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on behalf of herself and others similarly situated
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 MELISSA SOTO, on behalf of herself and
11 others similarly situated,

12 Plaintiff,

13 v.

14 GCAM, INC., a California Corporation; and
DOES 1 through 50, inclusive,

15
16 Defendants.
17

Case No. CIVSB 2114483

Hon. David Cohn

**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; and [Proposed] Order]*

Date: November 4, 2021
Time: 10:00 a.m.
Dept.: S26

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

2 **PLEASE TAKE NOTICE** that on November 4, 2021 at 10:00 a.m. in Department S26 of
3 the above-entitled Court, located at San Bernardino Justice Center, 247 West Third Street, San
4 Bernardino, CA 92415, Plaintiff Melissa Soto (collectively “Plaintiff” or “Class Representative”), on
5 behalf of herself and all persons similarly situated, will and hereby do move this Court pursuant to
6 California Labor Code § 2698 *et seq.* for an order approving the settlement agreement between
7 Plaintiff and Defendant GCAM, INC. (“Defendant”) which will accomplish the following: approve
8 the representative action settlement embodied in the Private Attorney General Act Settlement
9 Agreement and General and Limited Release; approve PAGA Counsel’s application for attorney’s
10 fees and litigation costs; and enter judgment approving the representative action settlement and
11 release.

12 The grounds for this Motion, as set forth in the attached memorandum of points and
13 authorities and supporting declaration, are that this is a fair and reasonable settlement that benefits
14 the PAGA aggrieved employees and was the product of informed, non-collusive negotiations by
15 parties who were represented by experienced and able counsel. *See Wershba v. Apple Computer,*
16 *Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
17 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985).

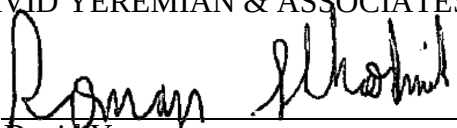
18 Defendant does not oppose this motion or the requests made herein.

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

23
24 DATED: August 17, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

25
26 By


David Yeremian

Roman Shkodnik

Attorneys for Melissa Soto

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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 current and former non-exempt employees who
4 worked for Defendant in the State of California at any time from August 27, 2019 through settlement
5 approval by the Court.” In this case, there are 160 Aggrieved Employees.

6 The value achieved by the Settlement may be gleaned from the fact that the gross Settlement
7 is \$80,000.00 and that the LWDA and the Aggrieved Employees encompassed by the Settlement
8 will receive no less than \$32,288.44 under the terms of the Settlement, which, pursuant to the
9 operative statute, shall be allocated “75 percent to the Labor and Workforce Development Agency. .
10 . and 25 percent to the aggrieved employees.” See Cal. Lab. Code § 2699(i). This is a significant
11 recovery, not only because further litigation may have resulted in a net-zero recovery based on the
12 defenses asserted by Defendant, but because the amount secured by Plaintiff is exponentially above
13 other 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 August 27, 2020, Plaintiff Melissa Soto filed a claim notice online with the California
19 Labor & Workforce Development Agency (“LWDA”) pursuant to Labor Code § 2699.3(a)(1),
20 giving notice of violations by Defendant of various Labor Code violations. (See Declaration of
21 David Yeremian (Yeremian Decl.”), filed concurrently herewith, ¶ 4; Exhibit 1).¹ The LWDA
22 declined to investigate the violations alleged. *Id.* Pursuant to Labor Code § 2699.3(a)(2), after 65
23 days from the mailing of the notice to the LWDA, Plaintiff had a private right of action to bring the
24 instant case. Plaintiff has also given notice of this stipulation for settlement to the LWDA. (See
25 Yeremian Decl. ¶ 42; Exhibit 5).

26 On May 19, 2021, long after 65 days from the mailing of the notice to the LWDA, Plaintiff

27 ¹ In September 2020 the Plaintiff and Defendant agreed to mediate this matter before Plaintiff files
28 her lawsuit. (See Yeremian Decl. ¶ 4).

1 filed a putative PAGA Complaint against Defendant in the Superior Court for the State of California,
2 in San Bernardino County, Case Number CIVSB2114483, alleging claims for (1) failure to pay
3 minimum wages; (2) failure to pay wages and overtime; (3) failure to provide meal breaks or pay
4 premiums in lieu of compliant breaks; (4) failure to provide rest breaks or pay premiums in lieu of
5 compliant breaks; (5) failure to reimburse necessary business expenses; (6) failure to furnish
6 accurate itemized wage statements; (7) failure to keep required payroll records; (8) violation of
7 Labor Code § 221; and (9) failure to timely pay final wages upon termination or separation.(See
8 Yeremian Decl. ¶ 5).

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

10 The Parties engaged informal discovery, and PAGA Counsel conducted a thorough
11 investigation of the facts and claims giving rise to the action, including the exchange of documents
12 ((Defendant informally produced a sampling of time and payroll records for employees from August
13 22, 2019 through February 6, 2021, Plaintiff's personnel file and time and payroll records, policies
14 and procedures regarding wages, overtime, meal periods, rest periods, and reimbursement), meeting
15 and conferring, reviewing and analyzing pay time and records, employment handbooks, Plaintiff's
16 personnel files, and Defendant's relevant policies and other documentation. (See Yeremian Decl. at
17 ¶¶ 6, 7). Informal discovery revealed Plaintiff, as well as many other Aggrieved Employees, signed
18 an arbitration agreement during their employment with Defendant, precluding them from pursuing
19 class action claims. (See Yeremian Decl. at ¶ 8). With the discovery in hand, the parties were able to
20 engage in meaningful settlement discussions in an attempt to resolve the claims remaining in the
21 Action. (*Id.* at ¶ 9).

22 **C. Settlement Negotiations**

23 On March 31, 2021, the parties mediated the matter and entered into a settlement agreement.
24 (See Yeremian Decl. at ¶ 10). The parties discussed all aspects of the case, including the risks of
25 litigation and exchanged further information. *Id.* The parties reached an agreement as embodied in
26 the Settlement, which is attached as Exhibit 2 to the Yeremian Declaration.²

27 ² As part of the settlement and in addition to the Gross Settlement Amount, Defendant has agreed to
28 separately settle Plaintiff's individual claim which is set forth in a separate Confidential Settlement

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

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

7 The Settlement requires Defendant to pay a total settlement amount Eighty Thousand Dollars
8 and Zero Cents (\$80,000.00) in exchange for a release of the Plaintiff's Representative PAGA
9 claims asserted in the PAGA Complaint. (See Yeremian Decl. at ¶ 13; Exhibit 2 at § I, 9). From the
10 total settlement amount the following deductions shall be made, if approved by the Court:

- 11 a. Attorneys' fees of up to 40% of the Gross Settlement Amount which is Thirty-
12 Two Thousand Dollars (\$32,000.00) ("PAGA Counsel's Fees") and Eight
13 Thousand Eight Hundred and Seventy Six Dollars and Fifty Six Two Cents (\$8,876.56)
14 for PAGA Counsel's actual litigation expenses incurred to date ("PAGA
15 Counsel's Costs") (see *id.* Exhibit 2, at § III, 2(b) and Exhibit 3)
- 16 b. Administration costs of no more than Six Thousand Eight Hundred and Thirty Five
17 Dollars (\$6,835.00) to be paid to the Settlement Administrator ("Administration
18 Costs") for sending notices and for calculating settlement shares and preparing all
19 checks and mailings (See Yeremian Decl. at Exhibit 2, § I, at 13; Exhibit B to
20 the settlement agreement); and
- 21 c. Distribution of the remainder Thirty Two Thousand Two Hundred and Eighty
22 Eight Dollars and Forty Four Cents (\$32,288.44) to the LWDA and the Aggrieved
23 Employees per statute: 75% (\$24,216.33) must be paid to the Labor and Workforce
24 Development Agency per Labor Code § 2699 *et seq.* and 25% (\$8,072.11) shared
25 by the Aggrieved Employees on a pro-rata basis (See *id.*; Exhibit 2 § III, 2(a)).

26 From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, the risks
27 Agreement.
28

1 and delays posed by further litigation, and PAGA Counsel's own prior litigation experience, PAGA
2 Counsel believes that the recovery for each aggrieved employee is fair and reasonable, taking into
3 consideration the amounts received in other PAGA actions, the risks inherent in litigation of this
4 genre, and the reasonable tailoring of each aggrieved employee's claim to the settlement award he or
5 she will receive. (See Yeremian Decl. at ¶ 14). Defendant, for its part, vigorously contests liability
6 and damages. (*Id.* at ¶ 8). Further, and based on the settlement negotiations, which were hard-fought
7 and conducted in good faith and at arm's length between attorneys with substantial experience
8 litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement
9 process in which the parties were forced to make significant compromises in the interest of reaching
10 a full and complete settlement of the lawsuit. (*Id.* at ¶ 14).

11 **III. Discussion**

12 **A. The Relief Obtained Through the PAGA Settlement is Genuine, Meaningful,** 13 **and Consistent with the Underlying Purpose of the Statute to Benefit the Public**

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

17 Under Labor Code § 2699, specifically, Plaintiff alleges that the Aggrieved Employees were
18 not paid all wages they were owed, including for all work performed and for all overtime hours
19 worked. (See Yeremian Decl. at ¶ 16). Specifically, when Aggrieved Employees arrived to work,
20 they had to walk over to the timekeeping station and allegedly had to wait in line to undergo
21 temperature checks before they could clock in (*Id.*) On top of these violations, Plaintiff alleges that
22 Aggrieved Employees often were not allowed to take meal and rest breaks due to the demands of the
23 job. To the extent they were able to take a break, it was allegedly interrupted often. (*Id.*)

24 Additionally, Plaintiff alleges that Aggrieved Employees were not reimbursed for their cellular
25 phone expenses despite incurring this expense in the course of performing their required job duties
26 for Defendant. (*Id.*)

27 Plaintiff also contends that Defendant failed to provide their employees with accurate,
28 itemized wage statements, in writing, as required by California Labor Code § 226(a). Section 226(a)

1 requires an employer to furnish each of his or her employees with an accurate, itemized statement in
2 writing showing the gross and net earnings, total hours worked, and the corresponding number of
3 hours worked at each hourly rate. Labor Code § 226(a). (*Id.* at 17.) These statements must be
4 appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the
5 employee's wages, or, if wages are paid by cash or personal check, these statements may be given to
6 the employee separately from the payment of wages. (*Id.*) In either case the employer must give the
7 employee these statements twice a month or each time wages are paid. (*Id.*) As a direct and
8 proximate cause of Defendant's alleged violation of Labor Code § 226(a), employees allegedly
9 suffered injuries, including not being paid their wages and overtime, confusion over whether they
10 received all wages owed them, the difficulty and expense involved in reconstructing pay records, and
11 forcing them to make mathematical computations to analyze whether the wages paid in fact
12 compensated them for all hours worked. (*Id.*) Specifically, the wage statements allegedly failed to
13 accurately account for unpaid wages and overtime due to the off the clock work. (*Id.*) Moreover, the
14 wage statements allegedly failed to account for premium pay for deficiently provided meal and rest
15 periods. (*Id.*) As a result, Defendant allegedly failed to provide employees with accurate, itemized
16 wage statements in writing, as required by the Labor Code. (*Id.*)

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

22 Regarding the alleged "off-the-clock" work, Defendant contends that Aggrieved Employees
23 were instructed to clock in before attending to any duties and to stop all work after clocking out. (*Id.*)
24 Accordingly, Defendant contends that they paid for all reported hours worked, that Aggrieved
25 Employees were trained to record all hours worked, and that it paid proper overtime and minimum
26 wages to Employees. (*Id.*) Defendant further contends that given its written policies and practices,
27 any unrecorded hours are likely subject to individualized inquiry and are not manageable as a
28 representative action. (*Id.*) Defendant also argued that it paid for any unreimbursed expenses that

1 were submitted. Finally, Defendant contends that Aggrieved Employees were provided with an
2 opportunity to timely take their meal periods. (See Yeremian Decl. at ¶ 19). Similarly, Defendant
3 further contends that Aggrieved Employees were provided the opportunity to timely take 10-minute
4 rest breaks for every four hours worked. As a result of Defendant's arguments Plaintiff's Counsel
5 had to apply appropriate discounts in light of the facts and law as discussed above. (*Id.*)

6 The Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiff to obtain civil
7 penalties on behalf of herself and other aggrieved employees for Defendant's violation of any
8 provision of the Labor Code enumerated under Labor Code § 2699.5. (See *id.* at ¶ 19). Where civil
9 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
10 are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved
11 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
12 employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-
13 five (75) percent of the penalties recovered must be allocated to the Labor and Workforce
14 Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the
15 affected employees. See also *Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-2122 CAS (CWx),
16 2013 WL 3233211, at *7 (C.D. Cal. Jun. 25, 2013) (“[A] PAGA plaintiff pursues civil penalties on
17 behalf of the government and receives a twenty-five percent portion of the recovered penalty as a
18 bounty.”). The limitations period as for all penalties is one year prior to the filing of the complaint.
19 However, under *Amaral v. Cintas*, 163 Cal. App. 4th 1157, 1207-09 (2008) the Court held that a
20 lower penalty amount of \$100 per violation applies in the absence of a determination that a violation
21 actually occurred.

22 Based on the foregoing facts and law, PAGA Class Counsel estimated Defendant's maximum
23 total exposure on the PAGA claim at approximately \$245,300. (See Yeremian Decl. at ¶ 21). The
24 provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not
25 limited to Labor Code 203, 204, 210, 221, 226, 226.7 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
26 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802 (*Id.*) Specifically, the total
27 exposure on the PAGA claim was calculated by multiplying the total number of pay periods (2,453)
28 by \$100.00 per violation. (*Id.*) Plaintiff's calculation of the total exposure on the PAGA claim is for

1 one PAGA penalty per pay period (*i.e.*, Plaintiff did not stack the penalties in their calculation). (*Id.*)
2 Plaintiff's claims giving rise to the penalties include the following: (1) Defendant's alleged failure to
3 pay minimum wages and overtime due to off the clock work; (2) Defendant's alleged failure to
4 provide all the legally required unpaid, off-duty meal periods to the Aggrieved Employees or
5 premiums in lieu of compliant breaks; (3) Defendant's alleged failure to provide all the legally
6 required paid, off-duty rest periods or premiums in lieu of compliant breaks; (4) Defendant's alleged
7 failure to provide accurate wage statements; (5) Defendant's alleged failure to timely pay all wages
8 due and certain at the time of termination or within seventy-two hours of resignation as required by
9 Labor Code §§ 201-203.; and (6) Defendant's alleged failure to reimburse Aggrieved Employees for
10 their alleged cellular phone expenses (*Id.*)

11 Case law supports the notion that it is inappropriate to "stack" penalties for multiple
12 violations, particularly when those violations all stem from the same alleged "injury" *Aguirre v.*
13 *Genesis Logistics*, 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189
14 Cal.App.4th 562, 577 (2010)). ("One injury gives rise to only one claim for relief... The violation of
15 one primary right constitutes a single cause of action."; *Crowley v. Katleman*, 8 Cal. 4th 666, 681-82)
16 (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012) ("There is no
17 authority that "would permit double recovery of essentially the same penalties.")

18 Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA liability
19 would be huge because of the possibility of collecting multiple civil penalties for a single violation,
20 and thus such penalties would almost always dwarf the damages available under the causes of action
21 proper. (See *Yeremian Decl.* at ¶ 23). However, PAGA penalties are not mandatory but permissive.
22 Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil
23 penalty amount specified by this part if, based on the facts and circumstances of the particular case,
24 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."
25 (See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (*substantially* reducing PAGA penalties
26 by 30% under this provision) (emphasis added); see also *Carrington v. Starbucks Corp.*, 30 Cal.
27 App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal
28 periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.*

(2017), LASC Case No. No. BC 499888 (98% reduction from \$41 million to \$775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from \$5.4 million to \$325,000); *Fleming v. Covidien, Inc.* (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from \$2.8 million to \$375,000). Defendant maintains that it would be unjust to award maximum PAGA penalties.

B. The Requested Attorney Fees and Cost Award Should Be Approved

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

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

Pursuant to the Settlement Agreement, the PAGA Counsel is entitled to 40% of the Gross Settlement Amount, or attorneys' fees of up to Thirty-Two Thousand Dollars (\$32,000.00), as attorneys' fees for its representation of Plaintiff in this Matter. (See Yeremian Decl., Exhibit 2 at § III, 2(b).) PAGA Counsel respectfully requests an order approving its attorneys' fees in the amount of \$32,000.00 pursuant to the Settlement Agreement. (See Yeremian Decl. at ¶ 24-25).

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

PAGA Counsel took this case on a contingent-fee basis against a corporation represented by a reputable defense firm. (See Yeremian Decl. at ¶ 27). When taking on contingent cases, careful attention must be paid to the economics involved or one bad case can destroy years of work. *Id.*

1 Accordingly, in such cases, we anticipate that we shall, if successful, receive a fee that exceeds our
2 normal hourly rate; otherwise the risk is often too great to bear. *Id.* Even with long hours of work,
3 the number of hours in a day is limited. *Id.* Because of this, when one particular matter is handled,
4 other matters are turned away. *Id.* When firms become involved in cases like this, they must realize
5 the time commitment entailed and are forced to turn down other matters that otherwise could have
6 been handled. *Id.*

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

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

1 Attorney's fees payable from this settlement amount to PAGA Counsel in no way
2 undermined their fiduciary duties to the state of California or the Aggrieved Employees. (*See id.* at ¶
3 30).

4 PAGA counsel in contingency-fee cases typically receive attorneys' fees equal to or greater
5 than forty percent of the gross settlement amount. *See Crandall v. U-Haul* (Los Angeles County
6 Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney fee
7 request in an overtime-exemption class action; in *Bushnell v. Cremar, Inc.* (Orange County Super.
8 Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees in the amount
9 of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super. Ct., November 1990), the
10 Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et al.*, Alameda County
11 Super. Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in *Elliott v. Clothestime*
12 (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan Cannon awarded a 40%
13 fee in a wage-and-hour class action which had not yet proceeded to the class certification stage; in
14 both *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359 BTM (JMA) and *Barile v. Boston*
15 *Market Corporation*, Case No.: 05 CV 1360 BTM (JMA), the Honorable Judge Barry T. Moskowitz
16 awarded a 40% fee to plaintiffs' counsel in wage-and-hour class actions that had not proceeded to
17 the class-certification stage. (*See Yeremian Decl.* ¶ 31.)

18 Moreover, PAGA Counsel, in both prior wage-and-hour class actions and PAGA lawsuits
19 that received final approval similar to this one, received awards of forty percent (40%) of the
20 settlement amount for attorneys' fees. The requested amount is also in line with the foregoing case
21 authority as well as the practice in most wage-and-hour class actions. (*Id.* at ¶¶ 30-32.)

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

1 PAGA Counsel spent adequate time on this matter. Aside from drafting the initial complaint,
2 PAGA Counsel conducted formal and informal discovery, reviewed and analyzed time and pay
3 records, employment handbooks, the Plaintiff's personnel files, relevant policies and other
4 documentation, researched the applicable law and potential defenses, constructed damage models
5 based on interpretations of California law, reviewed information provided by Defendant at the
6 mediation, engaged in meet and confer efforts with Defendant, and ultimately drafted and revised the
7 settlement agreement. (*See id.* at ¶30). PAGA Counsel conservatively estimates that it invested over
8 111 hours of attorney time in this matter. David Yeremian's billing rate is \$750.00 per hour (18
9 years out of law school and is less than the Laffey Matrix rate of \$759.00), and he spent
10 approximately 34 hours on this matter. Roman Shkodnik's billing rate is \$550.00 (9 years out of law
11 school, Laffey Matrix rate of \$672.00) and he spent 77 hours on this matter. (*See* Yeremian Decl.
12 **Exhibit 4** (Laffey Matrix).) The lodestar for Plaintiff's counsel is \$67,850 (\$25,500 for David
13 Yeremian's time on the case and \$42,350 for Roman Shkodnik's time on the case). (*See* Yeremian
14 Decl. at ¶ 32). The fee request of \$32,000.00 is actually less than our total lodestar further
15 evidencing the reasonableness of the request.

16 In light of the foregoing, the fee request in an amount equal to forty percent of the settlement
17 in this case is well within the bounds that have been established by the above-cited authority. (*See*
18 Yeremian Decl. at ¶33). **Defendant has no objection** to an award of fees in the amount requested.

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

20 PAGA Counsel requests reimbursement for costs, totaling \$8,876.56. Attached to the
21 concurrently filed Declaration of David Yeremian as Exhibit 3, is his cost log, showing total costs
22 of \$8,876.56. All of these costs are and were reasonable and necessary in the prosecution of the
23 Action, for the benefit of the State and the Aggrieved Employees. (*See* Yeremian Decl., Exhibit 3).
24 Moreover, the expenses for which reimbursement is sought are recoverable in common fund cases.
25 *See In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Secs. Litig.*, 1989 U.S. Dist.
26 LEXIS 19146, 16 (C.D. Cal. Mar. 9, 1989) ("[R]eimbursement of ... filing fees, postage, telephone
27 bills, photocopying, legal research assistance, deposition costs, witness fees, and similar items...
28 [are] appropriate for cost reimbursement in common fund cases."); *Bond v. Ferguson Enters. Inc.*,

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

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

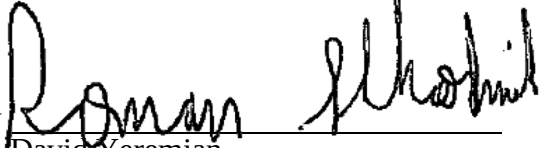
9 **IV. CONCLUSION**

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

13
14 DATED: August 17, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

15
16 By


David Yeremian
Roman Shkodnik
Attorneys for Melissa Soto