Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Lilit Ter-Astvatsatryan (SBN 320389)
Michael Citrin (SBN 335033)
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: afeghali@moonlawgroup.com
E-mail: lilit@moonlawgroup.com
E-mail: mcitrin@moonlawgroup.com

Attorneys for Plaintiff Teodoro C. Deguzman

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

TEODORO C. DEGUZMAN, individually, and on behalf of all others similarly situated, Plaintiff, vs. FATE THERAPEUTICS, INC., a Delaware corporation; BIO PHASE SOLUTIONS, a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No.: 37-2021-00038877-CU-OE-CTL <u>REPRESENTATIVE ACTION</u> **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT** [Filed with (1) the Declaration of Kane Moon, (2) the Declaration of Plaintiff, (3) the Declaration of Lisa Mullins, (4) [Proposed] PAGA Approval Order, and (5) [Proposed] Judgment] <u>PAGA APPROVAL HEARING</u>: Date: September 4, 2026 Time: 10:30 a.m. Dept.: C-70 Judge: Carolyn Caietti **Reservation Number: 100738** Action filed: September 13, 2021 Trial date: Not set

TO THIS HONORABLE COURT, TO ALL PARTIES, AND TO COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 4, 2026 at 10:30 a.m. in Department C-70 of the San Diego County Superior Court, Hall of Justice Courthouse, 330 West Broadway, San Diego, California 92101, Plaintiff Teodoro C. Deguzman ("Plaintiff") will, and hereby does, move the Court for an Order and Judgment, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

1. Approving the Private Attorneys General Act Settlement Agreement ("Settlement") between Plaintiff and Defendants Fate Therapeutics, Inc. and BioPhase Solutions, Inc.;
2. Appointing Kane Moon, Allen Feghali, Lilit Ter-Astvatsatryan, and Michael Citrin of Moon Law Group, PC as Plaintiff's Counsel;
3. Approving the requested Attorneys' Fees of $35,000.00;
4. Approving the requested Attorneys' Costs of $15,082.40;
5. Appointing Plaintiff as the PAGA representative and approving a $5,000.00 enhancement award to him;
6. Appointing ILYM Group as the Settlement Administrator and approving a $2,850.00 as the administration costs;
7. Approving the scope of the PAGA Released Claims and Released Parties;
8. Approving a non-reversionary Gross Settlement Amount of at least $100,000.00;
9. Approving at least $42,067.60 for PAGA penalties as settlement of the Released Claims, to be distributed as 75% (at least $31,550.70 to the LWDA) and 25% (at least $10,516.90 to Aggrieved Employees);
10. Directing consummation of the Settlement pursuant to its terms and provisions;
11. Entering Judgment and dismissing the above-captioned action with prejudice; and
12. Retaining jurisdiction over the Parties, this action, and this Settlement, including following any entry of Judgment for purposes of enforcement, interpretation, settlement administration, and any post-Judgment issues that arise.

This Motion is based upon this notice, the attached Memorandum of Points and Authorities, the declarations and exhibits filed concurrently herewith, the records and files in this action, and any other further records or argument that the Court may properly receive at or before the hearing.

///

Respectfully submitted,

DATED: February 5, 2026

MOON LAW GROUP, PC

By:______________________________________

Kane Moon
Allen Feghali
Lilit Ter-Astvatsatryan
Michael Citrin
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Teodoro C. Deguzman ("Plaintiff") seeks approval of a non-reversionary $100,000.00 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). After a full day of mediation with experienced and neutral mediator Michael Ludwig, Esq., and months of extended settlement negotiations, Plaintiff reached a resolution with Defendants Fate Therapeutics, Inc. and BioPhase Solutions, Inc. ("Defendants") (collectively, Plaintiff and Defendants are the "Parties"). The Parties have executed a Settlement Agreement (the "Settlement"), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of Kane Moon in Support of Motion for Approval of Private Attorneys General Act Settlement Agreement ("Moon Decl.") submitted concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiff now files this motion seeking an order approving the proposed Settlement.

The Settlement resolves all claims for civil penalties under PAGA that arose during the PAGA Period and that were alleged in the above-captioned matter ("Action"). For purposes of settlement, the "PAGA Period" is the period from November 13, 2020 to October 8, 2025. (Settlement, ¶ I(11).) This Settlement is on behalf of the California Labor and Workforce Development Agency (the "LWDA"), Plaintiff, and all BioPhase Solutions, Inc. employees who worked for Fate Therapeutics, Inc. in the State of California as hourly-paid and/or non-exempt employees at any time during the PAGA Period ("Aggrieved Employees"). (*Id.* at ¶ I(2).)

Settlement of a PAGA claim requires court approval. Pursuant to the operative PAGA statute, the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable. Specifically, the issue is whether the PAGA penalties to which the parties have agreed provide "genuine and meaningful" relief that is "consistent with the underlying purpose of the statute to benefit the public," and whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at *5; *see also O'Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as (1) it is the product of an arm's-length negotiation, (2) negotiated by attorneys experienced in wage and hour litigation, (3) following sufficient investigation necessary to evaluate the relative strength and value of the PAGA claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the LWDA and the estimated **45** Aggrieved Employees will, cumulatively, receive no less than **$42,067.60** as PAGA penalties. (Moon Decl., ¶ 21.) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendants, but also because an investigation by experienced PAGA counsel and analysis of discovery revealed minimal identifiable violations, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and current state of the law. For these reasons, as set forth more fully below, Plaintiff respectfully requests the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Defendant BioPhase Solutions, Inc. is a staffing agency with at least three California locations specializing in placing employees in the biotech industry, and Defendant Fate Therapeutics, Inc. is a biopharmaceutical company with a corporate headquarters in San Diego. (Moon Decl., ¶ 4.) Plaintiff was hired by the staffing agency BioPhase Solutions, Inc. and placed at Fate Therapeutics, Inc. as an IT Service Desk Associate from approximately March 2021 to June 2021. (*Id.*) Throughout his employment, Plaintiff was classified as non-exempt and paid on an hourly basis. (*Id.*) Plaintiff contends he and his former coworkers were subjected to the same or similar unlawful labor practices during their employment with Defendants. (*Id.*)

Plaintiff's claims for unpaid wages stems from allegations of Defendants' failure to pay employees for all hours worked, as a result of off-the-clock work. (*Id.* at ¶ 5.) Plaintiff further alleges that Defendants failed to provide timely and uninterrupted meal periods and that Defendants failed to authorize and permit timely and uninterrupted rest breaks. (*Id.*) In addition, Plaintiff alleges that Defendants failed to reimburse Plaintiff and all alleged Aggrieved Employees for necessary business expenses incurred in direct discharge of their duties, including the use of personal cell phones for work-related purposes. (*Id.*) Accordingly, Plaintiff alleges Defendants are liable for civil penalties under PAGA. (*Id.*)

Because of the foregoing alleged violations of the Labor Code, Plaintiff filed a Class Action Complaint on August 28, 2024, alleging Defendants systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest breaks, (5) failure to indemnify necessary business expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 6.)

Pursuant to PAGA, and on September 11, 2021, Plaintiff submitted notice of the alleged Labor Code violations to the California Labor and Workforce Development Agency (the "LWDA"), with certified mail service on Defendants, and paid the required filing fee. (*Id.* at ¶ 7, Ex. 2.) On September 13, 2021, Plaintiff submitted an amended notice of the alleged Labor Code violations to the LWDA, with certified mail service on Defendants, and paid the required filing fee. (*Id.*, Ex. 3.) The administrative exhaustion period under PAGA expired without the LWDA indicating any intent to investigate the allegations. (*Id.* at ¶ 7.)

After this action was filed, Defendants produced an arbitration agreement between Defendants and Plaintiff containing a class action waiver. (*Id.* at ¶ 8.) After reviewing the arbitration clause, Plaintiff's counsel determined that the arbitration agreement would likely be enforced if Plaintiff opposed arbitrating this matter. (*Id.*) Accordingly, on or around December 15, 2021, Plaintiff sought dismissal of his class action claims and requested leave to file the First Amended Complaint for PAGA penalties, which the Court granted on or around January 6, 2022. (*Id.*)

On January 18, 2022, Plaintiff filed a First Amended Class and Representative Action Complaint to allege a single cause of action for civil penalties under PAGA (the "Operative Complaint"). (*Id.* at ¶ 9.) Accordingly, Plaintiff is duly authorized to act as a private attorney general with respect to the PAGA claims involved in this action. (*Id.*) In compliance with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the Operative Complaint containing the Court-assigned case number. (*Id.*) To date, the LWDA has not sought to intervene in this action. (*Id.*)

Defendants ardently oppose the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 10.) Defendants argue all employees were properly paid for all hours worked and that employees were not permitted to work off-the-clock. (*Id.*) Defendants maintain all employees were provided with the opportunity to take code-compliant meal and rest breaks and that missed breaks, if any, were solely the result of employees' voluntary choice. (*Id.*) As for the unreimbursed business expenses, Defendants maintain they did not require employees to incur any business-related expenses. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendants argue penalties are not warranted because employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) Additionally, Defendants allege their good-faith belief that they paid all wages precludes the imposition of waiting time penalties because Plaintiff would be unable to show Defendants' alleged conduct was done willfully or knowingly. (Moon Decl., ¶ 10; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendants claim they did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 10.) Defendants also maintain the claims are not susceptible to proof on a representative basis because of the individualized and varying nature of each employee's experience, making this matter unmanageable. (*Id.*)

B. <u>Discovery and Investigation</u>

Prior to engaging in arbitration, the Parties agreed to a mediation of the representative PAGA claims. (*Id.* at ¶ 11.) The Parties engaged in informal discovery exchange prior to mediation. (*Id.*) Defendants provided information and documents, which enabled Plaintiff's Counsel to meaningfully investigate Plaintiff's allegations and assess the value of the PAGA claims. (*Id.*) Specifically, Defendants produced documents regarding Defendants' written policies and practices in effect during the relevant period, and time and corresponding payroll records for nearly all Aggrieved Employees. (*Id.*)

Prior to mediation, Plaintiff's Counsel reviewed and analyzed all the information that Defendants produced, including time and pay records and Defendants' written policies in conjunction with information provided by Plaintiff. (*Id.* at ¶ 12.) Plaintiff's Counsel retained an expert to analyze the records and prepare a damage analysis prior to mediation. (*Id.*) The time and pay records contained approximately 100% of shifts worked by the Aggrieved Employees, which allowed Plaintiff's expert to prepare an analysis with a high degree of certainty. (*Id.*) Further, Plaintiff's Counsel investigated the applicable law regarding the claims and defenses asserted in this action. (*Id.*) Accordingly, Plaintiff's Counsel were able to evaluate the probability of success on the merits and Defendants' monetary exposure. (*Id.*) In sum, Plaintiff and his Counsel's familiarity with the facts of the case and the legal issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

On August 8, 2025, the Parties participated in a full day of private mediation facilitated by Michael Ludwig, Esq., an experienced Class and PAGA action mediator. (*Id.* at ¶ 13.) The negotiations were at arm's length and although conducted in a professional matter, were adversarial. (*Id.*) Both sides went into the mediation willing to explore the potential for a settlement of the dispute, but they were also prepared to litigated their position through trial and appeal if a settlement had not been reached. (*Id.*) Negotiations were protracted, with extended discussions and instances in which it appeared the Parties would not reach a resolution. (*Id.*) Following a full discussion of the strengths and weaknesses of the claims and defenses, the Parties ultimately reached a resolution, the material terms of which are encompassed within the Settlement at issue. (*Id.*)

In reaching a resolution, the Parties recognized that the issues presented in this action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.* at ¶ 14.) Plaintiff and his Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*) In sum, Plaintiff and his Counsel believe the proposed Settlement is in the best interests of Aggrieved Employees and the LWDA. (*Id.*)

In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff's motion and the hearing date. (*Id*. at ¶ 15, Ex. 4.) To date, the LWDA has not indicated any objection to the Settlement. (*Id.* at ¶ 15.)

D. Key Terms of the Proposed Settlement

The Settlement's key financial and other terms include:

1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. Defendants agree to pay a non-reversionary Gross Settlement Amount of $100,000.00. (Settlement, at ¶¶ I(8), III(2).) Within 21 business days after the Effective Date, Defendants shall provide the Settlement Administrator with information for Aggrieved Employees. Within 7 business days of receiving the Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee and the data used to calculate said payments. (*Id.* at ¶ IV(2)(a).) The Settlement Administrator shall obtain approval from all counsel of the calculations before making Individual PAGA Payments. (*Id.*) After the Settlement Administrator has provided preliminary calculations, the Parties will have 7 business days to finalize and approve the calculations. (*Id.* at ¶ IV(2)(c).) Within 14 business days of the Parties having finalized and approved the calculations, Defendants will fund the Gross Settlement Amount (**$100,000.00**) by transmitting the funds into a Qualified Settlement Fund established and maintained by the Settlement Administrator. (*Id.* at ¶ IV(2)(d.) Disbursement will occur within 2 business days of the Settlement Administrator receiving approval from counsel of the payment calculations. (*Id.* at ¶¶ IV(3), IV(5).) Any funds remaining uncashed after 180 days from issuance will be canceled and distributed to the California Department of Unclaimed Property in accordance with the requirements of California Code of Civil Procedure section 384(b). (*Id.* at ¶ IV(4); *see also* Ex. A Notice of PAGA Settlement [the Notice of PAGA Settlement informs Aggrieved Employees that uncashed checks shall be sent to the California Department of Unclaimed Property.].)

2. Enhancement Award. The Settlement includes an enhancement award to Plaintiff in an amount up to $5,000.00, payable from the GSA. (*Id.* at ¶ III(3)(c).) This payment is for Plaintiff's service as the PAGA representative. (*Id.*)

3. Attorneys' Fees and Costs. The Settlement provides for attorneys' fees of not more than thirty-five percent of the Gross Settlement Amount, or $35,000.00, and attorneys' costs of not more than $15,082.40. (Settlement, ¶ III(3)(a).) If the fees payment approved by the Court is less than the maximum allocation, the difference will be added to the Net Settlement. (*Id.*) Plaintiff's Counsel has incurred $15,082.40 in litigation costs. (Moon Decl., ¶ 18, Ex. 5.)

4. Administration Costs. The Settlement provides for administration costs of not more than $7,500.00 for the Settlement Administrator's fees and expenses in administering this Settlement. (Settlement, ¶ III(3)(b).) In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. (*Id.*) The Parties jointly appoint ILYM Group ("ILYM") as the neutral entity to administer the Settlement based on its bid of $2,850.00. (*Id.* at ¶¶ I(16), IV(1); Moon Decl., ¶ 19, Ex. 6.))

5. Net Settlement Amount. After deducting the attorneys' fees, attorneys' costs, enhancement award, and administration costs in the amounts approved by the Court, the remainder will be allocated as PAGA penalties and distributed as 75% to the LWDA and 25% to the Aggrieved Employees.[1] (Settlement, ¶¶ III(4)(a)-(b).) Accordingly, the PAGA payment is estimated to be no less than **$42,067.60**,[2] which will be distributed 75% (i.e., no less than 75% * $42,067.60 = **$31,550.70**) to the LWDA and 25% (i.e., no less than 25% * $37,417.60 = **$10,516.90**) to Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims. (Moon Decl., ¶ 20.)

6. Allocation of Net Settlement to Aggrieved Employees. Each Aggrieved Employee will be entitled to his or her pro rata amount from the 25% share of Net Settlement Amount that is directly

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[1] On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024).) As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved employee split. (Lab. Code § 2699(m).) However, this provision does not apply retroactively prior to June 19, 2024. (*Id.* at § 2699(v)(1).) In other words, because Plaintiff's PAGA Notice was submitted prior to June 19, 2024, any civil penalties recovered in this action will be split according to prior PAGA law (i.e., 75% to the LWDA and 25% to Aggrieved Employees). (Moon Decl., ¶ 20, n.1.)

[2] The estimated Net Settlement Amount was calculated by deducting the following amounts from the Gross Settlement Amount ($100,000.00): $15,082.40 for the attorneys' costs, $35,000.00 for the attorneys' fees, $5,000.00 for Plaintiff's Enhancement award, and $7,500.00 for the administration costs. (*See* Settlement, ¶ III(3).) (Moon Decl., ¶ 20, n.2.)

proportional to the number of pay periods worked in the PAGA Period without having to submit any claim form. (Settlement, ¶ III(4)(b).) This results in an average individual PAGA payment of roughly **$233.71** for each of the estimated 45 Aggrieved Employees ($10,516.90 / 45), and a PAGA Pay Period value of **$15.89** for each of the 662 estimated PAGA Pay Periods ($10,516.90 / 662). (Moon Decl., ¶ 21.)

7. Representative PAGA Release. In his capacity as a Private Attorney General or "aggrieved employee" acting on behalf of himself, the State of California and Aggrieved Employees, Plaintiff herby releases Defendants and Released Parties from any and all of the PAGA Released Claims that arose during the PAGA Period. (Settlement, ¶ III(5).)

8. PAGA Released Claims. "PAGA Released Claims" mean any and all claims relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: meal and rest breaks; minimum wages, overtime and double time wages (including, but not limited to, any and all theories related to "off the clock work" or incorrect calculation of the "regular rate of pay"); expense reimbursement; late payment of wages; failure to properly record and maintain employment records; waiting time penalties; wage statement violations; separation pay violations; and unfair business practices. (*Id.* at ¶ I(13).) Plaintiff agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. (*Id.* at ¶ III(6).) Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties. (*Id.*)

9. Released Parties. Defendants and each of their parents, subsidiaries, affiliates, predecessors, insurers, successors and assigns, current and former employees, attorneys, professional employment organizations, officers, directors, and their employee benefit plans and programs and their administrators and fiduciaries. (*Id.* at ¶ I(12).)

III. DISCUSSION

A. Availability of Civil Penalties

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action on behalf of him- or herself and other current or former employees." (Lab. Code § 2699(a).) Before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code section 2699.3, Plaintiff submitted notice of the Labor Code violations at issue to the LWDA, and he exhausted administrative remedies without the LWDA noticing any intent to investigate the claims. (Moon Decl., ¶ 7, Exs. 2-3.) Accordingly, Plaintiff is duly authorized to act as a private attorney general pursuant to PAGA. (*Id.* at ¶ 7.)

B. The Settlement Merits Approval

Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(s)(2).) Here, the circumstances weigh heavily in favor of approval, as explained below.

1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes of Deterrence and Punishment under PAGA

The $100,000.00 Gross Settlement Amount amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public." (Moon Decl., ¶ 35; *see O'Connor*, 201 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].) Based on the discovery, the strength of Plaintiff's claims, Defendants' arguments at mediations and continued settlement discussions, and other important considerations discussed above, Plaintiff's Counsel believe that $66,200.00 reasonably represents Plaintiff's realistic recovery. (Moon Decl., ¶ 33.) As a result, the Gross Settlement Amount of $100,000.00 exceeds the realistic exposure. (*Id.*) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything at all. (Moon Decl., ¶ 35.)

The Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes -deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief on the other. As a result of this litigation, Defendants have had to hire legal counsel, engage in employee-wide discovery, and participate in mediation. (Moon Decl., ¶ 36.) Assuming approval is granted, Defendants will also have to pay civil penalties pursuant to PAGA. (*Id.*) Not including its own attorneys' fees and costs, Defendants will pay at least $100,000.00 to resolve this matter-of which at least $42,067.60 is allocated toward PAGA penalties and will be distributed as 75% to the LWDA and 25% to Aggrieved Employees, in compliance with PAGA law governing the claims in this Action. (*See* Settlement, ¶ III(4).) This amount represents roughly **64%** of the realistic exposure for the claims ($42,067.60 / $66,200.00). (Moon Decl., ¶ 36.) Additionally, the release obtained under the Settlement does not preclude Aggrieved Employees from pursuing any individual (non-PAGA) claims they may have against Defendants or the other Released Parties. (*Id.*; Settlement, ¶ III(6).)

2. The Settlement Amount Provides a Realistic Value for the Claims that is within the "Ballpark" of Reasonableness

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations between the Parties. (Moon Decl., ¶ 26.) Plaintiff's Counsel performed an extensive investigation into the facts, claims, and defenses at issue and Defendants' potential liability, including a review of governing law and analysis of informal discovery, including Defendants' written policies and time and pay data for a majority of Aggrieved Employees. (*Id.* at ¶¶ 11–12.) Plaintiff's Counsel used the foregoing discovery and investigation to prepare for mediation and, with the assistance of a statistics expert, assessed the probability of success on the merits and Defendants' monetary exposure, discussed the strengths and weaknesses of the claims and defenses in depth at mediation and extended negotiations, and ultimately negotiated the resulting Settlement. (*Id.* at ¶¶ 11–14.)

Based on Plaintiff's Counsel's analysis of the arguments and information provided by Defendants, on an expert analysis of the time and pay records, and on information from Plaintiff, Plaintiff's Counsel evaluated Defendants' both maximum (*optimistic*) and risk-adjusted (*realistic*) potential exposure in preparation for mediation. (*Id.* at ¶ 26.) Although the expert's analysis revealed that the time and pay records supported several violations by Defendants, those identifiable violations were primarily limited to the meal period claim. (*Id.*) The records themselves did not provide strong support for the off-the-clock, rest period, and expense reimbursement claims, and derivative penalties for those claims, as these claims are predominantly testimony based. (*Id.*) In other words, Plaintiff's analysis revealed that certain claims were not as strong as originally believed. (*Id.*)

Because Defendants did not require employees to record off-the-clock work nor rest periods, there are no records to establish the off-the-clock and rest period claims on the merits. (*Id.* at ¶ 27.) Rather, proof of that claim would need to be supported by declarations from Aggrieved Employees regarding off-the-clock work and missed rest periods as the records themselves cannot demonstrate when work was done and what breaks were missed, when, and why. (*Id.*)

Indeed, the exposure figures that were calculated for mediation were based on assumed high violation rates that would not likely be demonstrated at trial, as they assume either the participation of all Aggrieved Employees (which would be difficult given the particularly large size of this group), or alternatively, the use of surveys or statistical data as a surrogate (which would still require the participation of a majority of Aggrieved Employees to establish a sound representation of all non-exempt employees). (*Id.* at ¶ 28.) The reality is that many, if not all, employees would be unwilling to participate due to fear of retaliation. (*Id.*) However, even assuming those employees would be willing to participate, obtaining such declarations would potentially reveal that each Aggrieved Employee had a different experience. (*Id.*) The individualized nature of their employment experience and the numerosity of employees affected present significant risk with manageability and proof on the merits. (*Id.*)

Even as to the meal period claims, our analysis found that Defendants' exposure is less than initially believed. (*Id.* at ¶ 29.)Based on a review of the records, Plaintiff's expert found a violation rate of 18.1%; however, Plaintiff's expert also found that 13.7% of the violations included a meal waiver and that Defendants made meal premium payments for 1.4% of the violations. (*Id.*) After accounting for the waivers and the meal premium payments, Defendants' violation rate was reduced to 3%. (*Id.*) Defendants also argued that the fact that its employees signed waivers and the fact that Defendants paid meal premium payments indicate that Defendants did not intentionally commit meal break violations. (*Id.*)

The likelihood that Defendants could assert viable legal defenses would likely further reduce its overall exposure. (*Id.* at ¶ 30.) For example, the individualized and testimony-intensive nature of the claims could bar manageability of this representative action or otherwise significantly reduce Defendants' overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic as it presumes Plaintiff would be able to stack the penalties, although penalty stacking is not expressly permitted by PAGA. (*Id.* at ¶ 31.) Rather, without either (i) a prior finding by the LWDA or a court within the past five years that the employer violated PAGA or (ii) evidence that the employer's conduct was malicious, fraudulent, or oppressive, PAGA only provides for a maximum $100 penalty for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) Moreover, Plaintiff's Counsel believe it would be unrealistic to expect the Court would award the full (penalty-stacked) exposure given the discretionary nature of awarding penalties and given Defendants' defenses was not knowingly or willfully done, and additionally, to the extent employees received wage statements that were allegedly inaccurate, employees suffered no actual resulting damage or harm. (Moon Decl., ¶ 31.) Moreover, awarding the full penalties amount would likely raise Due Process concerns. (*Id.*) For the foregoing reasons, the *realistic* exposure is thus far below a claim-by-claim estimate. (*Id.* at ¶ 32.)

Based on the foregoing, Plaintiff's Counsel believe it is more reasonable to assess penalties on a $100 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the estimated 662 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 33.) Accordingly, Plaintiff's Counsel estimate Defendants' maximum PAGA exposure to be **$66,200.00** ($100 x 662). (*Id.*) Based on the discovery, the strength of Plaintiff's claims, Defendants' arguments at mediations and continued settlement discussions, and other important considerations discussed above, Plaintiff's Counsel believe that $66,200.00 also reasonably represents Plaintiff's realistic recovery. (*Id.*) As a result, the Gross

Settlement Amount of $100,000.00 exceeds the maximum and realistic exposure. (*Id.*)

The proposed Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery. (*Id.* at ¶ 34.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the Gross Settlement Amount of $100,000.00 is within the "ballpark" of reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims," but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation"].)

3. The Settlement Is a Fair and Reasonable Result Following a Thorough Investigation and Accounting of Various Litigation Risks

Plaintiff's Counsel have conducted a thorough investigation into the facts of the allegations. (Moon Decl., ¶ 37.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendants on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State of California. (*Id.*)

Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 38.) Plaintiff's Counsel also recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiff's Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 39.) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (*Id.*) While Plaintiff's Counsel believe there would be no persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and significantly reduce any award of penalties. (*Id.* at ¶ 40.) This wide range of potential recovery and additional delays and risks of trial provide justification to settle for a reasonable amount of recovery at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in preparation for mediation, the maximum exposure did not comport with the realistic exposure that Defendants faced, as discussed above. (*Id.*)

Plaintiff's Counsel took into account the risk of not being able to proceed on a representative basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 41.) The provisions of the Labor Code triggering PAGA penalties in this case include Labor Code sections 203, 210, 226, 1197.1, and 2802. (*Id.*) However, PAGA penalties are not mandatory, but rather, permissive. (*Id.*) Accordingly, it is entirely possible that even if Plaintiff would be successful at trial, assuming he is first able to win on the merits regarding his individual claims at arbitration and then defeat the manageability issues presented at litigation by the large number of Aggrieved Employees in this action, Plaintiff may still be awarded substantially less than what was obtained through the Settlement. (*Id.*)

The Settlement avoids the significant risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 42.) Though the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in formal discovery procedures, including depositions and expert discovery. (*Id.*) Moreover, Plaintiff would have to proceed with arbitration of his individual claims and win on the merits before proceeding with litigation of the representative PAGA claims. (*Id.*) Preparation for trial and the prospect of appeals in the wake of any summary judgment ruling would remain for the Parties. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial, a lengthy and uncertain process that could result in recovering less than was settled for. (*Id.*)

C. <u>The Requested Attorneys' Fees/Costs Are Reasonable and Should Be Approved</u>

In line with the Settlement, my firm requests an award of attorneys' fees in an amount of thirty-five percent of the Gross Settlement Amount (i.e., no less than $35,000.00), plus reimbursement for actual litigation costs in the amount of $15,082.40. (Moon Decl., ¶ 68; *see*

Settlement, ¶ III(3)(a).)

1. Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

Here, Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 69.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

> fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

> **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit**

> **analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.* at pp. 1378–79.) California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

2. The Matter Involves a Fee and Cost Shifting Provision under PAGA

Labor Code section 2699 provides for the recovery reasonable attorney's fees as well as costs of suit. (Lab. Code § 2699(k)(1).) Specifically, it states: "Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs . . ." (*Id.*) Under this provision, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total recovery for the Aggrieved Employees at the conclusion of this case. (*Id.*) This fee/cost-shifting provision reflects the understanding that Plaintiff's Counsel must accept significant risk of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that Plaintiff's Counsel is not only permitted, but entitled, to recover reasonable attorneys' fees and costs if successful in litigating a PAGA claim.

The Settlement at issue is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendants while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel who undertook this matter on a contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 71–77.) Once Plaintiff's Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 75.)

3. Counsel's Experience, Reputation, and Ability Support the Requested Fee Award

As demonstrated by their prior experience in pursuing class and representative actions on behalf of employees, Plaintiff's Counsel possess considerable expertise in litigating class action and representative matters. (*Id*. at ¶¶ 43–65.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (*Id.*) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

Plaintiff's Counsel's experience in wage-and-hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of this Settlement. (*Id.* at ¶ 66.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 64.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 47, 52, 58.) Thus, the requested fee award is reasonable and fair.

4. While the Lodestar Method Is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.*

[quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].) Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id*.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id*. at pp. 556–57.)

Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) The Court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Generally, hours are reasonable if they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.)

Here, Plaintiff's Counsel current lodestar is *no less than* **$48,160.00**, which is based on *no less than* **59.8 hours** of attorney time spent to-date at their customary hourly rates. (Moon Decl., ¶ 70.) Thus, in comparison to this lodestar, although application of a multiplier would be warranted in this case, none is requested. (*Id.* at ¶¶ 72–73.) In other words, Plaintiff's Counsel are requesting less than what they are reasonably entitled to. (*Id.* at ¶ 73(c).) Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation, including to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.* at ¶ 71.) The amount of fees requested under the Settlement is warranted based on the contingent risk that Plaintiff's Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel. (*Id.* at ¶ 73.) Plaintiff's Counsel also bear the risk of taking whatever actions are necessary if Defendants fail to pay. (*Id.* at ¶ 71.) Thus, the request for attorneys' fees is more than reasonable under a lodestar check.

5. Plaintiff's Counsel's Costs Were Actually and Reasonably Incurred

Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff's Counsel seek reimbursement in the total amount of $15,082.40 for expenses that were actually and reasonably incurred in this litigation. (Moon Decl., ¶ 78, Ex. 5.)

D. <u>The Enhancement to Plaintiff Is Reasonable and Should Be Approved</u>

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . ." (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, PAGA representatives should be rewarded for assuming the risk of retaliation for the sake of aggrieved employees.

Here, in light with the Settlement and subject to the Court's approval, Plaintiff requests an Enhancement Award of $5,000.00. (Settlement, ¶ III(3)(c).) Plaintiff and his Counsel respectfully submit that the requested enhancement is reasonable in recognition of Plaintiff's role as the named

Plaintiff and PAGA Representative, for the risks to future employment inherent in undertaking this role and for his service and participation in litigation that resulted in a fair settlement under PAGA. (Moon Decl., ¶¶ 80–83; Declaration of Plaintiff Teodoro C. Deguzman in Support of Plaintiff's Motion for Approval of Private Attorneys General Act Settlement Agreement, ¶¶ 7–13.)

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grant approval of the Settlement and enter the proposed approval order and proposed judgment submitted herewith.

Respectfully submitted,

DATED: February 5, 2026

MOON LAW GROUP, PC

By: ___________________________________

Kane Moon
Allen Feghali
Lilit Ter-Astvatsatryan
Michael Citrin
Attorneys for Plaintiff