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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CAROLINA MEDINA, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. 5648 EAST GOTHAM STREET, LLC, a California limited liability company; BRIARCREST NURSING CENTER, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No.: 21NWCV00450 [*Consolidated with Case No. 21NWCV00755*] *Assigned for All Purposes to: Hon. Lee W. Tsao, Dept F* **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ORDER APPROVING SETTLEMENT PURSUANT TO CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT AND ENTERING JUDGMENT** Date: September 25, 2025 Time: 9:30 A.M. Place: Dept. C Res ID: 075801553155 Medina Complaint Filed: July 12, 2021 Trial Date: None Set

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 25, 2025, at 9:30 a.m. in Department C of the above-entitled court, located at 12720 Norwalk Blvd., Norwalk, California 90650, named Plaintiffs CAROLINA MEDINA and ANTHONY NAYLOR ("Plaintiffs") will and hereby do move the Court for an Order:

1. Granting approval of settlement between Plaintiffs and Defendants 5648 EAST GOTHAM STREET, LLC, BRIAR CREST NURSING CENTER, IRA SMEDRA, and JACOB WINTNER (collectively, "Defendants") (Plaintiffs and Defendants are collectively referred to as the "Parties"), of the claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), as set forth in the Joint Stipulation of PAGA Settlement and Release of Claims ("Settlement," "Agreement," or "Settlement Agreement"), attached as **Exhibit 1** to the Declaration of Heather Davis ("Davis Decl."), including but not limited to, the plan of allocation and distribution of the Gross Settlement Amount;

2. Approving the distribution of the Net Settlement Amount, currently estimated to be One Hundred Fifty-Eight Thousand Five Hundred Twenty-One Dollars and Sixty-One Cents ($158,521.61) of which seventy-five percent (75%) shall be paid to the California Labor and Workforce Development Agency ("LWDA Payment") and twenty-five percent (25%) shall be paid to the PAGA Members on a *pro rata* basis based upon the number of Individual Pay Periods of each PAGA Member ("PAGA Payment"), worked during the PAGA Period;

3. Appointing Apex Class Action Administration Solutions ("Apex" or "Settlement Administrator") as the Settlement Administrator and approving the payment of Six Thousand Nine Hundred Ninety Dollars and No Cents ($6,990.00) to Settlement Administrator in connection with the costs of administering the Settlement ("Settlement Administrator Payment");

4. Awarding Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) each, or Fifteen Thousand Dollars ($15,000) total, to named Plaintiffs CAROLINA MEDINA and

ANTHONY NAYLOR as Plaintiffs' Representative Payments in return for their services in bringing the Actions;

5. Awarding Plaintiffs' Counsel, Protection Law Group, LLP, and Lawyers *for* Justice, PC, the Plaintiffs' Counsel Fees Payment of One Hundred and Five Thousand Dollars and No Cents ($105,000.00) and Plaintiffs' Counsel Litigation Costs Payment in the amount of Fourteen Thousand Five Hundred Thirty-Nine Dollars and Eighty-Six Cents ($14,539.86) for reimbursement of actual litigation costs and expenses pursuant to California Labor Code section 2699(g)(1);

6. Directing Defendants to deposit the Gross Settlement Amount of Three Hundred Thousand Dollars and No Cents ($300,000.00) into an account for administration of the Settlement, and directing the Settlement Administrator to distribute the Gross Settlement Amount in accordance with the Settlement Agreement; and

7. Directing the mailing of the PAGA Members' PAGA Payment Share checks to the PAGA Members under a cover letter substantially similar in content and form to the proposed covered attached as **Exhibit 5** to Davis Decl.

Unless otherwise specified, all citations and references to the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*, are to the version of statute prior to the recent amendment effective July 1, 2024; the amended statutue does not apply to the Settlement pursuant to California Labor Code section 2699, subd. (v)(1), as amended, because the Actions were filed prior to June 19, 2024.

Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Settlement, as well as information regarding the approval hearing on this matter, were submitted to the California Labor and Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on August 9, 2024. *See* Davis Decl. ¶34, **Ex. 6**.

This Motion is made on the grounds that the proposed Settlement is fair, adequate, reasonable, and in the best interest of the affected employees and the Parties. The Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently filed Declaration of Heather Davis in Support of Joint Stipulation for Order Approving Settlement Pursuant to California Labor Code Private Attorneys General Act and Entering Judgment, and all exhibits attached thereto; the Declaration of Alicia Brush in Support of Motion for Court Approval of Parties' PAGA Settlement ("Brush Decl."), and all exhibits attached thereto; the Declaration of Carolina Medina; the Declaration of Anthony Naylor; the Declaration of Sean Hartranft on behalf of Apex Class Action Administration ("Apex Decl."), and all exhibits attached thereto, and all other oral and documentary evidence that may be presented at the hearing on this Motion.

DATED: April 14, 2025

PROTECTION LAW GROUP, LLP

By: ______________________________

Heather Davis
Amir Nayebdadash
Brendan J. Burton
Shadi Sahebghalam
Attorneys for Plaintiff
CAROLINA MEDINA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs CAROLINA MEDINA ("Plaintiff Medina") and ANTHONY NAYLOR ("Plaintiff Naylor") ("Plaintiffs") seek approval of a Joint Stipulation of PAGA Settlement and Release of Claims ("Settlement," "Agreement," or "Settlement Agreement") entered into between Plaintiffs, individually and on behalf of the State of California and other "PAGA Members", and Defendants 5648 EAST GOTHAM STREET, LLC, BRIARCREST NURSING CENTER, IRA SMEDRA, and JACOB WINTNER (collectively, "Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties") pursuant to California Labor Code section 2699(l)(2). The Settlement was reached following a full day mediation with Eve Wagner, Esq., and extensive formal and informal discovery and investigation by Plaintiffs. By this Motion, Plaintiffs request that the Court grant the approval of the Settlement Agreement signed by the Parties and Enter Judgment accordingly. The Settlement terms are as follows:

- Number of PAGA Members: approximately 391 individuals, as of May 2023
- Gross Settlement Amount: $300,000.00
- Plaintiffs' Counsel Fees Payment: $105,000.00
- Plaintiffs' Counsel Litigation Costs Payment: $14,839.86
- Settlement Administrator Payment: $6,990.00
- Plaintiffs' Representative Payments: $7,500.00 each ($15,000.00 total)
- Net Settlement Amount: $158,521.61

The Net Settlement Amount will be distributed as follows: seventy-five percent (75%), *i.e.* One Hundred Eighteen Thousand Eight Hundred Ninety-One Dollars and Twenty-One Cents ($118,891.21), will be paid to the California Labor and Workforce Development Agency; twenty-five percent (25%), *i.e*. Thirty-Nine Thousand Six Hundred Thirty Dollars and Forty Cents ($39,630.40), will be paid to PAGA Members on a *pro rata* basis according to the number of Pay Periods worked by each PAGA Member from May 6, 2020, through the date that the Court approves the Settlement (the "PAGA Period."). The PAGA Members are comprised of all current and former hourly- paid or non-exempt employees who were employed by Defendants in the state of California at any time during the PAGA Period. *See* Declaration of Heather Davis ("Davis

Decl.") Ex. 1, Settlement Agreement ¶¶5, 6, 7, 15, 18, 19, 51-56.

The Settlement is the product of informed discovery, arms-length negotiations by highly experienced counsel, and is fair, reasonable, and adequate in light of the relative strengths of Plaintiffs' PAGA claims, the risk, expense, and uncertainty of further litigation, the benefit conferred by the Settlement, and the underlying goals associated with recovery under PAGA. Plaintiffs therefore respectfully request that the Court approve the proposed Settlement and enter Judgment thereon.

In order to efficiently present the Court with adequate information, Plaintiffs also move for an order permitting the filing of this memorandum, although it exceeds the page limit set forth in California Rules of Court, Rule 3.1113(d).

II. STATEMENT OF FACTS

Plaintiff Carolina Medina ("Plaintiff Medina") worked for Defendants 5648 EAST GOTHAM STREET, LLC and BRIARCREST NURSING CENTER as an hourly-paid, non-exempt employee from approximately January 2019 to approximately March 2020. See Davis Decl. ¶12.

On May 6, 2021, Plaintiff Medina's Counsel, on behalf of Plaintiff Medina and the State of California with respect to PAGA Members, gave written notice to the LWDA of the California Labor Code violations that Defendants 5648 East Gotham Street, LLC and Briarcrest Nursing Center are alleged to have violated ("Plaintiff Medina's PAGA Letter"). Davis Decl. ¶13.

On July 12, 2021, Plaintiff Medina filed a putative representative action Complaint against Defendants 5648 East Gotham Street, LLC and Briarcrest Nursing Center alleging a single cause of action for violation of California Labor Code § 2698, *et seq.*, Private Attorneys General Act ("PAGA") (i.e., the Medina Action). Davis Decl. ¶14.

On September 10, 2021, Plaintiff Naylor's Counsel, on behalf of Plaintiff Naylor and the State of California with respect to PAGA Members, gave written notice to the LWDA of the Labor Code violations Defendant 5648 East Gotham Street, LLC is alleged to have violated ("Plaintiff Naylor's PAGA Letter") (together with Plaintiff Medina's PAGA Letter, "PAGA Letters"). Davis Decl. ¶15.

On September 16, 2021, Defendants 5648 East Gotham Street, LLC and Briarcrest Nursing Center filed their Answer to Plaintiff Medina's Complaint. Davis Decl. ¶16.

On October 1, 2021, Plaintiff Medina filed Proofs of Service of Summons as to Defendants 5648 East Gotham Street, LLC and Briarcrest Nursing Center. Davis Decl. ¶17.

On November 15, 2021, Plaintiff Naylor filed his putative representative action Complaint against Defendant 5648 East Gotham Street, LLC, Ira Smedra and Jacob Wintner (i.e., the Naylor Action). Davis Decl. ¶18.

On April 5 and 6, 2022, Plaintiff Naylor filed a Proofs of Service of Summons as to Defendant 5648 East Gotham Street, LLC, Ira Smedra and Jacob Wintner. Davis Decl. ¶19.

On April 28, 2022, Defendants 5648 East Gotham Street, LLC, Ira Smedra and Jacob Wintner filed their Answer to Plaintiff Naylor's Complaint. Davis Decl. ¶20. Also on April 28, 2022, Defendants filed Notices of Related Case in both Actions, indicating that these Actions are related to one another. Davis Decl. ¶21.

On June 13, 2022, the Court found that the Actions are related, designating the Medina Action as the lead case. Davis Decl. ¶22.

On November 30, 2022, Defendants 5648 East Gotham Street, LLC and Briarcrest Nursing Center filed a Petion to Compel Arbitration of Plaintiff Medina's individual PAGA claim, to dismiss her collective action and to stay further proceedings pending binding arbitration. Davis Decl. ¶23.

On December 1, 2022, Defendants 5648 East Gotham Street, LLC, Ira Smedra and Jacob Wintner filed a Petition to Compel Arbitration of Plaintiff Naylor's individual PAGA claim, to dismiss his collective action and to stay further proceedings pending binding arbitration. Davis Decl. ¶24.

On March 28, 2023, the Court granted Defendants' Petitions to Compel Arbitration as to the Plaintiffs' individual claims. The representative claims were stayed in both Actions. Davis Decl. ¶25.

On July 17, 2023, the Parties participated in a mediation hearing before an experienced employment and class action mediator, Eve Wagner, Esq. (the "Mediation"). In order to provide Plaintiffs and their counsel the opportunity to adequately evaluate the alleged claims, Defendants informally produced their written policies in place during the PAGA Period, including its employee handbook, Plaintiffs' complete personnel files, and time and payroll data for the aggrieved employees. Defendants also provided Plaintiffs with data points necessary for Plaintiffs to complete a damages analysis and estimate Defendants' potential exposure. However, the Parties were unable to resolve this matter during mediation. Davis Decl. ¶26.

On August 9, 2023, Plaintiff Medina submitted an arbitration demand for her individual PAGA claims with JAMS Arbitration. Davis Decl. ¶27.

On July 13, 2024, the Parties reached a global resolution through extensive, arms' length, informal mediation communications via Eve Wagner, Esq. Davis Decl. ¶28.

Following mediation, the Parties spent considerable time negotiating the terms of a long form settlement agreement, and on April 7, 2025, fully executed the Settlement Agreement. Davis Decl. ¶29.

The Parties also met and conferred on the form and contents of the PAGA Notice Letter to be sent to the Aggrieved Employees advising them of the settlement and payment. Davis Decl. ¶30.

Throughout the Actions, Defendants have denied, and continue to deny, any wrongdoing in regard to the alleged violations. Davis Decl. ¶31.

The Settlement described in this Settlement Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendants that Plaintiffs' claims in the Actions have any merit or that they have any liability to Plaintiffs, PAGA Members, or the State of California on those claims, or as an admission by Plaintiffs that Defendants' defenses in the Actions have any merit. This Settlement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Settlement. Davis Decl. ¶32.

Based on their own thorough, independent investigation and evaluation of the Actions, Plaintiffs' Counsel is of the opinion that the Settlement of the Actions with Defendants for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interest of the State of California and PAGA Members in light of all known facts and circumstances, including the risk of significant costs and delay, the defenses asserted by Defendants including the risks of adverse determinations on the merits, and numerous potential appellate issues. Although Defendants contend that they have no liability in the Actions, Defense Counsel shares Plaintiffs' Counsel's belief that this Settlement represents a fair and adequate settlement given the respective risks associated with the case. Davis Decl. ¶33.

On April 14, 2025, at the same time the Settlement Agreement was sent to the Court, Plaintiffs submitted the Settlement Agreement to the LWDA. Davis Decl. ¶34. Ex. 6.

III. SETTLEMENT AGREEMENT

A. Definition of PAGA Settlement Members

Plaintiffs seek approval of the proposed Settlement Agreement. Davis Decl. ¶35. Under the Settlement Agreement, Plaintiffs' representative claims include "PAGA Members" which means "all current and former hourly-paid or non-exempt employees who were employed by Defendants in the state of California at any time during the period of time commencing on May 6, 2020, and ending on the date the Court approves the Settlement." Settlement Agreement ¶¶5-6. As of May 2023, there were approximately 391 PAGA Members. Davis Decl. ¶¶ 36-37; Settlement Agreement ¶16.

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B. Total Settlement Payment

The Parties have agreed to settle the PAGA claims at issue for a Gross Settlement Amount of Three Hundred Thousand Dollars and No Cents ($300,000.00) to be paid by Defendants. Davis Decl. ¶38, Settlement Agreement ¶¶15, 52.

C. Escalator Clause

Defendants represent that as of May 2023, the number of Pay Periods of the 391 PAGA Members is 11,104. Should the qualifying Pay Periods of the PAGA Members during the PAGA Period ultimately increase by more than ten percent (10%) (i.e., by more than 1,110 Pay Periods), Defendants shall increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Pay Periods of the PAGA Members above ten percent (10%). For example, if the number of Pay Periods increases by eleven percent (11%) (1,221 Pay Periods), the Gross Settlement Amount will increase by 1% to Three Hundred and Three Thousand Dollars and No Cents ($303,000). However, under no circumstance will the total Gross Settlement Amount rise more than a total of two percent (2%) or more than Three Hundred and Six Thousand Dollars and No Cents ($306,000). Davis Decl. ¶39; Settlement Agreement ¶16.

D. Allocation and Funding of the Total Settlement Payment

The Gross Settlement Amount is a common fund, and therefore includes all requested costs, fees, and other allocations. Specifically, the Gross Settlement Amount includes: (i) the Plaintiffs' Representative Payments in the amount of Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) to each Plaintiff, for a total of Fifteen Thousand Dollars and No Cents ($15,000.00); (ii) the Plaintiffs' Counsel Fees Payment in the amount of thirty-five percent (35%) of the Gross Settlement Amount, amounting to One Hundred and Five Thousand Dollars and No Cents ($105,000.00); (iii) the Plaintiffs' Counsel Litigation Costs Payment, not to exceed Fourteen Thousand Four Hundred Eight-Eight Dollars and Thirty-Nine Cents ($14,488.39); (iv) Settlement Administrator Payment, not to exceed Six Thousand Nine Hundred Ninety Dollars and No Cents

($6,990.00); and (v) the Net Settlement Amount. Davis Decl. ¶40; Settlement Agreement, ¶¶5, 6, 9, 10, 11, 12, 15, 18, 19.

The Net Settlement Amount is currently estimated to be One Hundred Fifty-Eight Thousand Five Hundred Twenty-One Dollars and Sixty-One Cents ($158,521.61), and will be distributed as follows: seventy-five percent (75%) of the Net Settlement Amount, or One Hundred Eighteen Thousand Eight Hundred Ninety-One Dollars and Twenty-One Cents ($118,891.21), will be paid to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement, or Thirty-Nine Thousand Six Hundred Thirty Dollars and Forty Cents ($39,630.40), will be paid to the PAGA Members on a *pro* rata basis based upon the number of Pay Periods worked by each PAGA Member during the PAGA Period. Davis Decl. ¶41; Settlement Agreement ¶¶17, 59(d).

Each PAGA Payment Share is intended to settle claims for civil penalties arising under PAGA. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Member in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each PAGA Member for that amount. Each PAGA Member shall be individually responsible for their own share of applicable income tax withholdings and deductions for his or her PAGA Payment Share. Davis Decl. ¶42; Settlement Agreement ¶¶20, 57.

Within fourteen (14) calendar days after the date on which the Court enters an order granting approval of this Settlement, Defendant will provide the Settlement Administrator a list of all PAGA Members, and will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each PAGA Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendants in the State of California; (6) total Pay Periods during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. Davis Decl. ¶43; Settlement Agreement ¶¶7, 8, 51(a)-(b), 60.

Within thirty (30) calendar days of the Effective Date, Defendants will deposit the initial payment of the Gross Settlement Amount in the sum of One Hundred Fifty Thousand Dollars and No Cents ($150,000.00) ("First Installment") into a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator. The final payment of One Hundred Fifty Thousand Dollars and No Cents ($150,000.00) ("Second Installment"), constituting the final payment by Defendants shall be paid by Defendants six (6) months after the initial payment, which will include no more than an additional Six Thousand Dollars and No Cents ($6,000.00) pursuant to the Escalator Clause in Paragraph 16. Davis Decl. ¶44; Settlement Agreement ¶¶16, 22, 52.

Within fourteen (14) calendar days following the receipt of the Gross Settlement Amount, the Settlement Administrator shall pay to each PAGA Member his or her PAGA Payment Share by sending a check in the appropriate amount to the PAGA Member at the address indicated in the Aggrieved Employee List. The Settlement Administrator shall conduct a National Change of Address search on all PAGA Members before mailing the PAGA Notice to each PAGA Member's address. Davis Decl. ¶45; Settlement Agreement ¶¶7, 53.

Payments to PAGA Members will be accompanied by a cover letter, substantially similar in content and form to the proposed letter attached as "Exhibit A" to the Settlement Agreement. Settlement Agreement, Ex. A. Davis Decl. ¶46.

All checks to PAGA Members will be sent by the Settlement Administrator and shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If any checks are not cashed within one hundred eighty (180) days of mailing, those funds shall be distributed to the Controller of the State of California to be held pursuant to the California Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.* Davis Decl. ¶47; Settlement Agreement ¶¶54, 55.

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E. Scope of the Release in the Settlement Agreement

Upon the Effective Date[1] and full funding of the Gross Settlement Amount, PAGA Members, without the need to manually sign a release document, in exchange for the consideration recited in the Settlement Agreement, Plaintiffs, PAGA Members, the LWDA, and the State of California shall release Defendants and the Released Parties[2] from the following Released Claims:

> any and all claims arising during the PAGA Period for the recovery of civil penalties, attorneys' fees, and costs permissible under PAGA which Plaintiffs, the State of California, and/or the PAGA Members had, or may claim to have, against the Released Parties arising out of the violations alleged in the Actions, including unpaid straight and overtime wages (including any work off the clock), failure to pay employees all minimum wages and overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay all premium wages owed for short, late, or missed meal and rest periods, failure to pay all wages owed at discharge or resignation, failure to timely pay wages within the times required under California Labor Code section 204, failure to provide complete and accurate wage statements, and failure to reimburse necessary business related expenses, in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, expressly excluding all claims for individual wage claims, vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the PAGA Period. ("Released Claims").

Davis Decl. ¶48; Settlement Agreement ¶¶24, 25, 61, 62, 63.

This release shall apply to claims arising during the PAGA Period and will be binding and effective upon Plaintiffs, PAGA Members, and the LWDA, regardless of whether the PAGA Member cashes his or her settlement check. Davis Decl. ¶47; Settlement Agreement ¶¶54-55.

IV. STANDARD OR REVIEW FOR APPROVAL OF A PAGA SETTLEMENT

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[1] "Effective Date" shall mean the later of the following: (a) the date upon which the Court grants approval of the settlement and enters Judgment; (b) the date for filing an appeal from the Judgment has lapsed and no such appeal being filed; or (c) if any timely appeals from the Judgment are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement. Davis Decl. ¶47; Settlement Agreement ¶22.

[2] "Released Parties" or "Defendants" means 5648 East Gotham Street, LLC, Briarcrest Nursing Center, Ira Smedra and Jacob Wintner as named by Plaintiffs in the operative complaints, and their past, present, and/or future direct and/or indirect officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, related companies, affiliates, divisions, predecessors, successors, assigns, and joint venturers. Davis Decl. ¶61; Settlement Agreement ¶24.

The PAGA allows an allegedly "aggrieved employee" to bring a civil action on behalf of himself or herself, other allegedly aggrieved employees, and the State of California to recover civil penalties which, outside of the PAGA, only the LWDA can collect from an employer. (Cal. Labor Code § 2699(a).) The settlement of a PAGA action requires court approval. (Cal. Labor Code § 2699(l)(2).)

In reviewing a PAGA settlement, the Court need only ensure that "a negotiated resolution is fair to those affected." *Williams v. Superior Court* (Cal. 2017) 3 Cal.5th 531, 549 [220 Cal. Rptr. 3d 472, 486, 398 P.3d 69, 81]. In making this assessment, the court's focus is not the monetary amount which the aggrieved employees or the State stand to receive, but on whether the total amount achieves the PAGA's objective. *See Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010, No. C 08-2073 MHP) 2010 WL 1340777, at p. 4 (citing *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986). Penalties recovered under the PAGA are, in part, to "be distributed to the [LWDA] for enforcement of labor laws…and for education of employers and employees about their rights and responsibilities under this code…to supplement and not supplant the funding to the agency for those purposes." Cal. Labor Code § 2699(j). Because a PAGA claim is effectively considered a law enforcement action, it does not have to meet the requirements of a class action. *Arias*, at p. 980-88. Moreover, because a PAGA claim is "a statutory action for penalties brought as a proxy for the State," "there is no need to protect absent employees' due process rights[.]" *Williams*, at 546, fn. 4. This renders approval of a PAGA settlement distinct from a class action settlement and, under both federal and state law, the Court need not employ the two-step approval process that applies to a class action settlement.

V. <u>THE SETTLEMENT IS FAIR AND REASONABLE</u>

"A trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.*, (Cal. Ct. App. 2021) 72 Cal.App.5th 56, 77 [287 Cal.Rptr.3d 107, 126-27]. Many of the factors used to evaluate class actions on a settlement's fairness, may "be useful in evaluating the fairness of a PAGA settlement". *Ibid*.

As set forth below, the Settlement before the Court is the result of adversarial, arms-length negotiations and extensive investigation, and fulfills the objectives of the PAGA. Moreover, the Settlement is fair and reasonable in light of the relative strengths of the PAGA Claims and risks associated with protracted litigation. Thus, the Settlement should be approved by the Court.

A. Plaintiffs Have Complied with the Administrative Requirements of California Labor Code Section 2699.

Before bringing a civil action under PAGA, an employee must comply with the notice requirements set forth in Labor Code section 2699.3. Plaintiffs complied with this requirement. *See* Davis Decl. ¶¶13, 50, Ex. 2; Brush Decl. ¶¶7, 8, Ex. 1, 2. In addition, the Settlement Agreement and this Motion and supporting papers are being submitted to the California Labor and Workforce Development Agency, as required by California Labor Code section 2699 (l)(2). Davis Decl. ¶¶34, 50, Ex. 6.

B. Arm's-Length Negotiations

Although PAGA settlements are not subject to the same heightened requirements as a class action settlement, the underlying guidelines utilized in class action settlements may be useful in evaluating the fairness of a PAGA settlement. California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 245 (disapproved on other grounds). Here, the Parties engaged in arms-length, non-collusive negotiations at all times including attending a full day of mediation with Eve Wagner, Esq., a highly respected mediator with extensive experience in wage and hour matters, including actions brought pursuant to the PAGA. At all times, Plaintiffs were willing and prepared to litigate this matter through trial and possible appeals, if a favorable resolution had not been reached. The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for each Party advanced their positions throughout the settlement negotiations. Davis Decl. ¶26, 28, 52.

C. Sufficient Investigation and Discovery by Experienced Counsel

Prior to mediation, Defendants informally produced a random sampling of time and payroll records for the PAGA Members, as well as information regarding the total number of non-exempt employees, the number of current and former non-exempt employees, the number of pay periods worked by non-exempt employees within the relevant time period, and other relevant information. Defendants also produced all applicable wage and hour policies in place during the PAGA Period. This allowed Plaintiffs' Counsel to thoroughly review the discovery produced and retain an outside expert to conduct an informed assessment and analysis of Defendants' potential exposure. Davis Decl. ¶¶53. Prior to mediation, the Parties exchanged mediation briefs. The Parties briefed their respective positions regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, provided their analyses to the mediator, and debated the merits of their respective positions at mediation. Davis Decl. ¶54. Furthermore, negotiations were conducted by highly capable and respected counsel with strong records of vigorous and effective advocacy handling complex wage and hour litigation. Davis Decl. ¶¶2-11, 55; Brush Decl. ¶¶1-6. Accordingly, Plaintiffs' Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

D. The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks of Continued Litigation, and the Underlying Purpose of the PAGA.

The Total Settlement Payment of Three Hundred Thousand Dollars and No Cents ($300,000.00) is a reasonable settlement in light of the strength of Plaintiffs' claims and Defendants' defenses, the risks of further litigation, and the unique risks associated with litigation of PAGA claims. A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the compensatory payments sought. *Wershba, supra*, 91 Cal.App.4th at p. 250.. Here, the reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual grounds for defending the Action. Davis Decl. ¶¶52-69.

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1. *Plaintiffs' Counsel's Analysis of Defendants' Maximum Potential Liability*

Prior to mediation, Defendants estimated there were approximately 391 employees and approximately 11,104 pay periods. Davis Decl. ¶55. Plaintiffs' Counsel reviewed and analyzed the extensive sampling of time records and other relevant documents and data informally produced by Defendants, and based on the discovery provided estimated with all claims adjudicated in favor of Plaintiffs, Defendants face an estimated maximum liability of Twenty-Two Million Eight Hundred Nineteen Thousand Two Hundred Ninety-One Dollars and Thirty-Six Cents ($22,819,291.36) in penalties arising from the alleged Labor Code Violations. Davis Decl. ¶¶52-69.

2. *Plaintiffs' Counsel's Risk-Based Analysis and Adjustments*

Despite this large potential liability, substantial barriers to recovery of such penalties exist. First, for Plaintiffs to prevail at trial on their PAGA claims, they would have to prove the underlying Labor Code violations, demonstrate that PAGA Members suffered these violations, and demonstrate that Defendants' alleged conduct gives rise to penalties. Davis Decl. ¶56, 57; s*ee Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82. Plaintiffs' core allegation is that Defendants systematically violated the California Labor Code by, *inter alia*, failing to pay for all time worked, including minimum and overtime wages, failing to provide compliant meal and rest periods and pay associated premiums, failing to timely pay wages during and upon termination of employment, failing to provide accurate itemized wage statements, and failing to maintain accurate payroll records. Although Plaintiffs maintain that such wage and hour claims are amenable to resolution as to a group of employees, many courts have found that the issues raised by Plaintiffs, including off-the-clock work, and meal and rest period violations, raise individualized issues that render a case unmanageable and unsuitable for adjudication as to a large group of employees. Davis Decl. ¶57; *see, e.g., Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1 [172 Cal. Rptr. 3d 371, 325 P.3d 916]. Although California case law clearly states that PAGA actions need not satisfy class action requirements, Plaintiffs remained mindful of the fact that some courts have nevertheless held that PAGA claims must meet a threshold "manageability" requirement. Indeed, Plaintiffs were forced to consider the recent ruling by Second District Court of Appeal recently held in *Wesson v.*

Staples the Office Superstore, LLC (Cal. Ct. App. 2021) 68 Cal.App.5th 746 that trial judges have inherent authority to limit, and even strike, an unmanageable PAGA claim. Davis Decl. ¶57.

Defendants also maintained several defenses to Plaintiffs' theories of liability which, if successfully proven, had the potential to eliminate or substantially reduce Plaintiffs' estimated recovery. Throughout this litigation, Defendants have maintained that they had legally compliant employment policies and practices and deny that they ever violated the Labor Code provisions Plaintiffs seek to enforce under the PAGA. Davis Decl. ¶58. Defendants argued that given that they maintained compliant policies and practices, any remaining issues regarding meal periods would require an individualized inquiry that would be unmanageable, and did not warrant imposition of substantial penalties, which under the PAGA are intended to be deterrent in nature, not compensatory. Plaintiffs' claims regarding off-the-clock work performed before and after employees' shifts, and during meal periods, faced similar challenges. Plaintiffs also anticipate that Defendants would attempt to challenge Plaintiffs' standing as an aggrieved employee and would deny that any of its other employees whom Plaintiffs seek to represent are aggrieved. Indeed, some courts have taken an approach requiring plaintiffs to establish standing and bifurcating discovery and/or trial of a PAGA claim. Davis Decl. ¶¶59-60. *See, e.g., Stafford v. Dollar Tree Stores, Inc.* (E.D. Cal. Nov. 2014, No. 2:13-cv-1187 KJM CKD) 2014 WL 6633396 at p. 4 .

In addition, Plaintiffs' Counsel remained mindful that the PAGA gives the Court discretion to lower the penalties assessed if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." Davis Decl. ¶61; Cal. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc*. (Ct. App. 2012) 203 Cal.App.4th 1112, 1136 [138 Cal. Rptr. 3d 130](holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary factors) (disapproved on other grounds); *Fleming v. Covidien, Inc.* (C.D. Cal. Oct. 13, 2011, ED CV 10-01487-RGK (OPx)) 2011 WL 7563047, at p. 4 (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030 (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.* (Cal. Ct. App. 2018) 30 Cal.App.5th 504, 529 [241 Cal. Rptr. 3d 647, 669] (approving reduction in penalties from

$50 per pay period to $5 per pay period based on good faith attempts to comply with obligations and minimal violations).

Plaintiff's Counsel also recognized that there was a significant risk that the Court would decline to assess the cumulative penalties for a large number of derivative violations. A significant portion of Defendants' alleged liability arises from claims that are predicated on the successful prosecution of Plaintiffs' overtime and minimum wage claims, and penalties derivative of this conduct could be considered duplicative. Davis Decl. ¶62; *see, Thurman, supra*, 203 Cal.App.4th at p. 1131 (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics* (C.D. Cal. 2013, No. SACV 12-00687-JVS (ANx)) 2013 WL 10936036, at p. 3 ("duplicative effect" of penalties is a factor in favor of "reducing . . . the PAGA penalty"); *Smith v. Lux Retail North America, Inc.* (N.D. Cal. 2013, No. C 13-01579 WHA) 2013 WL 2932243 at p. 3 (declining to stack penalties based on the same conduct).

Moreover, Plaintiff's Counsel recognized that protracted litigation of the alleged claims would be expensive, time-consuming, and uncertain. To prove liability and damages, Plaintiffs will be required to conduct additional extensive discovery, conduct numerous depositions, request and analyze thousands of pages of documents, obtain the PAGA Members' contact information, contact these employees, and obtain numerous declarations at great expense. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendants would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiffs prevailed at trial, possible appeals could delay recovery. Accordingly, there is a significant risk that Plaintiffs could ultimately recover nothing despite protracted litigation. Davis Decl. ¶63.

Thus, while Plaintiffs maintain that their PAGA claims are meritorious, Plaintiffs' Counsel took into account the strengths and weaknesses of each side's respective positions in evaluating the Defendants' likely potential exposure. First, taking into account the risk of maintaining the case on a representative basis, arguments regarding manageability, and challenges to Plaintiffs' status as aggrieved employees, Plaintiffs' Counsel discounted Defendants' estimated liability by eighty percent (80%). In consideration for merits-based risk factors, including prevailing at trial, Plaintiffs' Counsel discounted Defendants' estimated liability by an additional eighty percent (80%). Finally, given the discretionary nature of PAGA penalties, the likelihood that these potential penalties could be severely reduced by the Court's decision to decline to stack such penalties, and ongoing appellate challenges, Plaintiffs' Counsel discounted Defendants' estimated liability by an additional sixty-eight percent (68%). This resulted in an adjusted estimated liability of Two Hundred Ninety-Two Thousand and Ninety-Three Cents ($292,086.93). Davis Decl. ¶64.

3. *The Settlement Fulfills the Fundamental Purpose of the PAGA and is Consistent with Other PAGA Settlements Approved by the Court*

After considering this multitude of factors, Plaintiffs and Plaintiffs' Counsel concluded that it was in the best interest of the State of California and the PAGA Settlement Members to enter the Settlement. The overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California's labor laws, provide funds to the state, and deter future non-compliance by Defendants. The Settlement is also well-within the range of settlements of PAGA claims approved by courts in other cases. Davis Decl. ¶¶65-69. *See, e.g., Davis v. Brown Shoe Co.* (E.D. Cal. 2015) 2015 U.S. Dist. LEXIS 149010. For these reasons, the Settlement presented herein is fair, reasonable, and adequate. Davis Decl. ¶70.

VI. THE REQUESTED ATTONEYS' FEES PAYMENT IS FAIR AND SHOULD BE APPROVED

A. A Fee Award Based on the Percentage of the Settlement Fund is Appropriate

Plaintiffs' Counsel is entitled to recover reasonable attorneys' fees and costs as a matter of right under the PAGA. *See* Cal. Labor Code § 2699(g)(1). Plaintiffs' Counsel is also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is "for the benefit" of others and secures substantial monetary recovery on behalf of the State of California and the PAGA Members. *See Estrada v. FedEx Ground Package System, Inc.* (Cal. Ct. App. 2007) 154 Cal.App.4th 1, 16-17 [64 Cal. Rptr. 3d 327]. Where the amount of a settlement is a "certain or easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk v. Ford Motor Co.* (Cal. Ct. App. 1996) 48 Cal.App.4th 1794, 1808-09 [56 Cal. Rptr. 2d 483]. "The ultimate goal … is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Apple Computer, Inc. v. Superior Court* (Cal. Ct. App. 2005) 126 Cal.App.4th 1253, 1270 [24 Cal. Rptr. 3d 818] (citing *Brytus v. Spang Company* (3d. Cir. 2000) 203 F.3d 238, 247).

Here, the Settlement provides for One Hundred and Five Thousand Dollars and No Cents ($105,000.00), *i.e.*, thirty-five percent (35%) of the Gross Settlement Amount as Plaintiffs' Counsel Fees Payment, subject to Court approval. Davis Decl. ¶71. The requested fee award is well within the range of reasonableness. Based on Plaintiffs' Counsel's particular skill in the area, the complex nature of these claims, and the ever-evolving nature of the law related to the PAGA, many attorneys would have been unprepared to litigate these claims and unable to obtain the substantial settlement secured by Plaintiffs' Counsel. Plaintiffs' Counsel have devoted themselves to pursuing and understanding these types of complex wage and hour cases and were able to successfully litigate this matter despite risks that may have dissuaded other counsel from pursuing this case. Davis Decl. ¶72. Plaintiffs' Counsel also risked substantial economic loss when they took this case on a contingency basis, knowing that there would likely be a long battle with two (2) premier defense firms. As a result of Plaintiffs' Counsel's willingness to take on this risk and their efforts in prosecuting this case, the State and the PAGA Members will receive a substantial recovery for violations that would otherwise have gone unaddressed. *See* Davis Decl. ¶¶73-83.

Accordingly, the requested fee award: (1) is consistent with the private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2) aligns with the interests of Plaintiffs' Counsel, the State of California, and PAGA Members in achieving the maximum possible resolution of the case; (3) encourages the most efficient resolution of the litigation by providing an incentive for early, yet fair and reasonable settlement; and (4) reflects the work performed, risks incurred, results obtained, and experience of Plaintiffs' Counsel in handling similar matters. Thus, Plaintiffs' Counsel has obtained a fair recovery for the State of California and the PAGA Members which justifies a fee award based on thirty-five percent (35%) of the Gross Settlement Amount. *See* Davis Decl. ¶¶73-83.

B. The Requested Fee Award Is Reasonable Based on the *Dunkle* Factors.

In *Camden I Condominium Association, Inc. v. Dunkle* (11th Cir. 1991) 946 F.2d 768, 772, the court identified the factors to be considered in determining whether fee awards are reasonable in a common fund case. Evaluation of these factors demonstrates that the fees award requested here is reasonable and should be approved.

1. Time and Labor Required

Plaintiffs' Counsel have extensive experience in the handling of complex employment class actions and PAGA Actions. *See* Davis Decl. ¶¶2-11; Brush Decl. ¶¶1-6. Plaintiffs' Counsel have aggressively litigated this case from the initial pleading to the settlement of this Action. As a result of Plaintiffs 'Counsel's efforts, Defendants agreed to attend mediation rather than proceeding with litigation. The ongoing work performed by Plaintiffs' Counsel has been extensive, complex, and ultimately successful in achieving a fair settlement for the PAGA Members and the State. Plaintiffs' Counsel actively participated in this litigation, attending client meetings, conducting legal research on unanticipated and remote legal defenses, participating in case strategy and analysis, drafting, reviewing, and revising pleadings. Plaintiffs' Counsel conducted extensive informal discovery, researched defenses raised by Defendants, and investigated Defendants' policies, practices, and procedures before attending a full day mediation. Plaintiffs' Counsel also engaged in extensive and hard-fought motion practice. Plaintiffs' Counsel also spent significant time drafting and revising the Settlement before the Court. A settlement was finally achieved despite all of the obstacles because of Plaintiffs' Counsel's time, effort, experience, and skill. Davis Decl.¶¶73-83; Brush Decl. ¶¶9-13. In total, this Action consumed more than 372.10 hours of Plaintiffs' Counsel's efforts. *See* Davis Decl. ¶¶81-82, Ex. 3; Brush Decl. ¶¶14, Ex. 2.

2. The Skill Required to Perform Legal Services

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach this result. Defendants retained well-respected counsel and vigorously denied liability. Indeed, Defendants and their Counsel felt strongly about Defendants' ability to prevail and mounted several defenses that posed significant threats to Plaintiffs' claims, challenged the theories of Plaintiffs' Counsel, and promised a strong defense moving forward. Further, in order to evaluate these claims and defenses, Plaintiffs' Counsel were required to review and analyze a tremendous amount of data to determine Defendants' underlying practices and liability, a complex process that took considerable time, energy, and knowledge. This complicated analysis required substantial skill, but Plaintiffs' Counsel were able to successfully navigate these challenges because of their extensive experience in complex wage and hour litigation. This settlement, against experienced Defense Counsel, and despite the existence of several strong defenses, was made possible through Plaintiffs' Counsel's skill and reputation in complex employment matters. Davis Decl. ¶¶71-74, 80-81; Brush Decl. ¶¶11, 13-15.

3. *The Value, Amount, and Results Achieved*

The Settlement represents a fair resolution of this case given the risks inherent in litigating it through trial and possible appeals. Although Plaintiffs' Counsel predicted that Plaintiffs would prevail at trial, several risks reduced value of the case. Had the case not settled, Plaintiffs anticipate Defendants would have challenged the manageability of the case, disputed Plaintiffs' contentions on the merits, and sought reduction in the amount of penalties. Preparing the case for trial would have been expensive and risky. In contrast, settlement at this stage guarantees immediate recovery for the State of California and the PAGA Members. Despite the challenges Plaintiffs still faced, they were able to negotiate and reach a Gross Settlement Amount of $300,000.00. This is an outstanding result for a settlement limited to penalties arising under the PAGA and which does not affect the PAGA Members' individual wage claims. Davis Decl. ¶¶73-75.

4. *Whether the Fee is Fixed or Contingent*

Whether the representation was provided on a contingency basis, as it was in this case, is an important factor. "A contingent fee must be higher than a fee for the same legal services paid as they are performed." *Cates v. Chiang* (Cal. Ct. App. 2013) 213 Cal.App.4th 791, 823 [153 Cal. Rptr. 3d 285, 312] (emphasis added).

This case was litigated on a contingency basis. If Plaintiffs' Counsel had been unsuccessful, they would not receive any fee or recover any portion of their expenses spent litigating this matter.

Plaintiffs' Counsel have borne all risks and costs associated with the litigation and will not receive any compensation until recovery is obtained. If the Covid-19 crisis has made one thing clear, it is that economic uncertainty can arise swiftly and for reasons beyond any party's control. These are the types of risks Plaintiffs' Counsel took in deciding to litigate this matter on a contingent basis and this risk is a relevant factor when considering the reasonableness of the requested fee. Davis Decl. ¶76; Brush Decl. ¶¶13.

C. The Requested Fee is Reasonable Under the Lodestar Analysis

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys who worked on these matters. *See Ketchum v. Moses* (Cal. 2001) 24 Cal.4th 1122, 1131-32 [104 Cal. Rptr. 2d 377, 17 P.3d 735]. Counsel is entitled to compensation for every hour reasonably spent on the matter. *See Id.* at p. 1133. Further, this amount may be enhanced and courts in California routinely apply multipliers between 1 and 4 to a party's requested lodestar amount based on some of the same factors identified above. *See Cates, supra*, Cal.App.4th at p. 822.

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (Cal. Ct. App. 2000) 79 Cal.App.4th 440, 447 [94 Cal. Rptr. 2d 143]. This case was highly contested, as Defendants raised significant defenses and denied liability. Plaintiffs' Counsel invested significant time and labor into this matter. The services provided include, but were not limited to, attending client meetings, conducting legal research on unanticipated and remote legal defenses, drafting the stipulations necessary to attend mediation, participating in case strategy and analysis, drafting, reviewing, and revising pleadings. Plaintiffs' Counsel further conducted extensive informal discovery, researched defenses raised by Defendants, investigated Defendants' policies, practices, and procedures, reviewed hundreds of documents, and analyzed a substantial sampling of time and payroll data before attending a full day mediation, engaging in extensive and hard fought motion practice, participating in settlement negotiations and negotiating, reviewing, revising, and finalizing the final version of the Settlement Agreement. Plaintiffs' Counsel conservatively expended a total of 368.10 hours on this matter. The time spent on this matter was time Plaintiffs' Counsel could not spend on other cases or performing other tasks. Moreover, Plaintiffs' Counsel bore the significant risk that, despite all their efforts, there might ultimately be no recovery. Accordingly, Plaintiffs' Counsel has spent a reasonable number of hours working on this matter. *See* Davis Decl. ¶¶78-82, Ex. 3; Brush Decl. ¶¶9-11, 14-15, Ex. 2.

2. *Plaintiffs' Counse'sl Hourly Rate is Reasonable*

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this Action. *See Ketchum, supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051.

As previously discussed, Plaintiffs' Counsel have been actively involved in the Action from the filing of the initial complaint to completing these approval papers. Plaintiffs' Counsel invested time and bore the risk that there could have been no recovery. This is particularly relevant here in light of the complex and unique issues relating the litigation of these claims and the ever-evolving nature of the law related to the PAGA, which presented substantial concerns regarding the potential for individualized issues and the manageability of the case at trial. Given the complex nature of these claims many attorneys would have been unprepared to litigate these claims or obtain the proposed settlement. Ultimately, Plaintiffs' Counsel was successful in reaching a settlement of Three Hundred Thousand Dollars and No Cents ($300,000.00) on behalf of the State and PAGA

Members. To date, the lodestar for Plaintiffs' Counsel is approximately $268,595.00. *See* Davis Decl. ¶¶80-83, Ex. 3.

For these reasons, Plaintiffs respectfully request the Court award the requested attorneys' fees of One Hundred Thousand Dollars and No Cents ($105,000.00). Davis Decl. ¶83.

D. The Requested Costs Are Fair and Reasonable

Plaintiffs' Counsel requests the reimbursement of the costs incurred litigating this case in the total amount of Fourteen Thousand Five Hundred Thirty-Nine Dollars and Eighty-Six Cents ($14,539.86). These costs include filing fees, mediation fees, and other costs associated with the Action. These costs also include Three Hundred Fifty Dollars and No Cents ($300.00) in future costs that will be necessary in order to successfully resolve this Action including costs associated with the filing of this Motion and additional costs for filing declarations following distribution of the Gross Settlement Award. Davis Decl. ¶84, Ex.4; Brush Decl. ¶¶16-17, Ex. 3-4.

VII. THE REQUESTED PLAINTIFFS' REPRESENTATIVE PAYMENTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED

The Settlement provides for a Plaintiffs' Representative Payments to be paid to named Plaintiffs Anthony Naylor and Carolina Medina in the amount of Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) each, or Fifteen Thousand Dollars and No Cents ($15,000.00) total. The payments serve as an incentive award to encourage aggrieved employees to serve as the LWDA's proxy in undertaking the responsibilities associatied with initiating a PAGA lawsuit and serving in a representative capacity. *See Bell v. Famers Insurance Exchange* (Cal. Ct. App. 2004) 115 Cal.App.4th 715, 726 [9 Cal. Rptr. 3d 544].

Here, Plaintiffs initiated this litigation and invested considerable time and effort to enforce the Labor Code on behalf of the State of California and the PAGA Members, who will now receive monetary payment as a result. Plaintiffs provided Plaintiffs' Counsel with relevant documents and information, provided the facts and evidence necessary to attempt to prove their allegations, and had numerous discussions with Plaintiffs' Counsel about the case. Plaintiffs made themselves available, actively monitored the status of the case, assisted in preparation for mediation, and reviewed the Settlement and discussed its terms with Counsel. Plaintiffs played an instrumental role in the successful litigation of this case. Davis Decl. ¶¶85-88; Brush Decl. ¶¶18. The representative payments serve to recognize the actual risks Plaintiffs assumed by putting themselves on public record in a representative employment lawsuit and obtaining penalties on behalf of the State. Accordingly, it is reasonable for Plaintiffs to receive a modest representative payment of Seven Thousand Five Hundred Dollars and No Cents ($7,500.00) each, or Fifteen Thousand Dollars and No Cents ($15,000.00) total, in recognition of their contributions in obtaining the Settlement. Davis Decl. ¶¶85-88; Brush Decl. ¶¶18.

VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE

Subject to Court approval, the Parties have agreed to utilize Apex Class Action Administrators ("Apex") to handle administration of the Settlement. The total fees and expenses of the Settlement Administrator Payment shall not exceed Six Thousand Nine Hundred Ninety Dollars and No Cents ($6,990.00). These costs include, but are not limited to, expenses for preparing, translating, printing and mailing the cover letter and checks to the PAGA Members, performing skip-traces; remailing returned payments; and handling inquiries from PAGA Members regarding the Settlement. Apex Decl., ¶¶4-6, Ex. B.

Accordingly, Plaintiff respectfully requests that the Court approve payment of administration costs in the amount of Six Thousand Nine Hundred Ninety Dollars and No Cents ($6,990.00) to Apex. Davis Decl. ¶89, Ex. 4. *See also* Apex Decl. ¶¶ 7, Ex. B.

IX. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion Enter Judgment.

DATED: April 14, 2025

PROTECTION LAW GROUP, LLP

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