEASE TAKE NOTICE** that on September 21, 2021 at 9: a.m. in Department 54 of the
3 above-entitled Court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiff Giovanni
4 Manzares (“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 U Gym, LLC.
7 (“Defendant”) which will accomplish the following: approve the representative action settlement
8 embodied in the Private Attorney General Act Settlement Agreement and General; approve PAGA
9 Counsel’s application for attorney’s fees and litigation costs; and enter judgment approving the
10 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.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
16 (1996); 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 complete pleadings, records and files in the
20 case, and such other further oral and documentary evidence which may be submitted at or before the
21 hearing on this Motion.

22
23 DATED: August 18, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

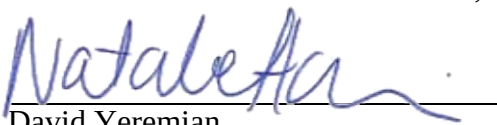
24 By 
25 David Yeremian
26 Natalie Haritoonian
27 Attorneys for GIOVANNI MANZARES on behalf of
28 himself and others similarly situated

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I. Introduction

This Motion to Approve Settlement and Release of PAGA Claims (the “Motion for Approval”) is made to enforce the terms of the settlement entered into by and between Plaintiff Giovanni Manzares (“Plaintiff” or “Class Representative”), and U Gym, LLC (“Defendant”). Plaintiff and Defendant shall be collectively referred to as the “Parties.” A copy of the Stipulation Regarding the Settlement of the Representative Private Attorneys General Act Action (hereinafter “Settlement” or “Stipulation”) entered into by the Parties is attached to the concurrently filed Declaration of David Yeremian as **Exhibit 2**. Plaintiff seeks, without opposition from Defendant, an order from the Court approving the Settlement under Labor Code §§ 2698 *et seq.*

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

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the “court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.” See Labor Code § 2699(l). In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties to which the Parties have agreed provide “genuine and meaningful” relief, “consistent with the underlying purpose of the statute to benefit the public” (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 12732709, at 5.), and whether the penalties are reasonable in light of the potential verdict value in this case (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135). As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, adequate and reasonable, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative 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 June 19, 2019 through June
5 1, 2021” In this case, there are 1,318 Aggrieved Employees, and 24,055 pay periods.

6 The value achieved by the Settlement may be gleaned from the fact that the gross Settlement
7 is \$105,000 and that the LWDA and the Aggrieved Employees encompassed by the Settlement will
8 receive no less than \$37,578.98 under the terms of the Settlement, which, pursuant to the operative
9 statute, shall be allocated “75 percent to the Labor and Workforce Development Agency. . . and 25
10 percent to the aggrieved employees.” See Cal. Lab. Code § 2699(i). This is a significant recovery,
11 not only because further litigation may have resulted in a net-zero recovery based on the defenses
12 asserted by Defendant, but because the amount secured by Plaintiff is exponentially above other
13 PAGA penalty awards approved as reasonable in these types of cases.

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

16 **II. Statement of the Case**

17 **A. Procedural History**

18 On June 19, 2020, Plaintiff filed a claim notice online with the California Labor &
19 Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699.3(a)(1), giving notice
20 of violations by Defendant of various Labor Code violations. (See Declaration of David Yeremian
21 (Yeremian Decl.”), filed concurrently herewith, ¶ 4; Exhibit 1). The LWDA declined to investigate
22 the violations alleged. *Id.* Pursuant to Labor Code § 2699.3(a)(2), after 65 days from the mailing of
23 the notice to the LWDA, Plaintiff had a private right of action to bring the instant case. Plaintiff has
24 also given notice of this stipulation for settlement to the LWDA. (See Yeremian Decl. ¶ 43; Exhibit
25 5).

26 On September 1, 2020, after 65 days from the mailing of the notice to the LWDA, Plaintiff
27 filed a putative PAGA Complaint against Defendant in the Superior Court for the State of California,
28 in Sacramento County, Case Number 34-2020-00284868, alleging Defendant must pay penalties

1 under PAGA for (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3)
2 failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to furnish accurate
3 itemized wage statements; (6) failure to timely pay final wages upon termination or separation; and
4 (7) failure to reimburse necessary business expenses. (See Yeremian Decl. ¶ 5).

5 **B. PAGA Counsel's Investigation**

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

16 **C. Settlement Negotiations**

17 On March 29, 2021, the parties mediated the matter and entered into a settlement agreement.
18 (See Yeremian Decl. at ¶ 10). The parties discussed all aspects of the case, including the risks of
19 litigation and exchanged further information. *Id.* The parties reached an agreement as embodied in
20 the Settlement, which is attached as Exhibit 2 to the Yeremian Declaration.

21 The parties recognized that the issues presented in the Action are likely only to be resolved
22 with extensive and costly pretrial and trial proceedings, and that further litigation will lead to
23 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of
24 litigation. *Id.* The parties took into account the risk and uncertainty of the outcome inherent in any
25 litigation in reaching this agreement. *Id.*

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

27 The Settlement requires Defendant to pay a total settlement amount One Hundred Five
28 Thousand Dollars and Zero Cents (\$105,000.00) in exchange for a release of the Plaintiff's

1 Representative PAGA claims asserted in the PAGA Complaint. (See Yeremian Decl. at ¶ 13; Exhibit
2 2 at ¶ 4). From the total settlement amount the following deductions shall be made, if approved by
3 the Court:

- 4 a. Attorneys' fees in the amount of Forty Two Thousand Dollars and Zero Cents
5 (\$42,000.00) ("PAGA Counsel's Fees") and Thirteen Thousand Four Hundred
6 Twenty One Dollars and Two Cents (\$13,421.02) for PAGA Counsel's actual
7 litigation expenses incurred to date ("PAGA Counsel's Costs) (*see id.* Exhibit 2,
8 at ¶ 4(a) and Exhibit 3)
- 9 b. Administration costs of no more than Twelve Thousand Dollars and Zero Cents
10 (\$12,000.00) to be paid to the Settlement Administrator ("Administration Costs")
11 for sending notices and for calculating settlement shares and preparing all checks
12 and mailings (See Yeremian Decl. at Exhibit 2, at ¶4(b); Exhibit A to the
13 settlement agreement); and
- 14 c. Distribution of the remainder Thirty Seven Thousand Five Hundred Seventy Eight
15 Dollars and Ninety Eight Cents to the LWDA and the Aggrieved Employees per
16 statute: 75% (\$28,184.23) must be paid to the Labor and Workforce Development
17 Agency per Labor Code § 2699 *et seq.* and 25% (\$9,394.75) shared by the
18 Aggrieved Employees on a pro-rata basis (See *id.*; Exhibit 2 at ¶ 4(d)).

19 From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, the risks
20 and delays posed by further litigation, and PAGA Counsel's own prior litigation experience, PAGA
21 Counsel believes that the recovery for each aggrieved employee is fair and reasonable, taking into
22 consideration the amounts received in other PAGA actions, the risks inherent in litigation of this
23 genre, and the reasonable tailoring of each aggrieved employee's claim to the settlement award he or
24 she will receive. (See Yeremian Decl. at ¶ 14). Defendant, for its part, vigorously contests liability
25 and damages. (*Id.* at ¶ 8). Further, and based on the settlement negotiations, which were hard-fought
26 and conducted in good faith and at arm's length between attorneys with substantial experience
27 litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement
28 process in which the parties were forced to make significant compromises in the interest of reaching

1 a full and complete settlement of the lawsuit. (*Id.* at ¶ 14).

2 **III. Discussion**

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

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

8 Under Labor Code § 2699, specifically, Plaintiff alleged that the Aggrieved Employees were
9 not paid all wages they were owed, including for all work performed and for all overtime hours
10 worked. (*See* Yeremian Decl. at ¶ 16). Specifically, Aggrieved Employees were instructed by
11 Defendant to clock out of work but to continue working. For instance, Plaintiff would coach multiple
12 classes each day and Defendant would require Plaintiff to clock out when he was not coaching a
13 class. However, while he was clocked out, he was performing other tasks such as assisting existing
14 customers with their workout routines, attending to new customers, and cleaning up the facility. (*Id.*)
15 On top of these violations, Plaintiff alleged that Aggrieved Employees often were not allowed to
16 take meal and rest breaks due to the demands of the job. To the extent they were able to take a break,
17 it was allegedly interrupted often. (*Id.*) Additionally, Plaintiff alleged that Aggrieved Employees
18 were not reimbursed for their cellular phone expenses and internet usage despite incurring this
19 expense in the course of performing their required job duties for Defendant. (*Id.*)

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

1 proximate cause of Defendant’s alleged violation of Labor Code § 226(a), employees allegedly
2 suffered injuries, including not being paid their wages and overtime, confusion over whether they
3 received all wages owed them, the difficulty and expense involved in reconstructing pay records, and
4 forcing them to make mathematical computations to analyze whether the wages paid in fact
5 compensated them for all hours worked. (*Id.*) Specifically, the wage statements allegedly failed to
6 accurately account for unpaid wages and overtime due to the off the clock work. (*Id.*) Moreover, the
7 wage statements allegedly failed to account for premium pay for deficiently provided meal and rest
8 periods. (*Id.*) As a result, Defendant allegedly failed to provide employees with accurate, itemized
9 wage statements in writing, as required by the Labor Code. (*Id.*)

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

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

26 The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil
27 penalties on behalf of herself and other aggrieved employees for Defendant’s violation of any
28 provision of the Labor Code enumerated under Labor Code § 2699.5. (*See id.* at ¶ 19). Where civil

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

14 Based on the foregoing facts and law, PAGA Class Counsel estimated Defendant’s maximum
15 total exposure on the PAGA claim at approximately \$2,405,500. (*See* Yeremian Decl. at ¶ 21). The
16 provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not
17 limited to Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1185, 1194,
18 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, and 2802. (*Id.*) Specifically, the total exposure on the
19 PAGA claim was calculated by multiplying the total number of pay periods (24,055) by 100 per
20 violation. (*Id.*) Plaintiff’s calculation of the total exposure on the PAGA claim is for one PAGA
21 penalty per pay period (*i.e.*, Plaintiff did not stack the penalties in their calculation). (*Id.*) Plaintiff’s
22 claims giving rise to the penalties include the following: (1) Defendant’s alleged failure to pay
23 minimum wages and overtime due to off the clock work; (2) Defendant’s alleged failure to provide
24 all the legally required unpaid, off-duty meal periods to the Aggrieved Employees; (3) Defendant’s
25 alleged failure to provide all the legally required paid, off-duty rest periods; (4) Defendant’s alleged
26 failure to provide accurate wage statements; (5) Defendant’s alleged failure to to timely pay all
27 wages due and certain at the time of termination or within seventy-two hours of resignation as
28 required by Labor Code §§ 201-203.; and (6) Defendant’s alleged failure to reimburse Aggrieved

1 Employees for their alleged cellular phone and internet expenses (*Id.*)

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

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

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

26 **1. The Payment of Attorneys’ Fees Is Reasonable and Therefore Falls**
27 **within the Range of Approval by the Court**

28 The California Supreme Court has recently held that “when class action litigation establishes

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

8 Pursuant to the Settlement Agreement, the PAGA Counsel is entitled to 40% of the
9 Maximum Settlement Amount, or Forty Two Thousand Dollars and Zero Cents (\$42,000), as
10 attorneys’ fees for its representation of Plaintiff in this Matter. (See Yeremian Decl., Exhibit 2 at ¶ 4
11 (d).) PAGA Counsel respectfully requests an order approving its attorneys’ fees in the amount of
12 \$42,000 pursuant to the Settlement Agreement. (See Yeremian Decl. at ¶ 24-25).

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

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

26 Contingent-fee cases present the very real risk of working hundreds if not thousands of hours
27 that may never be entirely compensated. (See *id.* at ¶ 28). Moreover, while the case is being litigated,
28 counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases

1 pay the out-of-pocket expenses incurred on the plaintiff's behalf. *Id.* And the prospect of a court-
2 awarded fee does not greatly reduce the risk posed by these cases. *Id.* In many cases, the prospect is
3 nothing more than a potential that never materializes. *Id.* First, you must win the case to get a court-
4 awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost. *Id.*
5 Second, there are always the pitfalls and unforeseen obstacles that arise along the way, such as
6 settlement offers that the client may accept without ensuring that we receive a reasonable fee or
7 changes in the law that substantially affect the merits of the case, or other uncertainties involving the
8 client. *Id.* Finally, there is the great risk inherent in advancing tens if not hundreds of thousands of
9 dollars in out-of-pocket expenses. *Id.* If that money were to be invested in some sort of financial
10 investment, one would expect a reasonable rate of return on that investment. *Id.* Here, however, the
11 best we can hope to recover is our money, and then only if we are substantially successful; if we are
12 not, all or part of this "investment" can be lost.

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

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

22 PAGA counsel in contingency-fee cases typically receive attorneys' fees equal to or greater
23 than forty percent of the gross settlement amount. *See Crandall v. U-Haul* (Los Angeles County
24 Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney fee
25 request in an overtime-exemption class action; in *Bushnell v. Cremar, Inc.* (Orange County Super.
26 Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees in the amount
27 of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super.Ct., November 1990), the
28 Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et al.*, Alameda County

1 Super. Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in *Elliott v. Clothestime*
2 (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan Cannon awarded a 40%
3 fee in a wage-and-hour class action which had not yet proceeded to the class certification stage; in
4 both *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359 BTM (JMA) and *Barile v. Boston*
5 *Market Corporation*, Case No.: 05 CV 1360 BTM (JMA), the Honorable Judge Barry T. Moskowitz
6 awarded a 40% fee to plaintiff's counsel in wage-and-hour class actions that had not proceeded to
7 the class-certification stage.(See Yeremian Decl. ¶ 32.)

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

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

19 PAGA Counsel spent adequate time on this matter. Aside from drafting the initial complaint,
20 PAGA Counsel conducted informal discovery, reviewed and analyzed time and pay records,
21 employment handbooks, the Plaintiff's personnel files, relevant policies and other documentation,
22 researched the applicable law and potential defenses, constructed damage models based on
23 interpretations of California law, reviewed information provided by Defendant at the mediation,
24 engaged in meet and confer efforts with Defendant, and ultimately drafted and revised the settlement
25 agreement. (See *id.* at ¶31). PAGA Counsel conservatively estimates that it invested over 90 hours of
26 attorney time in this matter. David Yeremian's billing rate is \$750.00 per hour (18 years out of law
27 school and is less than the Laffey Matrix rate of \$759.00), and he spent 32 hours on this matter.
28 Natalie Haritoonian's billing rate is \$450.00 (4 years out of law school and is less than the Laffey

1 Matrix rate of \$465.00), and she spent 58 hours on this matter. (See Yeremian Decl. **Exhibit 4**
2 (Laffey Matrix).) The lodestar for Plaintiff's counsel is \$50,100 (\$24,000 for David Yeremian's time
3 on the case and \$26,100 for Natalie Haritoonian's time on the case,). (See Yeremian Decl. at ¶ 31).
4 The fee request of \$42,000 is actually less than the lodestar value of the hours invested by PAGA
5 Counsel and thus no multiplier is required

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

9 **2. The Request for PAGA Counsel's Costs Are Reasonable**

10 PAGA Counsel requests reimbursement for costs, totaling Thirteen Thousand Four Hundred
11 Twenty One Dollars and Two Cents (\$13,421.02). Attached to the concurrently filed of Declaration
12 of David Yeremian as Exhibit 3, is PAGA his cost log, showing total costs of \$13,421.02. All of
13 these costs are and were reasonable and necessary in the prosecution of the Action, for the benefit of
14 the State and the Aggrieved Employees. (See Yeremian Decl., Exhibit 3). Moreover, the expenses
15 for which reimbursement is sought are recoverable in common fund cases. *See In re United Energy*
16 *Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig.*, 1989 U.S. Dist. LEXIS 19146, 16 (C.D.
17 Cal. Mar. 9, 1989) ("[R]eimbursement of ... filing fees, postage, telephone bills, photocopying, legal
18 research assistance, deposition costs, witness fees, and similar items... [are] appropriate for cost
19 reimbursement in common fund cases."); *Bond v. Ferguson Enters. Inc.*, 2011 U.S. Dist. LEXIS
20 70390, at 36-37 (E.D. Cal. June 29, 2011) (finding that the incurred costs, including payment to
21 court reporters for depositions, mediation costs, legal research, and in-house copies of documents,
22 are routinely reimbursed in these types of cases); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
23 482, at 493 (E.D. Cal. 2010) ("The costs billed, which include ground transportation, copy and
24 scanning costs, computer research, and expert witness fees, are reasonable.").

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

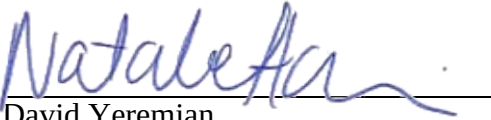
27 **IV. CONCLUSION**

28 For the reasons set forth herein, Plaintiff respectfully requests that this Court grant this

1 Motion, and issue an order approving the PAGA Settlement Agreement and Release between the
2 Parties.

3
4 DATED: August 18, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

5
6 By 
7 David Yeremian
8 Natalie Haritonian
9 Attorneys for GIOVANNI MANZARES on
10 behalf of himself and others similarly situated
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