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13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF FRESNO**

16 LORENA VIDAL and VANESSA PENA-  
17 LEON, individually, and on behalf of other  
aggrieved employees pursuant to the  
18 California Private Attorneys General Act,

19 Plaintiff,

20 v.

21 THE CALIFORNIA HOME FOR THE  
22 AGED, INC., a California corporation, doing  
23 business as CALIFORNIA ARMENIAN  
HOME & THE VINEYARDS and THE  
24 CALIFORNIA ARMENIAN HOME; and  
DOES 1 through 100,

25 Defendants.

Case No.: 21CECG02976  
Assigned for all purposes to the  
Hon. Jeffrey Y. Hamilton, Jr., Dept. 503

**NOTICE OF MOTION AND PLAINTIFFS'  
MOTION FOR APPROVAL OF PAGA  
SETTLEMENT, AWARD OF  
ATTORNEYS' FEES, ENHANCEMENT  
AWARDS, AND REIMBURSEMENT OF  
LITIGATION COSTS; MEMORANDUM  
OF POINTS AND AUTHORITIES**

[DECLARATIONS OF ANTHONY J.  
ORSHANSKY, JACOB N. WHITEHEAD,  
LORENA VIDAL, VANESSA PENA-LEON,  
& JULIE GREEN, AND PROPOSED ORDER  
SUBMITTED CONCURRENTLY  
HEREWITH]

PAGA Settlement Approval Hearing  
Date: August 29, 2023  
Time: 3:30 p.m.  
Dept.: 503

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

2 **PLEASE TAKE NOTICE** that on August 29, 2023 at 3:30 p.m., or as soon thereafter  
3 as the matter may be heard before the Honorable Jeffrey Y. Hamilton, Jr. in Department 503  
4 of the above-captioned court located at 1130 O Street, Fresno, California 93724, PAGA  
5 Representative Plaintiffs Lorena Vidal and Vanessa Pena-Leon (“Plaintiffs”) will and do  
6 hereby move this Court for an order approving the settlement between Plaintiffs and Defendant  
7 The California Home for the Aged, Inc. (“Defendant”; together with Plaintiffs, the “Parties”)  
8 of Plaintiffs’ representative claims for penalties pursuant to the Private Attorneys General Act  
9 of 2004 (“PAGA”) (Lab. Code, §§ 2698, et seq.) on behalf of themselves and other aggrieved  
10 employees.

11 The Parties have reached a settlement of the above-entitled case that disposes of the  
12 matter entirely, and have entered into and fully executed the Joint Stipulation of PAGA  
13 Settlement and Release (“Settlement” or “Settlement Agreement”). However, and pursuant to  
14 statute, settlement of PAGA claims requires court approval. (*See* Lab. Code, § 2699, subd. (l).)  
15 Thus, Plaintiffs seek court approval of the PAGA settlement, so that the matter may be  
16 dismissed once the Parties have complied with all of the mutual terms and conditions of the  
17 settlement. By this Motion, Plaintiffs also seek an award of attorneys’ fees and reimbursement  
18 of litigation costs to Plaintiffs’ counsel, enhancement awards to Plaintiffs, and settlement  
19 administration fees.

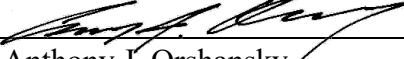
20 This Motion is based on this Notice, the attached Memorandum of Points and  
21 Authorities, the concurrently filed Declarations of Anthony J. Orshansky, Jacob N. Whitehead,  
22 Lorena Vidal, Vanessa Pena-Leon, and Julie Green (for CPT Group, Inc., the Settlement  
23 Administrator), all papers and pleadings on file with the Court in this action, all matters  
24 judicially noticeable, and on such oral and documentary evidence as may be presented in  
25 connection with the hearing on the Motion. The California Labor and Workforce Development  
26 Agency has been served with a copy of this Motion and the Settlement Agreement, as noted  
27 below and in the concurrently submitted supporting declarations.

28 ///

1 Plaintiffs further respectfully request that the Court consider the attached Memorandum  
2 of Points and Authorities, despite it exceeding the page limit for memoranda under California  
3 Rules of Court, Rule 3.1113, subdivision (e), which is 20 pages in length.

4  
5 Dated: June 28, 2023

**COUNSELONE, PC**

6 By: 

7 Anthony J. Orshansky

8 Jennifer L. Connor

**WHITEHEAD EMPLOYMENT LAW**

9 Jacob Whitehead

10 Attorneys for Plaintiffs  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Lorena Vidal and Vanessa Pena-Leon, individually and on behalf of all other  
4 similarly situated aggrieved employees (“Plaintiffs”), reached a settlement of the claims  
5 asserted in this action pursuant to the Private Attorneys General Act of 2004, Labor Code  
6 section 2699, *et seq.* (“PAGA”) against Defendant The California Home for the Aged, Inc.,  
7 doing business as The California Armenian Home (“Defendant” or “CA Home”; Plaintiffs and  
8 Defendant are referred to herein together as the “Parties”). In accordance with Labor Code  
9 section 2699, subdivision (l), Plaintiffs now ask this Court to review and approve the settlement  
10 of Plaintiffs’ PAGA claims, as authorized by the PAGA, on behalf of the California Labor and  
11 Workforce Development Agency (“LWDA”) and hourly paid or non-exempt individuals  
12 employed by Defendant during the Relevant Period (*i.e.*, August 27, 2020 through the date of  
13 approval of the settlement) (hereafter, “PAGA Members” or “Aggrieved Employees”). This is  
14 only a settlement of the PAGA claims for civil penalties; it is not a class settlement, and does  
15 not release the individual non-PAGA wage claims of any affected employees other than those  
16 of the Plaintiffs themselves. (*See* Lab. Code, § 2699, subd. (g)(1); *ZB, N.A. v. Superior Court*  
17 (2019) 8 Cal.5th 175, 182 [unpaid wages are not recoverable under PAGA].) As such, the usual  
18 two-step preliminary and final approval process is not required.

19 The settlement is set forth in the Parties’ Joint Stipulation of PAGA Settlement and  
20 Release (“Settlement Agreement”). A true and correct copy of the Settlement Agreement is  
21 attached as **Exhibit 1** to the Declaration of Jacob N. Whitehead (“Whitehead Decl.”) filed  
22 concurrently herewith. Capitalized terms in this Motion shall have the same meaning as defined  
23 in the Settlement Agreement.

24 The LWDA is being simultaneously served with a copy of this Motion and the  
25 Settlement Agreement (Whitehead Decl. ¶ 40.)

26 **II. RELEVANT FACTS**

27 On August 9, 2021, Plaintiff Lorena Vidal (“Vidal”), who worked as an hourly non-  
28 exempt employee for Defendant in the State of California, filed an action in the San Joaquin

1 County Superior Court on behalf of herself and allegedly aggrieved employees employed by  
2 The California Home for the Aged, Inc., doing business as California Armenian Home (*Lorena*  
3 *Vidal v. The California Home for the Aged, Inc.*, Case No. 21CECG02976, the “Vidal Action”)  
4 alleging seven causes of action against Defendant for: (1) failure to pay wages (Lab. Code, §§  
5 200, 218, 218.5 & 1194); (2) failure to pay overtime wages (Lab. Code, §§ 218, 510 & 1194);  
6 (3) failure to provide complete and accurate wage statements (Lab. Code, §§ 226 & 1174); (4)  
7 failure to timely pay wages and failure to timely pay wages due upon separation or termination  
8 (Lab. Code, §§ 201-204); (5) failure to provide meal and rest breaks (Lab. Code, §§ 226.7, 512,  
9 and 1198); (6) failure to pay minimum wage (Lab. Code, §§ 1194, 1197, 1197.1); and (7) failure  
10 to reimburse work expenses (Lab. Code, §§ 2800, 2802) during the Relevant Period. (Whitehead  
11 Decl. ¶ 9.) Subsequently, the matter was transferred to the Superior Court for the State of  
12 California, County of Fresno. (*Id.* at ¶ 10.)

13 Plaintiff Vanessa Pena-Leon (“Pena-Leon”) later filed a PAGA representative action  
14 against Defendant on August 27, 2021 in Fresno County Superior Court (*Pena-Leon v. The*  
15 *California Home for the Aged, Inc., et al.*, Case No. 21CECG0256 (the “Pena-Leon Action”).  
16 (Whitehead Decl. ¶ 11.)

17 On November 5, 2021, Defendant notified the Plaintiffs that their two actions were  
18 related. The Parties stipulated to consolidate the *Vidal* and *Pena-Leon* Actions. The two actions  
19 were consolidated on January 13, 2022. (Whitehead Decl. ¶ 12.) This now-consolidated action  
20 (the “Action” or “Lawsuit”) is currently pending in the Fresno County Superior Court as Case  
21 No. 21CECG02976. Defendant denied and continues to deny all claims and contentions alleged  
22 by the Plaintiffs in the Lawsuit.<sup>1</sup> (Whitehead Decl. ¶ 19.) The Parties met and conferred in this  
23 Action, and agreed to attend private mediation in an attempt to resolve the litigation, and have  
24 engaged in substantial informal discovery. (*Id.* at ¶ 14.)

---

25  
26 <sup>1</sup> Nonetheless, Defendant has concluded that further litigation would be protracted and expensive,  
27 and would also divert management and employee time. Defendant has taken into account the  
28 uncertainty and risks inherent in litigation, especially in multi-party cases, therefore, has concluded  
that it is desirable that the Lawsuit be fully and finally settled in the manner and upon the terms and  
conditions set forth in the Settlement. Defendant states that it is entering into the Settlement to  
eliminate the burden and expense of further litigation. (Settlement Agreement §§ 2.7, 2.13.)

Counsel for Plaintiffs have thoroughly investigated the facts relating to allegations made in the Lawsuit, and thoroughly researched the legal principles and strategies applicable to the claims asserted against Defendant. (Whitehead Decl. ¶ 13.) In preparation for mediation, Defendant produced payroll records for a sample of Aggrieved Employees and the personnel files for the named Plaintiffs, including employee handbooks, timekeeping policies, payroll records, meal and rest break policies, and purported arbitration agreements, along with providing the total number of Aggrieved Employees during the PAGA period, and counts of former employees, pay periods, and average hourly pay rate, all of which Plaintiffs' counsel reviewed and analyzed in advance of mediation and during the negotiation process. (*Id.* at ¶ 15.) Plaintiffs' counsel also interviewed other Aggrieved Employees. (*Ibid.*) Thus, Plaintiffs' damages calculations were based on review and analysis of the information and documents produced by Defendant, as well as the testimonial and documentary evidence provided by the Plaintiffs and other Aggrieved Employees. (*Ibid.*)

The Parties participated in full-day mediation session with Jill R. Sperber, an experienced neutral and well-respected mediator who is very knowledgeable regarding PAGA claims, and reached an agreement on the essential terms of a settlement with respect to this Lawsuit. (Whitehead Decl. ¶ 16.) The Parties' agreement was subsequently set forth in a written Memorandum of Understanding that was accepted by both Parties, the terms of which are now memorialized in complete and final form in the Settlement Agreement. (*Ibid.*) At all times, the Parties' negotiations were adversarial, non-collusive, in good faith, and at arm's length. (*Ibid.*)

### **III. TERMS OF THE PAGA SETTLEMENT**

The PAGA settlement is subject to Court approval pursuant to Labor Code section 2699, subdivision (1)(2). (Settlement Agreement § 3.3.) The following is a summary of the principal terms of the Settlement Agreement.

#### **A. Aggrieved Employees and Terms of the Settlement.**

As noted above, Aggrieved Employees (also known as PAGA Members), are defined as all hourly-paid or non-exempt individuals employed by Defendant for at least one day between August 27, 2020 and the date the Court approves the Settlement. (Settlement Agreement § 1.9.)

1 Defendant has represented that there are approximately 728 employees who are PAGA  
2 Members, and who have collectively worked 20,400 pay periods during the Relevant Period.  
3 (Whitehead Decl. ¶ 26.)

4 The Settlement Agreement negotiated by the Parties provides for a *non-reversionary*  
5 *Gross Fund Value (“GFV”) payment in the amount of Two Hundred and Forty Thousand*  
6 *Dollars (\$240,000.00)* to resolve the PAGA claims (also referred to as the “PAGA Settlement  
7 Amount”). (Settlement Agreement § 4.1.) Payments to the LWDA and PAGA Members,  
8 attorneys’ fees and litigation costs to Plaintiffs’ counsel, and enhancement award payments to  
9 Plaintiffs, as well as settlement administration fees, will be made from the PAGA Settlement  
10 Amount. (*Id.* at §§ 4.1-4.5.) Specifically, Plaintiffs’ counsel request an award of attorneys’ fees  
11 not to exceed 33% (or \$80,000) of the GFV, plus reimbursement of actual litigation expenses  
12 in the amount of \$10,656.08. (*Id.* at § 4.3.) Plaintiffs also request enhancements awards of  
13 \$10,000 to each Plaintiff (for a total amount of \$20,000) in recognition of their significant time  
14 expended, and services performed, on behalf of PAGA Members and the State of California in  
15 pursuing the Action, for the significant responsibility undertaken by serving as Representative  
16 Plaintiffs, and in exchange for an individual general release of claims by each of them. (*Id.* at  
17 §§ 4.3, 4.6.) Finally, any expenses incurred by the third-party Claims/Settlement Administrator<sup>2</sup>  
18 (with an estimated bid by CPT Group, Inc. of \$8,000) will also be paid from the GFV. After  
19 these deductions, the amount remaining, referred to as the “Net Settlement Amount,” is  
20 estimated to be \$121,343.92. (Whitehead Decl. ¶ 18.)

21 Of the Net Settlement Amount, seventy-five percent (75%) will be paid to the LWDA,  
22 and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees/PAGA  
23 Members (“Individual PAGA Member Payment”). (Settlement Agreement §§ 1.22 and 4.2.)  
24 These allocations are proper under Labor Code section 2699, as explained by *ZB, N.A., supra*,  
25 8 Cal.5th 175.

26  
27 <sup>2</sup> Consistent with the vernacular of the Settlement Agreement, the third-party settlement  
28 administrator is referred to herein as the “Claims Administrator,” but given this the Settlement only  
settles PAGA claims, there is no actual “claims” process.

1       The Individual PAGA Member Payment to each PAGA Member shall be based on the  
2 number of pay periods each PAGA Member worked during the Relevant Period in California,  
3 as a percentage of the total pay periods worked by all PAGA Members during the Relevant  
4 Period in California. (Settlement Agreement §§ 4.2, 4.4.) Individual PAGA Member Payments  
5 to PAGA Members shall be deemed 100% penalties and interest. (*Id.* at § 4.4.) As noted above,  
6 the Relevant Period is defined as August 27, 2020 through the date the Court enters an order  
7 approving this Settlement. (*Id.* at § 1.10.)

8           **B.       The Releases by PAGA Members and Representative Plaintiffs.**

9       Upon entry of judgment, the Released Parties<sup>3</sup> shall be released from the PAGA  
10 Released Claims by PAGA Members. Pursuant to the Settlement Agreement, all PAGA  
11 Members will be deemed to have, and by operation of the Court’s Order granting approval, will  
12 have expressly waived and relinquished, to the fullest extent permitted by law, all penalties  
13 under the PAGA during the Relevant Period, for the following violations: (1) failure to pay  
14 wages (Lab. Code, §§ 200, 218, 218.5 & 1194); (2) failure to pay overtime wages (Lab. Code,  
15 §§ 218, 510 & 1194); (3) failure to provide complete and accurate wage statements (Lab. Code,  
16 §§ 226 & 1174); (4) failure to timely pay wages and failure to timely pay wages due upon  
17 separation or termination (Lab. Code, §§ 201-204); (5) failure to provide meal and rest breaks  
18 (Lab. Code, §§ 226.7, 512, and 1198); (6) failure to pay minimum wage (Lab. Code, §§ 1194,  
19 1197, 1197.1); and (7) failure to reimburse work expenses (Lab. Code, §§ 2800, 2802)  
20 (collectively, the “PAGA Released Claims”). With the exception of Plaintiffs, the Settlement  
21 does not impact PAGA Members’ ability to assert claims, other than PAGA claims, arising  
22 from alleged violations of the Labor Code during the Relevant Period. (Settlement Agreement  
23 § 4.6.)

24       ///

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26       

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<sup>3</sup> The “Released Parties” are defined as: Defendant The California Home for the Aged, Inc., and its  
27 past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors,  
28 predecessors or assigns, and their past, present, and future officers, directors, shareholders, partners,  
agents, owners, insurers, employee, advisors, accountants, representatives, trustees, heirs, executors,  
administrators, predecessors, successors or assigns. (Settlement Agreement § 1.29.)

Under the terms of the Settlement, Plaintiffs will each receive a PAGA Representative Enhancement Award, to be paid in recognition of their respective time and service to PAGA Members and the State of California in pursuing the litigation and fulfilling their obligations as Representative Plaintiffs, and in exchange for their individual general releases including a Civil Code section 1542 waiver (in addition to the release of the PAGA Released Claims), in an amount of \$10,000 each (*i.e.*, \$20,000 in the aggregate). (Settlement Agreement §§ 4.3, 4.6-4.7; *see also* Declaration of Lorena Vidal (“Vidal Decl.”), filed concurrently herewith, *passim*; Declaration of Vanessa Pena-Leon (“Pena-Leon Decl.”), filed concurrently herewith, *passim*.)

**C. Settlement Payments and Notice.**

No later than thirty (30) calendar days following the Effective Date, Defendant shall transfer the PAGA Settlement Amount to the Claims Administrator. (Settlement Agreement § 5.1.) Moreover, notice of the Settlement shall be provided to the Aggrieved Employees in the following manner, as set forth in the Settlement Agreement: Defendant will provide a list containing the contact information, including the last known addresses, of PAGA Members to the Claims Administrator (in a secure manner and on a confidential basis) within thirty (30) calendar days after the Effective Date. (*Ibid.*) Within thirty (30) calendar days after receipt of the PAGA Settlement Amount from Defendant, the Claims Administrator will issue and send to each PAGA Member a check for his or her Individual PAGA Member Payment at his or her last known address, along with an explanatory letter providing notice of the Settlement and its terms and information regarding the payment enclosed therewith (*e.g.*, Notice of Settlement of PAGA Representative Action (“PAGA Payment Letter”)). A true and correct copy of the proposed PAGA Payment Letter is attached as **Exhibit 2** to Whitehead Decl. Checks will remain negotiable for a period of 120 days, after the expiration of which, any uncashed checks will be redistributed to the State of California’s Unclaimed Property Fund. (*Id.* at § 4.17.)

Any Individual PAGA Member Payment checks returned as undeliverable on or before the check cashing deadline will be promptly sent via First Class U.S. Mail to any forwarding address affixed thereto. (Settlement Agreement § 5.2.) In the event an Individual PAGA Member Payment check is returned to the Claims Administrator as undeliverable without a

forwarding address, the Claims Administrator will conduct a skip-trace and re-mail the returned check to any address located as a result thereof. (*Ibid.*) The expense of such investigation/search shall be included in the Claims/Settlement Administration Costs. (*Ibid.*) If a PAGA Member contacts the Claims Administrator (or any party’s counsel) with a new address within thirty (30) days of the date that checks are initially mailed to the PAGA Members, the Individual PAGA Member Payment check for that PAGA Member will be reissued and mailed to the new address no later than five (5) days after receipt of the new address for that PAGA Member. (*Id.*) Any such reissued check will indicate on its face that it is void if not negotiated within sixty (60) days of its issuance. (*Ibid.*) Finally, in the event any interest is earned on any portion of the monies allocated to PAGA Members, Plaintiffs’ counsel, the Representative Plaintiffs, and/or the Claims Administrator, such interest will be paid to the State Bar of California, Legal Services Trust Fund Program, as a donation to the legal aid programs funded by the State Bar of California. (*Id.* at § 5.3.)

#### IV. THE PAGA SETTLEMENT SHOULD BE APPROVED

Labor Code section 2699, subdivision (l), requires that the Court “shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” As such, and as noted above, simultaneously with this Motion’s filing, the Settlement Agreement is being submitted to the LWDA, along with a copy of this Motion. (*See Whitehead Decl.* ¶ 40.)

The statute does not explain what exactly the trial court should consider when reviewing a proposed PAGA settlement. However, the Court of Appeal in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided some guidance. The Court explained that “many federal district courts have applied the ‘fair, reasonable, and adequate’ standard from class action cases to evaluate PAGA settlements.” (*Id.* at pp. 75-76.) Specifically, the Court stated:

Despite the fact that “‘a representative action under PAGA is not a class action’”, and is instead a “type of qui tam action”, a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate. Class actions and PAGA representative actions have many differences, with one salient difference being that certain due process protections afforded to

1 unnamed class members are not part of PAGA litigation because aggrieved  
2 employees do not own personal claims for PAGA civil penalties. Nonetheless, the  
3 trial court must “review and approve” a PAGA settlement, and the Supreme Court  
has in dictum referred to this review as a “safeguard[.]”

4 (*Id.* at pp. 76-77 [internal citations omitted].) Thus, the *Moniz* Court held that the trial court  
5 should review PAGA settlements to determine whether they are fair, adequate, and reasonable.  
6 (*Ibid.*) Moreover, “because many of the factors used to evaluate class action settlements bear  
7 on a settlement’s fairness,” some useful criteria include: the strength of the plaintiff’s case; the  
8 risk, the stage of the proceeding, the complexity and likely duration of further litigation; and  
9 the settlement amount. (*Id.* at p. 77.) Based on application of such criteria to the matter *sub*  
10 *judice*, which embodies all of the key features, the Parties now respectfully ask the Court to  
11 review and approve the proposed Settlement.

12 **A. The Relative Strength of the PAGA Claims and the Realistic Range of**  
13 **Outcomes in the Litigation Strongly Favor Approval of the Settlement.**

14 Here, the relative strength of the PAGA claims brought by Plaintiffs weigh in favor of  
15 the Court finding that the Settlement is fair, adequate, and reasonable, since there are significant  
16 risk factors that Plaintiffs would face if they did not settle this matter.

17 As a threshold matter, this PAGA litigation presents itself amidst the challenging context  
18 of the United States Supreme Court’s June 15, 2022 decision in *Viking River Cruises, Inc. v.*  
19 *Moriana* (2022) 142 S.Ct. 1906, which poses significant risks. Post-*Viking River*, the landscape  
20 of PAGA litigation statewide has been significantly altered, and the ramifications will take  
21 months, if not years, to be fully realized in California trial and appellate courts. (*See, e.g.,*  
22 *Adolph v. Uber Technologies, Inc.* (Cal. Ct. App., Apr. 11, 2022) 2022 WL 1073583, review  
23 granted (July 20, 2022);<sup>4</sup> *see also Jarobe v. Hanlees Auto Group* (2020) 53 Cal.App.5th 539  
24 [recognizing courts are vested with discretion to stay inarbitrable claims pending arbitration].)

25  
26 <sup>4</sup> The issue to be briefed and argued in *Adolph, supra*, is limited to the following: “Whether an  
27 aggrieved employee who has been compelled to arbitrate claims under the Private Attorneys General  
28 Act (PAGA) that are ‘premised on Labor Code violations actually sustained by’ the aggrieved  
employee [citation] maintains statutory standing to pursue ‘PAGA claims arising out of events  
involving other employees’ [citation] in court or in any other forum the parties agree is suitable.”

1 Although Plaintiffs’ counsel anticipate an employee-favorable ruling from the California  
2 Supreme Court in *Uber Technologies*, an adverse ruling could be fatal to PAGA Members  
3 obtaining any recovery on a representative basis. This Settlement obviates those risks and  
4 delays.

5 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove  
6 each of the underlying Labor Code violations. (*See Cardenas v. McLane Foodservice, Inc.*  
7 (C.D.Cal. 2011) 2011 U.S. Dist. LEXIS 13126, at \*10 [“Given the statutory language [of  
8 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven  
9 suffered a violation of the Labor Code by the defendant.”]; Whitehead Decl. ¶ 26.) In other  
10 words, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for  
11 each period the employee worked in relation to meal or rest period violations, off-the-clock  
12 work, failure to pay minimum or overtime wages, failure to provide accurate itemized wage  
13 statements, failure to maintain accurate payroll records, failure to pay wages when due, and  
14 failure to reimburse for required expenses. (*Ibid.*)

15 Defendant denied and continues to deny all the claims and contentions alleged by the  
16 Representative Plaintiffs in the Lawsuit. (Whitehead Decl. ¶ 19.) Defendant also maintained,  
17 and continues to maintain, that it had legally compliant employment policies and practices  
18 throughout the time period at issue. (*Ibid.*) Even assuming, *arguendo*, that such Labor Code  
19 violations occurred, which Defendant denies, Defendant contends that said violations would  
20 only be considered “initial violations” and thus heightened “subsequent violation” penalties are  
21 not warranted where the violations were not intentional. (*See* Lab. Code, § 2699, subd. (f)(2);  
22 *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 [“Until the  
23 employer has been notified that it is violating a Labor Code provision [...], the employer cannot  
24 be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject  
25 to penalties.”].)

26 An important feature of the PAGA is that the Court retains discretion to lower penalties,  
27 based on the facts and circumstances of the particular case, if not doing so would otherwise  
28 result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*See* Lab. Code, §

1 2699, subd. (e)(2); *see also* *Thurman v. Bayshore Transit Management, Inc.* (2012) 203  
2 Cal.App.4th 1112, 1136 [holding that a court may reduce the amount of PAGA penalties  
3 awarded to an employee based upon discretionary factors].) Under the PAGA, Courts have  
4 considerable discretion to reduce the penalty award. In *Fleming v. Covidien* (C.D.Cal. 2011)  
5 2011 U.S. Dist. LEXIS 154590, a federal court reduced PAGA penalties from \$2,800,000 to  
6 \$500,000, a reduction of 82.2%, because the court found maximum penalties “unjust,” finding  
7 the employees had suffered no injuries. Some trial courts have actually awarded no civil  
8 penalties, even when Labor Code violations were established. (*See Makabi v. Gedalia* (Mar. 2,  
9 2016, No. B261005) \_\_\_ Cal.App.5th \_\_\_ [2016 Cal. App. Unpub. LEXIS 1489, at \*5-7] [no  
10 PAGA penalties were awarded by the Los Angeles County Superior Court]; *In re Taco Bell*  
11 *Wage & Hour Actions* (E.D.Cal. Apr. 6, 2016) 2016 U.S. Dist. LEXIS 48557, at \*40-43 [PAGA  
12 penalties denied after trial].) By contrast, under the Settlement Agreement, the amount made  
13 available as PAGA Settlement Amount is a sum certain of \$240,000. The amount is a significant  
14 penalty, yet is not confiscatory, nor is it, per the terms of the PAGA statute, “unjust, arbitrary,  
15 or oppressive.” (Lab. Code, § 2699, subd. (e)(2).)

16 Finally, Defendant denied, and continues to deny, that Plaintiffs’ Lawsuit is appropriate  
17 for representative treatment for any purpose other than settlement. (Whitehead Decl. ¶ 20.)  
18 Although wage-and-hour actions are amenable to resolution as to a group of employees, Defendant  
19 contended that some courts have also found that, for various reasons, the issues raised by Plaintiffs  
20 are individual issues, and/or are unmanageable, and thus not suitable for adjudication as to a group  
21 of employees. (*Ibid.*) Defendant contended that courts have required, and that due process  
22 requires, that the adjudication of PAGA claims meet a “manageability” requirement. (*See, e.g.,*  
23 *Liu v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014, No. CV-14-0425-PA) 2014 WL 5904904,  
24 at \*3-4 [Court dismissed the PAGA claim because a multitude of individualized assessments  
25 would be necessary, making the PAGA claim unmanageable]); Whitehead Decl. ¶ 20.)  
26 Specifically, Defendant argued that numerous individualized inquiries would be needed to  
27 determine liability on Plaintiffs’ claims, including: (1) whether aggrieved employees worked  
28 off-the-clock with knowledge of a supervisor or Defendant; (2) whether each individual took a

1 particular meal period or rest break on a particular occasion; (3) whether the meal period was  
2 waived; and (4) where the individual skipped the meal or rest period, why it was skipped for  
3 each of the allegedly Aggrieved Employees. (Whitehead Decl. ¶ 20.) Defendant argued that the  
4 litigation would be unmanageable, given that the allegations encompass hundreds of individuals  
5 with varying job positions across multiple departments.

6 While Plaintiffs disagree with Defendant's contentions and maintain that their PAGA  
7 claims have merit, in reaching the settlement, Plaintiffs and their counsel took into account the  
8 strengths and weaknesses of each side's position and uncertainty as to how the case would  
9 progress as litigation continued, and the outcome of a potential trial and/or appeals. (Whitehead  
10 Decl. ¶ 21.) Defendant's defenses present risks to the PAGA claims and the potential that some  
11 or all of the PAGA penalties sought may not be awarded. (*Ibid.*) Thus, the Settlement reached  
12 here is reasonable in light of significant risk and uncertainties associated with the PAGA claims  
13 in this case.

14 **B. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in**  
15 **Favor of Approval of the Settlement.**

16 Here, the expense, complexity, and likely duration of future litigation were, to some  
17 extent, unknown. However, what is certain in this case is that to adequately establish the  
18 foundational violations that would support a substantial penalty award, investment of  
19 tremendous time and expense would be required. To adequately establish that aggrieved  
20 employees experienced the alleged violations, and at what frequency, most of the aggrieved  
21 employees would need to be interviewed in a systematic fashion and their testimony cataloged  
22 in a sufficiently meaningful way, so as to permit the submission of summary evidence at trial  
23 (*i.e.*, such as planning and implementing an illustrative survey.) *First*, the burdensome nature  
24 of such a process would be expensive and time-consuming. *Second*, the interviews and factual  
25 investigation already undertaken by Plaintiffs' counsel confirmed substantial risk that the Court  
26 would either substantially reduce any penalty ultimately awarded, *or* conclude that the conduct  
27 was insufficient to support a penalty award. *Third*, it would be essentially impossible to  
28 formulate an objectively reliable means of summarizing testimonial experiences, other than by

1 an extraordinarily detailed survey. And formulating such a survey would have been important,  
2 since frequency of violations would need to be established before any penalties could be  
3 recovered. (Whitehead Decl. ¶ 22.) Alternatively, direct testimony would have been required  
4 from as many of the 728 Aggrieved Employees as could be obtained, which would be, at best,  
5 extremely difficult. (*Ibid.*) The evidence collected to date lead Plaintiffs to conclude that, to the  
6 extent violations occurred, a fact which Defendant disputes, the violations were not systematic  
7 and not uniform across all of Defendant's employees who worked during the Relevant Period.  
8 (*Ibid.*)

9 **C. The PAGA Settlement Amount Is Fair, Adequate, and Reasonable.**

10 The Parties believe that the PAGA Settlement Amount is fair, adequate, and reasonable  
11 and therefore should be approved. "In determining whether the proposed settlement falls within  
12 the range of reasonableness, perhaps the most important factor to consider is plaintiffs'  
13 expected recovery balanced against the value of the settlement offer." (*Cotter v. Lyft, Inc.*  
14 (N.D.Cal. 2016) 176 F.Supp.3d 930, 935 [internal quotation omitted].) Here, the relative  
15 strength of the PAGA claims brought by Plaintiffs weigh in favor of the Court finding that the  
16 settlement is fair, adequate, and reasonable, since there are significant risk factors that Plaintiffs  
17 would face if they did not settle this matter.

18 Most significantly, the ultimate decision as to the amount of penalties is always up to  
19 the discretion of the Court. Labor Code section 2699, subdivision (e)(2), states: "[i]n any action  
20 by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a)  
21 or (f), a court may award a lesser amount than the maximum civil penalty amount specified by  
22 this part if, based on the facts and circumstances of the particular case, to do otherwise would  
23 result in an award that is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a)  
24 states:

25 Notwithstanding any other provision of law, any provision of this code that  
26 provides for a civil penalty to be assessed and collected by the Labor and  
27 Workforce Development Agency or any of its departments, divisions,  
28 commissions, boards, agencies, or employees, for a violation of this code, may,  
as an alternative, be recovered through a civil action brought by an aggrieved  
employee on behalf of himself or herself and other current or former employees  
pursuant to the procedures specified in Section 2699.3.

1 (Lab. Code, § 2699, subd. (a).) Subdivision (f) specifies the penalties in instances where the  
2 underlying statute does not specify any civil penalty. In other words, where the facts and  
3 circumstances of the case demonstrate that an unreduced award would be “unjust, arbitrary and  
4 oppressive, or confiscatory,” the court may reduce the award to ameliorate such. (*See* Lab.  
5 Code, § 2699, subd. (e)(2).)

6 In *Cotter*, the court found a significant reduction of the PAGA claim would be  
7 appropriate because “[t]his does not appear to be a case where a company has deliberately  
8 sought to evade the law.” (*Cotter, supra*, 176 F.Supp.3d at p. 941.) Here, Defendant can state a  
9 strong case that, as the Court concluded in *Cotter*, its efforts to devise compliant operational  
10 policies do not indicate an organization that has deliberately sought to evade the law. This is a  
11 very significant risk factor. Defendant also disputes that Plaintiffs could find a coherent method  
12 for proving liability for the 728 employees working in different departments and/or job  
13 positions in Defendant’s nursing and residential care facility. Establishing violations for  
14 purposes of the PAGA would be difficult in this matter. After analyzing the claims in this  
15 matter, Plaintiffs have concluded that the value of this Settlement is fair, adequate, and  
16 reasonable. (Whitehead Decl. ¶ 23; Declaration of Anthony J. Orshansky (“Orshansky Decl.”),  
17 filed concurrently herewith, at ¶¶ 14, 21.)

18 Using the most straightforward formulation by applying the “catch-all” \$100 penalty  
19 specified in Labor Code section 2699, subdivision (f)(2), to each pay period per employee for  
20 all of the estimated 20,400 pay periods, the maximum plausible exposure is \$2,040,600.  
21 (Whitehead Decl. ¶ 26.) The PAGA Settlement Amount of \$240,000 is about 12% of that  
22 estimated exposure value. (*Ibid.*) Thus, based on this method of calculation, this PAGA  
23 Settlement Amount compares favorably to the estimated amount of PAGA penalties. When  
24 considering the serious risks discussed herein—especially *Viking River Cruises* and its  
25 progeny—and the Court’s inherent power to adjust penalties downward to reflect an employer  
26 that sought to be in compliance with wage and hour laws even if mistakes were sometimes  
27 made, the compromise figure is reasonable. (*Ibid.*)

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1 The LWDA has released data on PAGA settlement amounts. The settlement secured by  
2 Plaintiffs here is greater than other PAGA penalty awards approved by California state courts,  
3 which often range between \$7,500 and \$15,000 for PAGA claims impacting hundreds or  
4 thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis.  
5 (*See, e.g., Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County, May 20, 2013, No.  
6 BC471369) 2013 WL 2917624, at \*2 [approving PAGA penalties of \$5,000.00 to class of 667  
7 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County, March 12,  
8 2013, No. BC485259) 2013 WL 1182822 [approving PAGA penalties of \$10,000.00 for class  
9 of approximately 3,000 members].)

10 For example, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the Court of  
11 Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay  
12 period. Therefore, at trial in the instant matter, any PAGA penalties awarded could be  
13 significantly less than Plaintiffs' calculation, even *if* Plaintiffs prevailed on the PAGA claim. If  
14 the amount of \$5 per pay period from *Carrington* is used, the potential recovery of civil  
15 penalties would be only \$74,130 which is less than this settlement provides. The result achieved  
16 in this case, and the monetary recovery provided by this settlement, are well within the range  
17 of an acceptable settlement under the circumstances, especially when compared to the  
18 settlement of PAGA claims in other cases.<sup>5</sup> (Whitehead Decl. ¶ 28.)

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22 <sup>5</sup> *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP433 (May  
23 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims);  
24 *Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 31, 2012) 2012 WL 5364575, at \*3 (approving the  
25 amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller v. David's*  
26 *Bridal, Inc.* (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 WL 2117001, at \*14  
27 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu v. Wells*  
28 *Fargo Investments, LLC* (N.D.Cal. Feb. 16, 2011) 2011 WL 672645, at \*1 (approving the amount  
of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food Products,*  
*Inc.* (E.D.Cal. Nov. 27, 2012) 2012 WL 5941801, at \*14 (approving the amount of \$10,000 out of  
\$2.5 million toward settlement of PAGA claims); *Nordstrom Com. Cases* (2010) 186 Cal.App.4th  
576 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0  
toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained  
for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in  
fulfillment of the objectives of the PAGA statute.

**D. The Presence of a Government Participant.**

As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith, Labor Code section 2699.3, subdivision (b)(4), permits the LWDA to comment on the penalties. This provides an independent check on collusive settlements. The LWDA has been provided with a copy of this Motion and the Settlement Agreement, thereby providing notice. (Whitehead Decl. ¶ 40.) The decision of the LWDA to accept the PAGA Settlement and not oppose this Motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent employees, as with a class action settlement, given this PAGA-only settlement does not release the individual claims of absent employees and that the LWDA is a sophisticated government entity highly capable of protecting its own interests.

**E. PAGA Settlement Counsel Are Experienced and Negotiated Aggressively.**

The Court may also consider that negotiations between the Parties were conducted at arm's length and in an adversarial manner, despite a mutual desire to resolve the case. (Whitehead Decl. ¶ 16.) The Court may also consider the opinion of all counsel that the settlement arrived at is fair, reasonable and in the best interests of the aggrieved employees. Plaintiffs' counsel are experienced with employment class actions and representative actions, as set forth more fully in the concurrently filed Declarations of Jacob N. Whitehead and Anthony J. Orshansky.

**F. The Parties' Substantial Investigation and Exchange of Data Favor Approval.**

In evaluating the Parties' basis for valuing a settlement, "formal discovery is not a necessary ticket to the bargaining table." (*Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1239.) Here, the substantial exchange of data was sufficient to enable Plaintiffs' counsel to evaluate the strength and value of the claim for purposes of settlement. (Whitehead Decl. ¶ 15.) As discussed above, Plaintiffs' counsel interviewed other Aggrieved Employees; reviewed personnel files, timekeeping policies, meal and rest break policies, payroll records, employee handbooks, and purported arbitration agreements; performed qualitative and quantitative analyses of Defendant-produced data, including the number of Aggrieved Employees during the PAGA period, and counts of former employees, pay periods, and average

1 hourly pay rates; and analyzed time and pay records to assess exposure and risk. (*Ibid.*) Based  
2 on Plaintiffs' counsels' experience litigating wage and hour claims, such investigation was  
3 sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of  
4 these claims for purposes of settlement. (*Ibid.*)

5 **G. These Relevant Factors Weigh in Favor of the PAGA Settlement.**

6 In summary, while Plaintiffs believe that the claims asserted in the Lawsuit have merit  
7 and that the evidence developed to date is supportive, they recognize and acknowledge the  
8 expense and length of the continued proceedings necessary to prosecute the case against  
9 Defendant through trial and appeals. Plaintiffs' counsel have also taken into account the  
10 uncertain outcome and risk of any litigation, especially in complex actions such as this one, as  
11 well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' counsel  
12 are together mindful of the inherent problems, including the risk of not being able to maintain  
13 representative claims, the difficulty of proving Plaintiffs' claims in a manageable trial, and the  
14 possible merits of Defendant's alleged defenses. Since the terms set forth in the Settlement  
15 Agreement confer substantial monetary benefits in the face of genuine risks to any recovery at  
16 all, and after considered, careful evaluation, Plaintiffs' counsel have determined that the  
17 Settlement is in the best interests of the Representative Plaintiffs, the State of California, and  
18 the PAGA Members.

19 **V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

20 Plaintiffs' counsel seek approval of attorneys' fees in the amount of \$80,000, which  
21 represents one-third (or 33.3%) of the \$240,000 PAGA Settlement Amount. The Court-approved  
22 attorneys' fees award will be split between Plaintiffs' counsel CounselOne and Whitehead  
23 Employment Law by shares of 50% and 50%, respectively, as agreed upon by counsel and  
24 Plaintiffs.

25 Pursuant to Labor Code section 2699, subdivision (g)(1), the prevailing party in a PAGA  
26 action is entitled to reasonable attorneys' fees and costs. Though Plaintiffs are not claiming that  
27 they are prevailing parties, the settlement of a PAGA action must consider the fees that have  
28 been incurred as an element of the liability analysis and ultimate settlement.

1 First, the requested fees are justified as a percentage of the settlement amount, given  
2 that recovery akin to a common fund for the benefit of others was achieved. Plaintiffs' counsel  
3 negotiated a recovery of \$240,000, and this result justifies the requested fees which are equal  
4 to one-third of this recovery. This percentage is reasonably comparable to the general, standard  
5 contingent recovery percentage of 33.3% in similar cases, as was expressly approved by the  
6 Supreme Court in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 504. Here, Plaintiffs'  
7 counsel represented Plaintiffs (and the State of California) on a strictly contingency basis and,  
8 as such, had to forego other financial opportunities such as litigating other cases (contingency  
9 and hourly), and incurred the risk of non-recovery after investment of time, money, and  
10 resources, while having proceeded with Plaintiffs' representation since the inception of this  
11 case without payment or compensation. (Whitehead Decl. ¶¶ 33-37.)

12 Moreover, the attorneys' fees award requested is also consistent with what courts have  
13 awarded in other PAGA representative actions. There follows a sampling of PAGA actions and  
14 PAGA/class action cases where attorneys' fees were awarded on a common fund basis ranging  
15 between 33.33% and 40%:

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

19 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior  
20 Court Case No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of PAGA-  
21 only claims);

22 • *Birch v. Office Depot*, United States District Court for the Southern  
23 District of California Case No. 06-cv-1690-DMS (**40% fee awarded** on \$16,000,000 settlement  
24 of mixed PAGA/class claims);

25 • *Zelada v. Majestic Terminal Services*, San Bernardino County Superior  
26 Court Case No. CIVDS1916968 (**38% fee awarded** on \$1,800,000 settlement of PAGA-only  
27 claims); and  
28

1                   •       *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-  
2 2014-00720574-CU-OE-CXC (**33.33% fee awarded** on \$1,030,000 settlement of PAGA-only  
3 claims).

4           According to a leading treatise on class actions, “[n]o general rule can be articulated on what  
5 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a  
6 reasonable fee award from a common fund in order to assure that the fees do not consume a  
7 disproportionate part of the recovery obtained for the class, although somewhat larger percentages  
8 are not unprecedented.” (Conte & Newberg, 3 *Newberg on Class Actions* (3rd Ed. 1992) § 14.03.)  
9 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty*  
10 *to forty percent commonly awarded in cases where the settlement is relatively small.* (*Ibid.*; see  
11 also *Van Vranken v. Atlantic Richfield Company* (N.D.Cal. 1995) 901 F.Supp. 294 [stating that most  
12 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)  
13 While this is not a class action, again, California courts routinely approve attorneys’ fees awards  
14 “average[ing] around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43,  
15 66 fn. 11 [lower court found the range of contingency fees in marketplace to be up to 40 percent and  
16 determined such a percentage fee was appropriate].) Plaintiffs’ counsel’s application for attorneys’  
17 fees in light of the facts and circumstances surrounding the case is well within the range of  
18 reasonableness.

19           Second, the attorneys’ fees award requested is justified by the lodestar cross-check  
20 method. Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness  
21 of fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte*,  
22 *supra*, 1 Cal.5th at p. 506.) This Court can and should award attorneys’ fees and costs based on  
23 the percentage fee alone in light of the excellent results achieved and for the reasons stated.  
24 Nevertheless, the lodestar “cross-check” here also supports the requested contingency-fee  
25 percentage. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48; see also Whitehead Decl. ¶ 35 [attesting  
26 to 110.5 hours worked by Whitehead Employment Law] and **Exhibit 3** [Attorney Time and  
27 Expenses/Costs Breakdown]; Orshansky Decl. ¶ 17 [attesting to 99.2 hours worked by  
28

CounselOne, PC] and **Exhibit A** [Attorney Time Breakdown].)<sup>6</sup> Adding together the sums of the 110.5 hours at the indicated hourly rates spent by attorneys at Whitehead Employment Law and the 99.2 hours at the indicated hourly rates spent by attorneys at CounselOne, PC results in a ***\$137,330 aggregated lodestar*** for the work performed by Plaintiffs' counsel. (Whitehead Decl. ¶ 35.) When cross-checked with the requested attorneys' fees of \$80,000, however, the result is a ***negative multiplier***. (*Ibid.*) Accordingly, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness.

Finally, Plaintiffs' counsel also seek reimbursement of actual out-of-pocket litigation costs incurred, in the ***aggregate amount of \$10,656.08***. Litigation costs incurred and requested by Whitehead Employment Law total \$5,238.61. (Whitehead Decl. ¶ 36 and **Exhibit 3**.) Litigation costs incurred and requested by CounselOne, PC total \$5,417.47. (Orshansky Decl. ¶ 20 and **Exhibit B** [Expense Spreadsheet].) The litigation costs incurred by Plaintiffs' counsel in this matter benefited Plaintiffs, the LWDA, and PAGA Members, were of the type routinely billed by attorneys in such litigation, and were reasonably and necessarily incurred. Given that the \$10,656.08 in actual litigation costs are reasonable and uncontested, they should be approved.

#### **VI. THE ENHANCEMENT AWARDS TO PLAINTIFFS ARE REASONABLE**

As part of the settlement, the Parties seek Enhancement Awards to be paid to the Representative Plaintiffs in recognition of their respective time and service to PAGA Members and the State of California in pursuing this Action and in fulfilling their obligations as lead Aggrieved Employees, and in exchange for their general release of claims against Defendant, in an amount of \$10,000 to each of them (for a total amount of \$20,000). (Settlement Agreement §§ 1.19, 4.3, 4.6.) The Parties acknowledge that Plaintiffs took significant risks in bringing this litigation and actively supporting its prosecution. (Whitehead Decl. ¶ 38.) Numerous other state courts have previously approved service awards and/or individual settlement payments to

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<sup>6</sup> Plaintiffs' counsel will also expend future attorney time in attending the hearing on this Motion, overseeing the notice and administration process, and addressing questions from PAGA Members, among other tasks. (Orshansky Decl. ¶ 17.)

1 PAGA representatives in amounts that demonstrate the reasonableness of Plaintiffs’ request.  
2 (*See, e.g., Garrett v. Bank of America* (Oct. 28, 2016) Alameda County Superior Court Case  
3 No. RG13699027 [awarding three PAGA plaintiffs \$25,000 each as service awards]; *Brewer v.*  
4 *Connell Chevrolet*, Orange County Superior Court Case No. 30-2016-00852123 [approving a  
5 PAGA representative awarded as an individual settlement payment of \$15,000]; *Jones v. J.C.*  
6 *Penny Corp.*, Los Angeles County Superior Court Case No. BC451823 [awarding PAGA  
7 representative a service award of \$10,000]; and *Garcia v. Macy’s West Stores*, San Bernardino  
8 County Superior Court Case No. CIVDS1516007 [approving a PAGA settlement and service  
9 award of \$10,000].)

10 Here, Plaintiffs spent a significant amount of time assisting Plaintiffs’ counsel with the  
11 prosecution of this action, and, among other things, performing the following tasks: (1)  
12 regularly speaking with their attorneys; (2) providing relevant legal and factual information;  
13 (3) evaluating and producing relevant documents; (4) identifying potential witnesses; (5)  
14 discussing discovery and penalties issues; (6) participating in and being available during the  
15 mediation process; (7) reviewing, discussing, evaluating the terms of and signing the Settlement  
16 Agreement; and (8) regularly requesting updates on the status of the case. (Vidal Decl. ¶ 5;  
17 Pena-Leon Decl. ¶ 8; Whitehead Decl. ¶ 39; Orshansky Decl. ¶ 24.) Plaintiffs will not “benefit  
18 financially” from this Settlement in any meaningful sense, yet they have obtained a substantial  
19 payment for the State of California and for other PAGA Members. (Vidal Decl. ¶ 6; Pena-Leon  
20 Decl. ¶ 11; Whitehead Decl. ¶ 39; Orshansky Decl. ¶ 25.) Thus, the Enhancement Award to  
21 each Plaintiff is justified, reasonable, and should be approved.

## 22 **VII. CONCLUSION**

23 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA  
24 settlement as set forth in the Settlement Agreement and enter the Proposed Order and Judgment  
25 submitted concurrently herewith.

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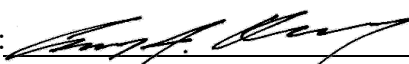
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Dated: June 28, 2023

**COUNSELONE, PC**

By:   
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