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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MICHAEL S. GARZA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CEN-CAL FIRE SYSTEMS, INC., a
California Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: RG20070111

Assigned to Hon. Brad Seligman

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

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

Reservation: R-2228596

HEARING DATE

Date: March 2, 2021

Time: 3:00 p.m.

Dept.: 23

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

2 **PLEASE TAKE NOTICE** that on March 2, 2021 at 3:00 p.m., or as soon thereafter as
3 this matter may be heard by the Hon. Brad Seligman in Department 23 of the Alameda County
4 Superior Court for the State of California, located at the 1225 Fallon Street Oakland, California
5 94612, Plaintiff Michael S. Garza (“Plaintiff”) will and hereby does move this Court for an order
6 approving a settlement pursuant to the Private Attorneys General Act of 2004, California Labor
7 Code § 2698 *et seq.* (“PAGA”).

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

14 Dated: February 4, 2021

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

16 BY: _____

17 JOSHUA FALAKASSA
18 MEHRDAD BOKHOUR
19 *Attorneys for Plaintiff and the Aggreived*
20 *Employees*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This PAGA representative action stems from the alleged failure of Defendant Cen-Cal Fire
4 Systems, Inc. (“Defendant”) to properly provide minimum wages and overtime pay, compliant
5 duty-free meal periods and rest periods, and reimbursement for necessary business expenses, along
6 with derivative claims for wage statement violations and waiting time penalties on behalf of all
7 aggrieved employees and the State of California for civil penalties under the Labor Code Private
8 Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”).

9 The PAGA action is a type of *qui tam* action filed on behalf of the state to assist it with
10 labor law enforcement. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-382.
11 As such, the state is the real party in interest in a PAGA action. *Id.* at 382. The State of California
12 was timely served with a copy of the Settlement Agreement concurrently filed with this instant
13 Motion to Approve the PAGA Settlement.

14 Plaintiff and the aggrieved employees who worked for Defendant Cen-Cal Fire Systems,
15 Inc. as non-exempt hourly employees who were employed by Defendant within the State of
16 California from July 30, 2019 through the date that the Court approves this settlement (the “PAGA
17 Members”). The PAGA Members contend that Defendant: (1) failed to pay minimum and overtime
18 wages, (2) failed to provide meal and rest periods or compensation in lieu thereof, (3) failed to issue
19 accurate itemized wage statements, (4) failed to pay all earned wages due to terminated/resigned
20 employees, (5) failed to indemnify all necessary business expenses; (6) engaged in unfair business
21 practices and thus (7) owes civil penalties under the Private Attorneys General Act (“PAGA”).
22 Plaintiff alleges that Defendant owes PAGA penalties as a result of its alleged violations of various
23 Labor Code sections. Defendant denies these claims, denies any fault or wrongdoing, and disputes
24 Plaintiff’s characterization of liability, and damages/penalties. Thus, the Parties fully dispute the
25 merits of the claims and defenses.

26 Following extensive discussions, as well as negotiations and the exchange of informal
27 discovery, the Parties engaged in a full session of mediation on December 15, 2020 with David
28 Lowe, Esq. of Rudy Exelrod Zieff & Lowe, LLP serving as the mediator. Mr. Lowe has extensive

1 experience and insight in wage and hour class and PAGA actions. At the conclusion of the
2 mediation session, along with the mediator's guidance, the Parties reached agreement regarding the
3 major terms of the Settlement. The Parties subsequently memorialized the terms in the long-form
4 Settlement Agreement as set forth in the Private Attorneys General Act Settlement Agreement and
5 Release ("Settlement Agreement") attached at **Exhibit "A"** to Declaration of Joshua Falakassa
6 ("Falakassa Decl.") filed concurrently herewith.

7 Now with a comprehensive Settlement Agreement that resolves the claims alleged in this
8 case, Plaintiff seeks this Court's approval of the \$350,000 Gross Settlement Amount involving
9 approximately 89 PAGA Members. For estimation purposes only, assuming *arguendo* that
10 distribution were pro rata across the 89 PAGA Members (in reality, it is pro rata based on
11 proportionate pay periods worked), the average payment to each PAGA Member is approximately
12 \$630. This Settlement merits approval because it fulfills the purpose of PAGA (*i.e.*, to deter
13 violations of the Labor Code and secure obedience of California's labor laws; and to provide relief
14 that is genuine, meaningful, and consistent with California's goal of benefitting the public through
15 enforcement of labor laws).

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

25 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

26 **A. Factual Background**

27 Defendant offers consultation, design, fabrication, installation, and service of underground
28 and overhead fire protection systems. Defendant primarily works on distribution centers,

1 educational facilities and schools, university housing and facilities, assisted living and senior
2 housing facilities, retail centers, and churches. (Falakassa Decl. ¶ 13.)

3 During the relevant time period, Plaintiff alleges that Defendant failed to provide Plaintiff
4 and other similarly situated employees with all overtime compensation at the appropriate premium
5 rate, failed to provide Plaintiff and other aggrieved employees with all minimum wages, failed to
6 provide Plaintiff and other aggrieved employees with all of their statutorily mandated meal and/or
7 rest periods, failed to compensate Plaintiff and aggrieved employees with all earnings at their
8 separation of employment, failed to reimburse Plaintiff and aggrieved employees for all necessary
9 business expenditures and failed to furnish Plaintiff and other aggrieved employees with complete,
10 accurate, itemized wage statements. (Falakassa Decl. ¶ 14.)

11 For example, Defendant’s payroll policy of modifying and/or manipulating Plaintiff and
12 similarly situated employees’ time entries by manually overriding the hours they self-report to their
13 supervisors via their own personal phones, resulted in underpayment. (Falakassa Decl. ¶ 15.)

14 Moreover, Plaintiff and aggrieved employees were routinely not permitted to take compliant
15 first meal periods before the end of the fifth hour of work, and second meal periods before the end
16 of the tenth hour of work. (Falakassa Decl. ¶ 16.)

17 **B. Procedural History**

18 On July 20, 2020, Plaintiff’s counsel sent notice to the California Labor & Workforce
19 Development Agency (“LWDA”) of his intent to pursue a representative action pursuant to PAGA,
20 on behalf of himself and the State of California, as well as on behalf of a group of aggrieved
21 employees (the “PAGA Notice”). (Falakassa Decl. ¶ 17.) This PAGA Notice is required under
22 Labor Code § 2699.3(a)(1)(A) as a prerequisite to bringing a PAGA representative claim against an
23 employer. The LWDA did not respond to this notice, thus allowing Plaintiff to file the instant
24 lawsuit. Labor Code § 2699.3(a)(2)(A). (Falakassa Decl. ¶ 18.)

25 On August 4, 2020, Plaintiff filed his Complaint in the action entitled *Garza v. Cen-Cal Fire*
26 *Systems, Inc.*, Case No. RG20070111, in the Superior Court of California, County of Alameda (the
27 “Lawsuit”). (Falakassa Decl. ¶ 19.) Through his PAGA claim, Plaintiff seeks penalties for
28 Defendant’s violation of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 206(e), 226.3, 226.6,

1 226.7, 510, 512, 516, 1197, 1197.1, 1198, and 2802-2804. (Falakassa Decl. ¶ 20.) Thereafter, it was
2 demonstrated to Plaintiff that he along with the vast majority of the employees had signed
3 arbitration agreements with explicit class action waiver clause. Therefore, this matter proceeds as a
4 pure PAGA representative action.

5 Although Defendant denies the allegations and vowed to vigorously defend against them,
6 the Parties agreed to attend mediation. (Falakassa Decl. ¶ 23.) In preparation for mediation, the
7 Parties exchanged documents and information that allowed both sides to evaluate the potential
8 exposure and potential risk, such as a sampling of time and payroll records for the PAGA Members,
9 review of Defendant's employee handbook and relevant meal and rest break policies, along with
10 timekeeping and overtime procedures, wage statements, and the total number of employees and
11 workweeks during the PAGA period. (Falakassa Decl. ¶ 24.) During this process, Plaintiff's
12 counsel analyzed, researched, and investigated the potential issues, including matters related to the
13 calculation of damages, trial management, and appellate issues and risks. (Falakassa Decl. ¶ 25.)

14 On December 15, 2020, the Parties attended mediation with David Lowe, Esq. of Rudy
15 Exelrod Zieff & Lowe LLOP, an experienced mediator in wage and hour matters. (Falakassa Decl.
16 ¶ 26.) During that mediation, the Parties exchanged further information and discussed all aspects of
17 the case, including the risks and delays of litigation, the risk associated with proceeding in a
18 representative capacity, liability under the claims asserted, and the ability to recover and measure
19 damages and/or penalties. (*Id.*)

20 The settlement negotiations were at all times at arm's length and although conducted in a
21 professional manner, were adversarial. (*Id.*) With guidance from the mediator, the Parties reached
22 agreement regarding the major terms of the settlement and subsequently finalized those terms in a
23 long-form Settlement Agreement. (Falakassa Decl. ¶ 27.) This Settlement was the culmination of
24 protracted discussions between the Parties following a thorough analysis of the pertinent facts and
25 law at issue. The Parties now present the Settlement Agreement to this Court for approval.
26 (Falakassa Decl. ¶ 22.)

27 ///

28 ///

1 **III. PAGA AND ITS REQUIREMENTS**

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

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

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

28 ///

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

8 In this case, Plaintiff provided the LWDA with the PAGA Notice advising it of the alleged
9 Labor Code violations, but the LWDA deferred the prosecution of these violations to Plaintiff and
10 his attorneys. Accordingly, the Settlement and the \$350,000.00 common fund created by it for the
11 benefit of the State and PAGA Members, is solely the result of the work performed by Plaintiff and
12 his attorneys on this case – all while the PAGA Members will preserve their own separate
13 individual claims should they wish to pursue them.

14 Any settlement of a PAGA action brought by an aggrieved employee must be approved by
15 the court. Lab. Code § 2699(1)(2). In 2009, the California Supreme Court considered the PAGA
16 approval process and, more specifically, whether an aggrieved employee needs to meet class
17 certification requirements. *Arias, supra*, 46 Cal.4th at 976. After a substantial review of the
18 legislative history of PAGA, the Court held that an aggrieved employee's representative action
19 brought on behalf of the state and other aggrieved employees against an employer for PAGA
20 violations **does not** need to meet the requirements for class certification nor does there need to be
21 notice to the other employees. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under
22 PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986.
23 Thus, the Court reviews any proposed settlement and approves it if it is deemed to be fair and
24 reasonable. Accordingly, the Parties to this current PAGA action have reached such an agreement
25 and now seek this Court's approval of the Settlement.

26 **IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

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

28 **A. PAGA Members and Terms of the Settlement**

Aggrieved Employees are defined as, “all non-exempt hourly employees who are or were employed by Defendant within the State of California from July 30, 2019 through the date that the Court approves this settlement” (Settlement Agreement p. 1, ¶ 6.) The number of PAGA Members, including Plaintiff, is estimated to be 87 individuals, *see*, (Falakassa Decl. ¶ 28), who worked approximately 5,200 pay periods during the relevant time period. (Settlement Agreement p.1. ¶ 6.)

The Settlement provides that Defendant will pay a ***Gross Settlement Amount of Three Hundred And Fifty Thousand Dollars (\$350,000.00)*** (the “Gross Settlement Amount”), inclusive of payments to the LWDA and PAGA Members, payment of Plaintiff’s Service Award, attorneys’ fees and litigation costs,¹ and third-party settlement administrator costs.² (Settlement Agreement ¶ 5.) After payment of the PAGA Counsel’s Fees, PAGA Counsel’s Costs, Plaintiff’s Service Award and Administration Costs, approximately \$208,333.34 remains (the “PAGA Fund”).

B. Settlement Allocation to the LWDA and PAGA Members

Pursuant to the Settlement Agreement, the PAGA Fund in the amount of approximately \$214,033.34 shall be designated as PAGA Penalties to be allocated between the LWDA and the PAGA Members pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (the “LWDA PAGA Portion”) and 25% paid to the PAGA Members (the “Aggrieved Employees’ PAGA Portion”) on a pro-rata basis. The following chart reflects the estimated payments from the Settlement Agreement:

	Total Amount
<i>Settlement Amount</i>	\$350,000.00
PAGA Counsel’s Fees (1/3)	\$116,666.66
PAGA Counsel’s Costs	\$7,600.00
Plaintiff’s Service Award	\$10,000.00
Administration Costs (<i>not to exceed</i> \$5,000.00)	\$1,700.00
<i>The PAGA Fund (PAGA Penalties)</i>	\$214,033.34
• 75% to the LWDA	\$160,525.00
• 25% to the PAGA Members	\$53,508.33

¹ Although the Settlement Agreement contemplates that litigation costs are to be reimbursed up to \$10,000.00, Plaintiff’s counsel was able to come in *under budget* and have only incurred \$7,600.

² The Parties have selected Phoenix Class Action Administration Solutions as the Settlement Administrator, and its estimated costs of \$1,700 (which is also *under budget*). (Settlement Agreement ¶ 5(d).)

1 Based on these distributions, the LWDA PAGA Portion will be approximately \$160,525 (75
2 percent of the PAGA Penalties) and the amount paid to PAGA Members for civil penalties under
3 PAGA is estimated to be \$53,508.33 (25 percent). (Falakassa Decl. ¶ 52.) Assuming *arguendo* that
4 distribution were pro rata across the 87 PAGA Members (in reality, it is pro rata based on
5 proportionate pay periods worked), the average payment to each PAGA Member is estimated to be
6 \$630. (Falakassa Decl. ¶ 32.)

7 **C. Settlement Share Payments and the Notice**

8 As noted, twenty-five percent (25%) of the PAGA Penalties will be allocated to the PAGA
9 Members. (Settlement Agreement ¶ 5(e).) Based on the numbers provided by Defendant,
10 approximately 87 current and former PAGA Members will share in the Aggrieved Employees’
11 PAGA Portion. The Settlement Agreement provides a very fair and equitable means of allocating
12 this fund. Each PAGA Member shall receive a portion of the PAGA Penalties on a pro-rata basis.
13 The allocation among the PAGA Members shall be determined by dividing the entire PAGA Fund
14 allocated to the PAGA Members (*i.e.*, approximately \$52,083.33) by the number of workweeks in
15 the PAGA Period. The resulting amount shall be the Workweek Amount. Plaintiff and each PAGA
16 Member shall receive a pro rata value equal to the number of workweeks worked during the PAGA
17 Period multiplied by the Workweek amount. All Individual Settlement Payments made to PAGA
18 Members will be reported on an IRS Form 1099. (Settlement Agreement ¶ 6.)

19 The Settlement is non-reversionary and does not require PAGA Members to submit a claim
20 form to reap financial benefit from the Settlement. Within 30 calendar days after the Court approves
21 the Settlement Agreement and the PAGA Settlement (“Effective Date”), Defendant shall deposit
22 with the Settlement Administrator the Gross Settlement Amount and shall also provide the
23 Settlement Administrator with a list of all PAGA Members. (Settlement Agreement ¶ 8(a).) The list
24 of PAGA Members shall list: employees’ full name, last known mailing address, social security
25 number, and beginning and end dates of employment. (*Id.*) Thereafter, within 45 calendar days of
26 the Effective Date the Settlement Administrator shall run all the addresses of PAGA Members
27 through the United States Postal Service National Change of Address (“NCOA”) database to obtain
28 the most current address information. (Settlement Agreement ¶ 8(b).)

1 Further, within 45 calendar days of the Effective Date, the Settlement Administrator shall
2 remit a total of Seventy-Five percent (75%) of the PAGA Fund to the California Labor &
3 Workforce Development Agency in satisfaction of all PAGA Claims in the Lawsuit (“LWDA
4 PAGA Portion”); and also remit a total of Twenty-Five percent (25%) of the PAGA Fund, as
5 penalty payments to the PAGA Members along with the employee letter - attached to the
6 Settlement Agreement as internal exhibit “A” The payment checks shall be sent to each PAGA
7 Member by U.S. First Class mail to the PAGA Member’s address with directions to the Postmaster
8 to forward the payment checks and return all undeliverable payment checks to the Settlement
9 Administrator. It will be conclusively presumed that a PAGA Member’s Individual Settlement
10 Payment check was received if the payment check has not been returned within thirty (30) days of
11 the original mailing of the payment check. (Settlement Agreement ¶ 8(b)(i)-(ii).)

12 Finally, within 45 calendar days of the Effective Date, the Settlement Administrator shall
13 remit Counsel’s Fees and Costs, as approved by the Court, along with Plaintiff’s Service Award, as
14 awarded by the Court. (Settlement Agreement ¶ 8(b)(iii)-(iv).)

15 Settlement Checks issued to PAGA Members pursuant to this Agreement will expire one
16 hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. Any
17 unclaimed funds after the 180-day period shall be sent to the Unclaimed Property Fund in the name
18 of the PAGA members. Neither the Defendant nor Plaintiff shall bear any liability for lost or stolen
19 checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by
20 its own acts of omission or commission, the same is true for the Settlement Administrator.
21 (Settlement Agreement ¶ 8(c)-(d).)

22 **D. The Limited Release**

23 Importantly, the California Supreme Court has explained that other employees are bound by
24 a PAGA adjudication only with respect to civil penalties, just as they would be “bound by a
25 judgment in an action brought by the government.” *Arias, supra*, 46 Cal.4th at 986. In accordance
26 with this rule, the release of the PAGA Members herein is narrowly tailored to include release from
27 liability for claims seeking *civil penalties* under California Labor Code Section 2698 *et seq.*
28 predicated on the alleged California Labor Code and Wage Order No. 1-2001 violations asserted in

1 the operative Complaint. Specifically, the release states as follows:

2 The Parties agree and acknowledge that, to the maximum extent permitted by law,
3 the final judgment entered pursuant to this settlement will bind all those who would
4 be bound by a judgment if the action had been brought by the California Labor &
5 Workforce Development Agency ("LWDA"), including Plaintiff, the LWDA, and
6 the PAGA Members, with respect to the recovery of civil penalties under PAGA
7 only, against Defendant and its past or present parents, subsidiaries, and affiliated
8 corporations, officers, directors, employees, partners, agents, insurers, and/or any
9 other individual or entity which could be liable for the acts of omissions of the
10 Defendant ("Released Parties"). It is expressly understood and agreed that this
11 settlement only includes claims for civil penalties under PAGA for violations of
12 Labor Code §§ 201, 202, 203, 204, 210, 226(a), 206(e), 226.3, 226.6, 226.7, 510,
13 512, 516, 1197, 1197.1, 1198, and 2802-2804. (Settlement Agreement ¶ 2.)

14 In addition to the forgoing, the Settlement Agreement contains the following release of
15 Plaintiff's individual claims:

16 Except as specified herein, and only if an enhancement award is issued to Plaintiff
17 as described further below, Plaintiff fully releases and discharges Released Parties
18 from any and all actions, causes of action, obligations, costs, expenses, damages,
19 penalties, losses, claims, liabilities, suits, debts, demands, and benefits (including
20 attorneys' fees and costs), of whatever character, in law or in equity, known or
21 unknown, suspected or unsuspected, matured or unmatured, of any kind or nature
22 whatsoever, now existing or arising in the future, based on any act, omission,
23 event, occurrence, or nonoccurrence from the beginning of time to the date of
24 execution hereof, including but not limited to any equitable or legal claims or
25 causes of action arising out of or in any way relating to his employment with
26 Defendant, or that have been or could have been made in the lawsuit, including but
27 not limited to any claims under the state and federal anti-discrimination statutes,
28 for a breach of contract, related to compensation or wages, or alleging tortious
conduct by the Released Parties. The general release by Plaintiff includes any
unknown claims that he does not know or suspect to exist in his favor at the time
of the release, which, if known by him, might have affected his settlement with,
and release of, the Released Parties, or might have affected his decision not to
object to this settlement. With respect to the general release, Plaintiff stipulates
and agrees that, upon approval by the Court, he 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. (Settlement
Agreement ¶ 3.)

26 **E. Attorneys' Fees and Costs**

27 Plaintiff's Counsel request one-third of the Gross Settlement Amount, or up to \$116,666.66,
28 in attorneys' fees, and \$7,500 in reimbursement of actual litigation costs. (Settlement Agreement ¶

1 5(a)-(b).) Further discussion and support for the requested awards is set forth in Sections VI and
2 VII, *infra*, and the accompanying Falakassa Decl. ¶¶ 54-66 and Declaration of Mehrdad Bokhour
3 (“Bokhour Decl.”) ¶ 15-22 filed concurrently herewith.

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

5 In 2016, PAGA was amended to require the Court to “review and approve any settlement of
6 any civil action filed pursuant to this part.” Labor Code § 2699(l)(2). The amendment also requires
7 that the “proposed settlement shall be submitted to the agency at the same time that it is submitted
8 to the court.” As such, on the day of filing of this Motion, the Settlement is also being concurrently
9 submitted to the LWDA in accordance with this section. (Falakassa Decl. ¶ 41.)

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

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

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

23 Here, the penalties are appropriate when considered in light of the principles discussed in
24 Senator Dunn’s letter. Plaintiff contends that a *non-reversionary* Gross Settlement Amount of
25 \$350,000 represents an excellent recovery that is large enough to punish or deter Defendant. The
26 proposed Settlement provides a fair and reasonable monetary recovery for the LWDA and PAGA
27 Members in the face of hotly-disputed claims.

28 ///

1 **First**, although PAGA and its legislative history do not seem to require a comparison with
2 the “maximum value” of the claims to the actual settlement amount, the penalties are reasonable
3 when considered in this context as well. The number of PAGA Members in the PAGA covered
4 period is only 87 and the number of PAGA-eligible pay periods is only 5,200. (Falakassa Decl. ¶
5 43.) Further, while Plaintiff believes the claims are meritorious and that he would have recovered
6 unreduced penalties, Defendant asserts numerous defenses to the claims. For example, a significant
7 factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and
8 subject to potentially significant reduction by the Court. Defendant maintains that given its good
9 faith and *de minimis* defenses, this Court would exercise its discretion to substantially reduce any
10 PAGA penalties if it were to find Defendant liable for any of Plaintiff’s claims. (Falakassa Decl. ¶
11 44.) *See also*, Labor Code §§ 203, 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
12 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.* (C.D.
13 Cal. Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8
14 million to \$500,000). Additionally, Defendant could argue that Plaintiff could only seek PAGA
15 penalties at the \$100 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate,
16 since before Plaintiff initiated this action, Defendant had never been put on notice by a court or the
17 Labor Commissioner that its practices violated the Labor Code. *See, Amaral v. Cintas Corp. No. 2*,
18 163 Cal.App.4th 1157, 1209 (2008) (finding “initial” violation rate applies until employer has been
19 notified that it is violating a Labor Code provision). As a result, Plaintiff took this into
20 consideration in calculating penalties. (Falakassa Decl. ¶ 45.) Finally, many of the claims were
21 derivative of each other, which tended to undermine any stacking of penalties. In light of the
22 foregoing, Plaintiff’s Counsel took into consideration, when valuing the merits of these claims, the
23 chances of prevailing on the derivative violations, as well as the additional hurdles of prevailing
24 under each standalone violation in light of the defenses raised and applied the appropriate
25 discounts. (Falakassa Decl. ¶ 48.)

26 Based on the data provided by Defendant, the proposed maximum exposure for the PAGA
27 claims for PAGA Members is \$520,000 calculated as follows. (Falakassa Decl. ¶ 49.) During the
28 PAGA covered period, there were approximately 5,200 pay periods. (*Id.*) PAGA penalties are

1 assessed at the \$100.00 penalty for a total of \$520,000.

2 The proposed Settlement of \$350,000 represents **67% of the potential maximum exposure.**
3 which is an excellent recovery on behalf of the State of California and the aggrieved employees.
4 (*Id.*)

5 Courts can exercise their discretion to reduce the amount of PAGA penalties. *See, e.g.,*
6 *Fleming v. Covidien Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA
7 penalties to \$500 per employee prior to the 75-25 split). (*Id.*) If the Court were to award the same
8 amount as the Court in *Covidien* at trial, then Plaintiff would have recovered only \$43,500.00. (*Id.*)
9 Accordingly, the proposed Settlement approximates or provides an even better result than some
10 actual PAGA trials that were litigated to completion, though other cases also provided for a greater
11 award than *Covidien*. (*Id.*) Thus, the PAGA settlement amount is reasonable in light of significant
12 risks and uncertainties associated with the PAGA claims in this case.

13 Defendant vigorously disputed the merits of Plaintiff's claims. Specifically, Defendant
14 argued that Plaintiff's rest period claim fails because Defendant maintains an express written
15 policy, found in its employee handbook, providing employees with a rest break compliant with
16 applicable law. (Falakassa Decl. ¶ 46.) Defendant contends that Plaintiff's allegations regarding
17 denied rest breaks are entirely false. Defendant further argued it was prepared to call every single
18 current employee to testify as witnesses at trial that not a single employee was ever denied a rest
19 break. (Falakassa Decl. ¶ 47.)

20 **Second**, the scope of the release of the PAGA Settlement is narrowly confined to those
21 PAGA civil penalties that were or could have been alleged in the operative Complaint. The PAGA
22 Released Claims do not release any PAGA Members' non-PAGA claims for alleged violations of
23 the Labor Code. Individual PAGA Members who believe they have been denied, for example,
24 minimum wage or overtime, can maintain those rights to pursue those claims in another proceeding.
25 In that respect, the Settlement also requires that each PAGA Member receive a notice, *i.e.*, the
26 PAGA Notice, which describes this litigation and the Settlement sum. Plaintiff contends that this
27 notice will educate PAGA Members as to the requirements of the Labor Code, something that is in
28 the public interest and consistent with PAGA's purposes. *See*, Labor Code § 2699(j) (stating that

1 civil penalties recovered under PAGA shall be distributed to the LWDA for [among other things]
2 “education of employers and employees about their rights and responsibilities under this code.”)
3 (Falakassa Decl. ¶ 51.)

4 **Third**, the proposed Settlement, even with deductions, provides a substantial sum of
5 \$160,600.05 to the State and \$53,533.33 to PAGA Members. The Settlement secured by Plaintiff
6 here is greater than other PAGA penalty awards approved by California state courts, which often
7 range between \$7,500.00 and \$15,000.00 for PAGA claims impacting hundreds or thousands of
8 individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g.,*
9 *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A.
10 County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of 667 members);
11 *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct.
12 L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class of
13 approximately 3,000 members). (Falakassa Decl. ¶ 52.)

14 **Fourth**, public policy strongly favors the settlement of litigation. *Consumer Advocacy*
15 *Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63. Because the proposed
16 Settlement is neither unjust nor ignores the public interest, it should be approved. (Falakassa Decl. ¶
17 53.)

18 **VI. THE ATTORNEYS’ FEES REQUEST IS FAIR AND REASONABLE**

19 For their efforts and the risk that they undertook in obtaining a common fund settlement that
20 benefits the LWDA and PAGA Members, the Parties allocated one-third of the Gross Settlement
21 Amount, up to \$116,666.66, to Plaintiff’s Counsel for reasonable attorneys’ fees. (Settlement
22 Agreement ¶ 5(a).) These fees are warranted under the law and within the range of fees commonly
23 awarded in similar cases.

24 **A. Attorneys’ Fees Are Recoverable under the Common Fund Doctrine**

25 PAGA provides that a Plaintiff is entitled to recover reasonable attorneys’ fees, expenses,
26 and costs under section 2699(g)(1) of the California Labor Code, which states that, “Any employee
27 who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs,
28 including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or

1 subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. As discussed below, in a
2 qui tam action, reasonable attorneys' fees and costs are typically awarded under the common fund
3 doctrine where, as here, the litigation creates a common fund of money in a specific amount for the
4 benefit of others.

5 "A qui tam action is one brought under a statute that allows a private person to sue as a
6 private attorney general to recover damages or penalties, all or part of which will be paid to the
7 government." *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-
8 492. "A qui tam action 'is a type of private attorney general lawsuit' [citation], in which 'the qui
9 tam plaintiff stands in the shoes of the state or political subdivision [citation].'" *Id.* at p. 501. As the
10 name of the PAGA statute makes clear (e.g. "Labor Code Private Attorney General Act"), a PAGA
11 action is a qui tam action because the statute allows the employee plaintiff, acting as the proxy of
12 the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and
13 recover civil penalties that otherwise would have been assessed and collected by the Labor and
14 Workforce Development Agency (LWDA). *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59
15 Cal.4th 348, 380. "A PAGA representative action is therefore a type of *qui tam* action." *Id.* at p. 382.
16 Here, where a common fund is created in a qui tam action by the successful litigation of a plaintiff
17 and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund.
18 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. (Falakassa Decl. ¶ 55.)

19 Moreover, a more generic application of the common fund doctrine is found "consistently in
20 California when an action brought by one party creates a fund in which other persons are entitled to
21 share." *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110. An award of fees
22 from the gross settlement amount under the common fund doctrine prevents unjust enrichment of
23 those who benefit from the common fund through the successful efforts of plaintiff's counsel and
24 furthers the important goal of attracting competent counsel to handle representative actions
25 enforcing minimum labor standards. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.
26 (Falakassa Decl. ¶ 56.) In affirming the use of the common fund doctrine in California, the
27 California Supreme Court summarized the benefits of the percentage method of recovery stating:
28

1 The recognized advantages of the percentage method – including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better
3 approximation of market conditions in a contingency case, and the encouragement
4 it provides counsel to see an early settlement and avoid unnecessarily prolonging
the litigation [citations] – convince us the percentage method is a valuable tool that
should not be denied our trial courts. *Id.*

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

9 **B. A Fee of One-Third the Gross Settlement Amount is Fair and Reasonable**

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

16 First, the efforts of Plaintiff's Counsel resulted in a common fund Settlement amount of
17 \$350,000.00. This is a good PAGA settlement considering the contested issues.

18 Second, Plaintiff faced significant risks going forward with the litigation. As discussed,
19 Defendant raised various defenses, such that Plaintiff faced risky issues going forward with this
20 litigation, as well as the fact that it would have taken significant time to realize any recovery in this
21 action along with the possibility of post-trial appeals. (Falakassa Decl. ¶ 58.)

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

26 Fourth, Plaintiff's Counsel represented Plaintiff (and the State of California) in this matter
27 on a strictly contingency basis and, as such, had to forego other financial opportunities to litigate
28 other cases (contingency and hourly), incurred the risk of non-recovery after investment of time,

1 money, and resources, and have done so since the inception of this case without payment or
2 compensation. This is not an easy burden for Plaintiff's Counsel and, if the best that could be hoped
3 for is merely to be paid the customary hourly rate, such would not be sufficiently incentivize future
4 similar private attorney general/qui tam cases with contingency risks. (Falakassa Decl. ¶ 58-60)

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

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

11 *Robles v. DCH*, Los Angeles County Superior Court Coordination Proceeding Case No.
12 4833 (**33.33% fee awarded** on \$4,035,600 settlement of mixed PAGA/class claims);

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

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

17 *Birch v. Office Depot*, United States District Court for the Southern District of California,
18 Case No. 06cv1690 DMS (**40% fee awarded** on \$16,000,000 settlement of mixed PAGA/class
19 claims);

20 *Brewer v. Connell Chevrolet*, Orange County Superior Court Case No. 30-2016-00852123-
21 CU-OC-CXC (**33.33% fee awarded** on a **PAGA only case**);

22 *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-20014-007205740-
23 CU-OE-CJC (**33.33% fee awarded** on \$1,030,000 settlement of a **PAGA only case**);

24 *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court Case No.
25 MCC1401137 (**33.33% fee awarded** on a \$650,000 settlement of a **PAGA only case**).

26 Moreover, the award of a one-third fee recovery under the common fund doctrine was recently
27 approved by the California Supreme Court in *Laffitte, supra*, 1 Cal.5th 480, 503. For all of the above
28 reasons, a common fund fee award here in the amount of one-third of the \$350,000.00 common

fund created by Plaintiff and his attorneys is fair and reasonable.

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

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

Total Aggregated Lodestar of Class Counsel				
<i>Timekeeper</i>	<i>Yrs Experience</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Lodestar</i>
Mehrdad Bokhour, Esq.	8	96.2	\$495.00	\$47,619
Joshua Falakassa, Esq.	7	91	\$495.00	\$45,045
Carlos Garcia	10	7	\$125.00	\$875
TOTAL		115.9		\$96,539

In light of the total hours and lodestar rates, Plaintiff's counsel's requested fee award would be cross checked at an approximate 1.20 multiplier of the lodestar fees. Plaintiffs' counsel respectfully submits that an award of a 1/3rd of the recovery for \$116,666.66 in attorneys' fees is reasonable under the circumstances of this case.

VII. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE

Plaintiff's Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees. *See, Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. Plaintiff's Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. *See, Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by...[Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel are entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." *Harris, supra*, 24 F.3d at 19.

The Settlement Agreement allows Plaintiff's Counsel to seek to recover litigation costs not to exceed \$10,000.00. The following sets forth specific costs incurred by each firm to date:

BOKHOUR LAW GROUP, P.C.		
Type	Description	Charge
Court Filing Fee	Summons & Complaint, motions, etc.	\$1,535
Mediation	Mediation Fees	\$6,000
Filing Fee	LWDA Notice Letter	\$75
TOTAL		\$7,600

(Bokhour Decl. ¶ 21.)

Accordingly, Plaintiff's Counsel seeks **\$7,600** in litigation cost reimbursement.

VIII. SUBMISSION TO THE LWDA

As set forth in the Falakassa Decl. at ¶ 41, the Settlement and this Motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic submission is attached as **Exhibit B** to the Falakassa Decl.

IX. THE SETTLEMENT ADMINISTRATOR

The Parties have agreed to use Phoenix Class Action Administration Solutions ("Phoenix") as the Settlement Administrator. The Settlement Administrator will be responsible for processing the settlement payments and providing notice to the PAGA Members. A true and correct copy of the Phoenix cost-estimate bid for settlement administration is attached at **Exhibit C** to the Falakassa Decl.

X. CONCLUSION

For the foregoing reasons, Plaintiff requests the Court approve the PAGA Settlement.

Dated: February 4, 2021

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

BY: _____
JOSHUA FALAKASSA
MEHRDAD BOKHOUR
Attorneys for Plaintiff and the Aggreived Employees