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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

SOPHATH NHEM, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

POSITIVE PIZZA PEOPLE, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2022-0000557

*[Assigned for all purposes to the Hon. George
J. Abdallah, Dept. 10A]*

**DECLARATION OF KANE MOON IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PAGA SETTLEMENT**

*[Filed with (1) Plaintiff's Notice of Motion
and Motion to Approve PAGA Settlement, (2)
the Declaration of Plaintiff Sophath Nhem, (3)
the Declaration of Lisa Mullins, (4)
[Proposed] Order and, (5) [Proposed]
Judgment]*

PAGA APPROVAL HEARING:

Date: February 27, 2025,
February 28, 2025,
March 4, 2025,
March 5, 2025, or
March 6, 2025

Time: 9:00 a.m.

Dept.: 10A

Complaint filed: January 26, 2022

Trial date: Not set

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1. I am an attorney at law duly licensed to practice as such before all the Courts of the State of California and am one of the attorneys of record for Plaintiff Sophath Nhem (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and if called as a witness, I could and would competently testify to them under oath.

CASE BACKGROUND

3. Defendant owns multiple Domino's Pizza restaurants throughout northern California. Plaintiff worked for Defendant as a delivery driver from June 2019 to June 2021 and was classified as non-exempt throughout his employment. Plaintiff contends both he and his former coworkers were subjected to the same unlawful labor practices during their employment by Defendant, including failure to pay wages for all hours worked.

4. Plaintiff's claim for unpaid wages stems from allegations that Defendant required Plaintiff and Aggrieved Employees to work off-the-clock without compensation and that Defendant failed to incorporate non-discretionary bonuses into Plaintiff's and Aggrieved Employees' regular rate of pay for purposes of calculating overtime pay and sick pay. Plaintiff's meal and rest period claims are based on allegations that due to the nature of their work and Defendant's employment practices, Plaintiff and other employees regularly experienced missed, untimely, or interrupted lunches and breaks. Additionally, Plaintiff alleges that Defendant failed to reimburse Plaintiff and other Aggrieved Employees for business expenses incurred, including for the use of their personal vehicles. Plaintiff also alleges he did not receive all wages owed at the time of termination and did not receive accurate itemized wage statements. Accordingly, Plaintiff

alleges Defendant is liable for civil penalties under the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”).

5. On January 22, 2022, Plaintiff submitted a PAGA notice of alleged Labor Code violations to Defendant and California Labor and Workforce Development Agency (the “LWDA”). Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff’s PAGA notice. Because of Defendant’s alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on January 26, 2022, which alleges Defendant 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 periods, (5) failed 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.

6. On May 19, 2022, Plaintiff filed a First Amended Representative Action Complaint alleging a single cause of action against Defendant for civil penalties under the PAGA (the “Operative Complaint”). Plaintiff’s administrative exhaustion period expired without the LWDA indicating its intent to investigate Plaintiff’s allegations. In compliance with Labor Code section 2699 (l)(1), Plaintiff submitted to the LWDA a file-stamped copy of the Operative Complaint.

7. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies liability for any of the causes of action alleged.

DISCOVERY AND INVESTIGATION

8. Following the filing of Plaintiff’s complaint, the Parties met and conferred regarding an agreement to mediate the action, and further agreed to a protocol for an informal exchange of documents and information before the mediation. Prior to mediation, the Parties engaged in informal discovery, including an exchange of sample data and demographic information which allowed the Parties to meaningfully mediate this matter. Specifically, prior to mediation, Defendant provided the approximate number of Aggrieved Employees and pay periods within the relevant period, documents regarding Defendant’s written employment policies,

Plaintiff's personnel file and his time and payroll records, and a statistically significant sample of time and payroll records of the Aggrieved Employees.

9. After reviewing and analyzing documents regarding Defendant's wage and hour policies and practices, the sample time and pay records, and other information provided by Defendant and Plaintiff, Plaintiff's Counsel were able to evaluate the probability of success on the merits and Defendant's maximum and risk-adjusted monetary exposure. Plaintiff's Counsel retained an expert to analyze the sample records produced and prepare a damage analysis prior to mediation. The sample of time and pay records contained 3,185 pay periods that employees worked during the PAGA Period (representing approximately 18.7% of total pay periods worked in the PAGA Period), which allowed the expert to prepare an analysis with a high degree of certainty. In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Thus, Plaintiff's and Plaintiff's Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the PAGA Settlement.

SETTLEMENT NEGOTIATIONS

10. On September 6, 2024, the Parties participated in private mediation with Brandon McKelvey, Esq., an experienced, professional, neutral, class action and PAGA mediator. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. Specifically, Defendant asserted that employees were not permitted to work off-the-clock, it did not fail to incorporate any bonuses into Plaintiff's and Aggrieved Employees' regular rate of pay for purposes of calculating overtime and sick pay because such bonuses were discretionary, that many meal periods and rest breaks were taken, and where a violation appears, it was a result of an employee voluntarily choosing to forego a meal period or rest break, that Defendant reimbursed its employees for any necessary business expenses incurred, and that Plaintiff's allegations are not representative but require individual proof. After

1 extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims
2 and Defendant's defenses, the Parties reached a settlement, the material terms of which are
3 encompassed within the PAGA Settlement. The Parties recognized that the issues presented in the
4 Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that
5 further litigation will lead to inconvenience, distraction, disruption, delay, and expense
6 disproportionate to the potential benefits of litigation. Plaintiff and his counsel considered the risk
7 and uncertainty of the outcome inherent in any litigation when determining whether this PAGA
8 Settlement was the correct option.

9 11. In compliance with Labor Code section 2699 (l)(2), Plaintiff's Counsel submitted
10 to the LWDA a notice of settlement, a copy of the proposed PAGA Settlement, the instant
11 declaration, and the moving papers filed concurrently with the Court herewith. A true and correct
12 copy of the LWDA's acknowledgment of receipt thereof is attached hereto as **Exhibit 3**.

13 12. The PAGA Settlement includes all hourly-paid, non-exempt employees of
14 Defendant who worked for Defendant in California during the PAGA period ("Aggrieved
15 Employees"). (PAGA Settlement, ¶ 1.4.) The PAGA Period is the period from January 22, 2021
16 to November 5, 2024.¹ (*Id.* at ¶ 1.22.)

17 13. All Aggrieved Employees are deemed to release, on behalf of themselves and their
18 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
19 and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or
20 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
21 Complaint and the PAGA Notice ("Released PAGA Claims"). Aggrieved Employees, with the
22 exception of Plaintiff, retain their rights to pursue claims for wages, statutory penalties, and any
23 other damages, other than the PAGA claims being released by the PAGA Settlement. (*Id.* at ¶ 5.2.)
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27 ¹ The PAGA Period is defined as the period from January 22, 2021 to November 5, 2024
28 or the date the Court approves the Settlement, whichever is earlier. (PAGA Settlement, ¶ 1.22.)
November 5, 2024 is earlier than the date the Court approves the PAGA Settlement.

1 14. Defendant agrees to pay a Gross Settlement Amount of \$217,500.00. (*Id.* at ¶ 3.1.)
2 Aggrieved Employees are not required to submit a claim as a condition of payment. (*Id.*) None of
3 the Gross Settlement Amount will revert to Defendant. (*Id.*)

4 15. After deducting the Administration Expenses Payment, the Enhancement
5 Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment
6 in the amounts approved by the Court, the remainder will be allocated as PAGA Penalties and
7 distributed as 75% to the LWDA as the LWDA PAGA Payment and 25% to Aggrieved Employees
8 as Individual PAGA Payments. (*Id.* at ¶¶ 1.17, 1.24, 3.2.4.) Aggrieved Employees will also receive
9 a letter explaining the settlement, with a Spanish translation. (*Id.* at ¶ 4.4.1.) A true and correct
10 copy of this letter is incorporated as part of the PAGA Settlement as Exhibit A attached thereto.

11 16. The PAGA Settlement provides for a PAGA Counsel Fees Payment payable to
12 Plaintiff's Counsel not to exceed one-third (33 1/3%) of the Gross Settlement Amount (currently
13 estimated to be \$72,500.00) for Plaintiff's Counsel's attorneys' fees, plus a PAGA Counsel
14 Litigation Expenses Payment for reimbursement of out-of-pocket litigation costs not to exceed
15 \$25,000.00. (*Id.* at ¶ 3.2.1.) In the event the amount of actual costs is less than the maximum
16 allocation and/or the amounts of attorneys' fees and costs approved by the Court are less than the
17 amounts requested, the difference will be added to the portion to be paid to the LWDA and the
18 Aggrieved Employees. (*Id.*) At this time, Plaintiff's Counsel's costs are \$19,537.06 and a true and
19 correct copy of the litigation costs to-the-date is attached hereto as **Exhibit 4**.

20 17. The PAGA Settlement provides for an Enhancement Payment of not more than
21 \$7,500.00 to Plaintiff. (*Id.* at ¶ 3.2.2.) In the event the amount approved by the Court is less than
22 the amounts requested, the difference will be added to the portion to be paid to the LWDA and the
23 Aggrieved Employees. (*Id.*)

24 18. The PAGA Settlement provides the Administrator will be paid an Administration
25 Expenses Payment not to exceed \$10,000.00 for its fees and expenses in administering this
26 Settlement. (*Id.* at ¶ 3.2.3.) In the event the amount approved by the Court is less than the amount
27 requested, the difference will be added to the portion to be paid to the LWDA and the Aggrieved
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1 Employees. (*Id.*) The Parties jointly appoint ILYM Group, Inc. as the neutral entity to administer
2 this Settlement based on its bid of \$7,350.00. A true and correct copy of the estimate for
3 administration costs is attached to this declaration as **Exhibit 5**.

4 19. The Administrator will calculate each Individual PAGA Payment by (a) dividing
5 the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of
6 PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by each
7 Aggrieved Employee's PAGA Pay Periods. (*Id.* at ¶ 3.2.4.1.) The Administrator will report the
8 Individual PAGA Payments on IRS 1099 Forms. (*Id.*) Aggrieved Employees assume full
9 responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id.*)

10 20. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed
11 and canceled after the void date (not less than 180 days after the date of mailing) the Administrator
12 shall transmit the funds represented by such checks to the California Controller's Unclaimed
13 Property Fund in the name of the Aggrieved Employee. (*Id.* at ¶ 4.4.1, 4.4.3.)

14 21. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds
15 to the Administrator seven (7) days after the Effective Date. (*Id.* at ¶ 4.3.) The "Effective Date"
16 means the date by which both of the following have occurred: (a) the Court enters a Judgment on
17 its Approval Order, and (b) the Judgment is final. (*Id.* at ¶ 1.11.) The Judgment is final as of the
18 day the Court enters Judgment. (*Id.*)

19 **THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE**

20 22. Based on Plaintiff's Counsel's analysis of the time, payroll, and additional records
21 and information provided by Defendant, on Plaintiff's expert's analysis of the sample time and
22 payroll records provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel
23 evaluated Defendant's maximum and risk-adjusted potential exposure. Although Plaintiff's
24 expert's analysis revealed that the time and payroll records supported several violations by
25 Defendant, the records themselves did not provide overwhelming evidence to support the case on
26 a representative basis.

23. Based on a review of its records, as of September 6, 2024, Defendant estimates the Aggrieved Employees worked a total of 17,002 PAGA Pay Periods. (*Id.* at ¶ 4.1.) Additionally, Defendant estimated at the time of mediation that there were 849 Aggrieved Employees. Prior to mediation, Plaintiff's expert analyzed the sample time and payroll records Defendant had produced and accordingly, was able to confirm Plaintiff's allegations. For example, Plaintiff's expert determined there were 1,011 unique meal period violations (5,397 when extrapolated to all Aggrieved Employees) demonstrated by a review of the records, resulting in a 5.3% violation rate. Accordingly, 20.8% of Pay Periods had at least one unique meal break violation. However, the expert's analysis also revealed that certain claims were not as strong as originally believed. For example, Plaintiff's expert found only 18 payments which included pay codes such as "MANAGER BONUS" and "Referral Bonus." Assuming such additional payments were non-discretionary, Defendant's failure to incorporate such bonuses into calculating the correct regular rate for purposes of overtime pay resulted in the underpayment of only \$633.00. Additionally, Plaintiff's expert found that after accounting for meal break waivers, there were only 2,893 unique meal break violations when extrapolated to all Aggrieved Employees, resulting in an 2.5% violation rate. Plaintiff's expert also found that after accounting for the meal premium payments made by Defendant, the percentage of Pay Periods with at least one unique meal break violation reduced from 20.8% to 15.7%. Moreover, many of Plaintiff's allegations would largely need to be supported by declarations from Aggrieved Employees, and obtaining such declarations potentially would reveal that each Aggrieved Employee had a different experience. The individualized nature of employees' employment experience and the numerosity of employees affected present significant risk with manageability and proof on the merits.

24. Assuming a \$100 civil penalty per pay period (total 17,002 estimated pay periods), Defendant's maximum potential exposure in this Action for civil penalties under PAGA is estimated to be \$1,700,200.00. Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, we acknowledge a legitimate controversy exists as to each allegation. In other words, based on Plaintiff's Counsel's investigation and analysis, the maximum exposure did not comport

1 with the reasonable exposure that Defendant faced. Specifically, Defendant argued that it did not
2 permit employees to work off-the-clock and that it did not fail to incorporate any bonuses into
3 Aggrieved Employees' regular rate for purposes of calculating overtime pay and sick pay as such
4 bonuses were discretionary. Due to the lack of written policies regarding criteria for bonus
5 payments, I acknowledge the foregoing presents significant risk with proof on the merits.
6 Defendant maintains its compliance with all its meal and rest period obligations, and that any
7 missed lunches or breaks was solely the result of employees' voluntary choice. Defendant also
8 argued that many Aggrieved Employees waived their meal breaks and to the extent there were
9 any violations, Defendants paid meal premium payments. Indeed, the records evidenced that
10 approximately 2.8% of the meal break violations included a meal waiver and that Defendant paid
11 an estimated 1,775 meal premium payments, which accounts for approximately 33% of the meal
12 break violations. To the employees who received wage statements that were allegedly inaccurate,
13 Defendant asserts they suffered no actual damage or harm as a result.

14 25. Additionally, for purposes of the settlement negotiations Plaintiff's Counsel
15 considered, as in any PAGA action, all PAGA awards are discretionary and can be reduced by the
16 Court. (Lab. Code § 2699(e).) Under Labor Code section 2699, subdivision (e)(2), a Court can reduce
17 PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would
18 result in an award that is unjust, arbitrary and oppressive, or confiscatory." (*Id.*) Thus, were this matter
19 to go to trial, any award granted would be at the discretion of the Court and subject to a substantial
20 reduction. Plaintiff's Counsel took all foregoing issues and risks into consideration when valuing
21 Defendant's realistic exposure had the Parties not reached a settlement.

22 26. Plaintiff recognizes that, although he believes there would be no persuasive grounds to
23 reduce the penalties, the Court could determine otherwise and significantly reduce the PAGA Penalties.
24 This wide range of potential recovery and additional delays and risks of trial provide justification to
25 settle for a reasonable amount of recovery at this point in the litigation. In all, based on the investigation
26 and analysis of the claims in preparation for mediation, the maximum exposure did not comport with
27 the realistic exposure that Defendant faced.

1 27. Based on the foregoing and in consideration of the Due Process concerns related to
2 penalizing Defendant disproportionately to the amount of damages at issue, and the discretionary
3 nature of awarding penalties, it is reasonable to assume for resolution purposes, that a violation
4 occurred in approximately one-fifth of all pay periods resulting in a **realistic (risk-adjusted)**
5 **exposure of \$340,040.00** (\$1,700,200 / 5).

6 28. The **\$217,500.00** settlement is an excellent result and amounts to “genuine and
7 meaningful” relief “consistent with the underlying purpose of the statute to benefit the public” **as it**
8 **represents approximately 64% of Defendant’s realistic recovery** (*Villalobos v. Calandri*
9 *Sonrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at
10 *5; *see also O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)
11 This is an excellent result, particularly because, under the PAGA Settlement, Aggrieved Employees
12 will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything.

13 29. After the Administration Expenses Payment, Enhancement Payment, PAGA
14 Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment, the amount estimated
15 as PAGA Penalties for the LWDA and Aggrieved Employees is at least **\$110,612.94**.² The PAGA
16 Penalties will be split with 75% going to the LWDA and 25% going to Aggrieved Employees on
17 a pro rata basis in Individual PAGA Payments. (PAGA Settlement, ¶ 3.2.4.) Each Aggrieved
18 Employee will receive payment directly proportional to the number of PAGA Pay Periods the
19 Aggrieved Employee worked within the PAGA Period. (*Id.* at ¶ 3.2.4.1.) Accordingly, at least
20 **\$82,959.71** (75% * \$110,612.94) will be available to the LWDA and **\$27,653.23** (25% *
21 \$110,612.94) will be available to the estimated 849 Aggrieved Employees, which results in an
22 average Individual PAGA Payment of **\$32.57** (\$27,653.23 / 849 Aggrieved Employees) and a Pay
23 Period value of **\$1.63** (\$27,653.23 / 17,002 Pay Periods) for each of 17,002 estimated Pay Periods.³

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25 ² The PAGA Penalties amount is \$217,500.00 minus: \$19,537.06 for Plaintiff’s Counsel’s
26 litigation costs, \$72,500.00 for Plaintiff’s Counsel’s attorneys’ fees, \$7,500.00 for Plaintiff’s
Enhancement Payment, and \$7,350.00 for administration costs. (PAGA Settlement, ¶¶ 1.17, 3.2.)

27 ³ The Pay Period value when considering the entire Gross Settlement Amount of
28 \$217,500.00 is estimated to be \$12.80 (\$217,500.00 / 17,002 pay periods). (PAGA Settlement,
¶ 8.)

1 30. Plaintiff's Counsel have conducted a thorough investigation into the facts of this
2 case. Based on the foregoing discovery and on their own independent investigation and evaluation,
3 Plaintiff's Counsel are of the opinion that the Settlement is fair, reasonable, and adequate.
4 Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk,
5 appellate risk, the defenses that could be asserted by Defendant on the merits, the PAGA
6 Settlement is in the best interests of the Aggrieved Employees.

7 31. Plaintiff's Counsel took into account the risk of not being able to proceed on a
8 representative basis at all due to the potential manageability issues, the risk of not prevailing at
9 trial, and the risk that even if Plaintiff prevailed at trial, the damages would be limited due to the
10 largely discretionary nature of the damages. Indeed, pursuant to Labor Code section 2699,
11 subdivision (e)(2), a Court may reduce PAGA penalties "if, based on the facts and circumstances
12 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
13 oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to
14 trial, any award granted would be at the discretion of the Court and subject to a substantial
15 reduction.

16 32. The PAGA Settlement avoids the risks, burdens, and the accompanying expense
17 of further litigation. Although the Parties have engaged in a significant amount of investigation,
18 formal and informal discovery, and employee data analysis, they have not participated in
19 depositions and extensive expert discovery. Moreover, preparation for trial would remain for the
20 Parties as well as the prospect of appeals. As a result, the Parties would incur considerably more
21 attorneys' fees and costs through trial.

22 33. The PAGA Settlement contains an escalator clause under which Defendant may
23 owe more than \$217,500.00 as the Gross Settlement Amount. (PAGA Settlement, ¶ 8.) Under the
24 escalator clause, if the final accounting of the total PAGA Pay Periods increases the original
25 estimate by more than 10% (i.e., more than 18,702 PAGA Pay Periods), Defendant shall either, at
26 its sole discretion, (i) increase the Gross Settlement Amount proportionally or (ii) change the end
27 date of the PAGA Period so that the total number of PAGA Pay Periods does not exceed 18,702.
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1 (*Id.*) In the event Defendant elects to increase the Gross Settlement Amount, the Gross Settlement
2 Amount shall be increased by a proportionate amount, which is calculated by multiplying the pay
3 periods in excess of 18,702 by the Pay Period Value of \$12.80. (*Id.*)

4 THE ENHANCEMENT PAYMENT TO PLAINTIFF IS REASONABLE

5 34. Throughout this litigation, Plaintiff, who was a former employee of Defendant, has
6 cooperated immensely with my office and has taken many actions to protect the interests of the
7 State of California and the Aggrieved Employees. Plaintiff provided valuable information
8 regarding his hours worked, and what duties were performed during those hours. Plaintiff also
9 provided information regarding meal and rest periods taken and missed by Plaintiff and other
10 Aggrieved Employees. Plaintiff participated in decisions concerning this action, assisted in
11 preparation for the mediation session, and provided my office with the names and contact
12 information of potential witnesses in this action. Before we filed this case, Plaintiff worked with
13 my office to determine the viability of his claims. Plaintiff also provided information and
14 documents relating to his employment by Defendant. The information and documentation
15 provided by Plaintiff were instrumental in establishing the wage and hour violations alleged in this
16 action, and the recovery provided for in the PAGA Settlement would have been impossible to
17 obtain without his participation.

18 35. At the same time, Plaintiff faced many risks in adding himself as the named plaintiff
19 in this matter. Plaintiff faced actual risks with his future employment, as putting himself on public
20 record in an employment lawsuit could also very well affect his likelihood for future employment.
21 For example, a search of Plaintiff's names will reveal this action, and as a result, many employers
22 may likely forego hiring Plaintiff in learning he sued a former employer.

23 36. In turn, Aggrieved Employees will now be reimbursed civil penalties for wage
24 violations they may have never known about or been willing to pursue on their own. If each
25 Aggrieved Employee would have tried to pursue legal remedies on their own, that would have
26 resulted in each having to expend a significant amount of their own monetary resources and time,
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1 not to mention limited judicial resources, which were obviated by Plaintiff putting himself on the
2 line on behalf of the Aggrieved Employees.

3 37. In the final analysis, this representative action would not have been possible without
4 the aid of Plaintiff, who put his own time and effort into this litigation and placed himself at risk
5 for the sake of the State of California and the Aggrieved Employees. The requested enhancement
6 payment to Plaintiff for his service as the named plaintiff is a relatively small amount of money
7 considering the time and effort put into the litigation. The requested enhancement payment is
8 therefore reasonable to compensate Plaintiff for his active participation in this lawsuit, in addition
9 to his general release of claims, both known and unknown, and waiver of section 1542 rights

10 MY EXPERIENCE AND QUALIFICATIONS

11 38. I received a B.A. in History in 1998 from UCLA, and my J.D. from Loyola
12 Marymount Law School in 2006. I became an Active Member of the State Bar of California in
13 June 2007 and have been an Active Member in good standing continuously since then. I have been
14 selected to Super Lawyers each year from 2019 to 2023.

15 39. I co-founded Moon & Yang, APC—now Moon Law Group, PC—in March 2010. My
16 practice is focused exclusively on advocating for the rights of employees in wage and hour
17 litigation, almost entirely in class and/or PAGA representative actions.

18 40. For the past decade, I have built my practice to have an emphasis on employment and
19 related civil litigation cases and have both prosecuted and defended employment-related litigation
20 cases. I have been heavily, successfully, and continuously involved in active litigation and trial
21 work, and have conducted bench and jury trials on behalf of both employees and employers in
22 wage and hour cases.

23 41. My current billing rate is \$950.00 per hour, which is my usual hourly rate for wage and
24 hour litigations A \$950.00 per hour rate is reasonable considering my years of experience practicing
25 in the highly specialized area of employment and labor law and my Laffey Matrix rate (The Laffey
26 Matrix, <http://www.laffeymatrix.com/see.html>, [last visited January 2, 2025].) The Laffey Matrix
27 is a “well-established objective source for rates that vary by experience” used by the District of
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1 Columbia. (*In re HPL Tech., Inc. Sec. Litig.* (N.D. Cal. 2005) 366 F. Supp 2d 912, 921.) A true and
2 correct copy of the Laffey Matrix is attached hereto as **Exhibit 6**. California Courts have adjusted the
3 Laffey Matrix rate upwards based on “locality pay differentials” and the location of counsel’s office in
4 California to determine whether counsel’s rates are reasonable. (*See, e.g., id.* [applying a 9% upward
5 adjustment to the Laffey Matrix rate based on an approximate difference of 9% between the locality
6 pay differential of the District of Columbia and San Francisco, California, where counsel’s office was
7 located].) To determine the locality pay differential, the Court in *In re HPL Technologies, Inc.* utilized
8 the locality pay differentials within the federal courts. (*Id.* at 921–22.) Using the same method here
9 and based on Class Counsel’s location in Los Angeles, California, the locality pay differential of
10 the Los Angeles-Long Beach area is 36.47% and the locality pay differential of the Washington-
11 Baltimore-Arlington area is 33.94%, which results in a difference of approximately 2.5%.
12 (*Compare* Judiciary Salary Plan of Los Angeles-Long Beach, CA, Effective January 13, 2024 *with*
13 Judiciary Salary Plan of Washington-Baltimore-Arlington, Effective January 13, 2025.) True and
14 correct copies of the Los Angeles-Long Beach and Washington-Baltimore-Arlington salary plans
15 are attached hereto as **Exhibit 7** and **Exhibit 8**, respectively. Based on my 18 years of experience,
16 my Laffey Matrix rate with a 2.5% adjustment is \$971.70 per hour (\$948 Laffey Matrix rate +
17 (2.5% x \$948)) (*See* Exh. 6.). Accordingly, my current billing rate of \$950.00 per hour is
18 reasonable.

19 42. I am experienced in prosecuting and defending employment matters, particularly class
20 and PAGA actions. My firm has focused a substantial percentage of its practice on wage, hour,
21 and working conditions violations. In addition to the present case, I am also class counsel for other
22 wage and hour class action lawsuits pending in various counties throughout California, including
23 in state and federal courts. The following is a list of some of our recent class action settlements
24 that have received preliminary and final approval: *Aparicio v. Lineage Logistics, LLC* (LASC No.
25 BC722764) (class size approx. 155; lead counsel); *Black v. Mission Healthcare Servs., Inc.* (LASC
26 No. 19STCV04602) (class size approx. 1,000; lead counsel); *Campa v. Bloomingdeals, Inc.* (LASC
27 No. BC700366) (class size approx. 1,500; lead counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.*
28

(LASC No. BC709630) (class size approx. 210; lead counsel); *Gomez v. H Mart Cos., Inc.* (LASC No. BC671525) (class size approx. 2,500; co-counsel); *Jones v. Citiguard, Inc.* (LASC No. BC664890) (class size approx. 587; lead counsel); *Jones v. Fitness Alliance, LLC* (Riverside No. PSC1404079) (class size approx. 1,000; lead counsel); *Lagos v. ThyssenKrupp Elevator Corp.* (LASC No. BC682972) (\$750,000 for 79 class members; lead counsel); *Mark Brulee et al. v. DAL Global Servs., LLC* (C.D. Cal. Dec. 20, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659, at *10 (class size approx. 2,650; lead counsel) (in approving my \$650 hourly rate in that case, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators. Other courts have approved the attorneys’ current rates for the Moon & Yang, APC attorneys”); *Martinez v. Bail Hotline Bail Bonds, Inc.* (LASC No. BC700131) (class size approx. 173; lead counsel); *Montoya v. Golden I Credit Union* (Sacramento No. 34-2018-00228252) (class size approx. 1,900; lead counsel); *Onofre v. Caitac Garment Processing, Inc.* (LASC No. BC702283) (class size approx. 750; lead counsel); *Rodriguez v. Rossmoyne, Inc.* (LASC No. BC699137) (class size approx. 220; lead counsel); *Sison v. Cha Hollywood Med. Ctr., L.P.* (LASC No. BC6441 29) (class size approx. 2,100; co-counsel); *Slaughter v. ACA Sec. Stems, LP* (LASC No. BC699137) (class size approx. 300; lead counsel); *Taylor v. Sherman’s Delicatessen & Bakery, LLC* (LASC No. BC722765) (class size approx. 515; lead counsel); *Vargas v. AMS Paving, Inc.* (LASC No. BC722767) (case size approx. 260; lead counsel); *Vertti v. Bagcraft Papercon III, LLC* (LASC No. 19STCV12729) (class size approx. 260; lead counsel); and *Wallick v. Campbell Soup Supply Co., LLC* (San Joaquin No. STK-CV-UOE-2021-0000865) (class size 435; lead counsel).

LILIT TER-ASTVATSATRYAN’S EXPERIENCE AND QUALIFICATIONS

43. Lilit Ter-Astvatsatryan is a Partner at Moon Law Group, PC. Since she was admitted to the California Bar, her practice has exclusively focused on labor and employment class action lawsuits involving California and federal labor laws.

44. Mr. Ter-Astvatsatryan received her Juris Doctorate from the University of California, Hastings College of the Law in 2017, where she served as a Symposium Editor for the Hastings Race

1 and Poverty Law Journal and a Teaching Assistant to the Legal Research & Writing and Legal Analysis
2 programs. In law school, she served as a Judicial Extern to the Honorable Patrick J. Walsh of the United
3 States District Court, Central District of California.

4 45. Ms. Ter-Astvatsatryan received her undergraduate degree in 2014 from the University of
5 California, Los Angeles with a Bachelor of Arts degree in Anthropology and a minor in English
6 Literature.

7 46. Ms. Ter-Astvatsatryan's billing rate is \$850.00 per hour, which is her usual hourly
8 rate in wage and hour litigations. Based on Ms. Ter-Astvatsatryan's nearly eight years of experience,
9 her Laffey Matrix rate with a 2.5% adjustment is \$859.98 per hour (\$839 Laffey Matrix rate + (2.5%
10 x \$839)). (See Exh. 6.) As compared to the Laffey Matrix rate and when considering her experience,
11 Ms. Ter-Astvatsatryan's billing rate of \$850.00 per hour is reasonable.

12 47. As a Partner working solely on wage and hour class action cases, she has been involved
13 in all aspects of complex litigation, including assisting in class certification motions in the following
14 cases:

15 (a) *Macario Gonzalez v. Metcon TI, Inc.*, Alameda Superior Court, Case No.
16 RG19015589 [after class certification motion was filed, the parties attended
17 mediation and ultimately resolved the matter on a class wide basis];

18 (b) *Miguel Angel Lopez Cuadras v. R.C. Wendt Painting, Inc.*, Los Angeles
19 Superior Court, Case No. BC705964 [after class certification motion was
20 entirely briefed, the parties attended mediation and ultimately resolved the
21 matter on class wide basis]; and

22 (c) *Noe Armendariz v. Kinkisharyo International, LLC*, United States District
23 Court, Central District of California, Case No. 2:19-cv-08757-JAK-KS [motion
24 for class certification filed, decision pending].

25 48. Additionally, the following is a list of cases where she briefed preliminary and final
26 approval motions of class action settlements that were ultimately granted by each respective
27 Court:
28

- (a) *Ana Rose De Jesus, et al. v. Philippine National Bank, et al*, Los Angeles Superior Court, Case No. BC673024;
- (b) *Andres De La Riva Sotelo v. Belfor USA Group, Inc.*, Los Angeles Superior Court, Case No. BC688895;
- (c) *Carlos Vertti v. Bagcraft Papercon III, LLC, et al.*, Los Angeles Superior Court, Case No. 19STCV12729;
- (d) *Christopher Thurman v. Wanton Group SP, LLC, et al*, Los Angeles Superior Court, Case No. 19STCV18772;
- (e) *Francisca Velasco v. Paige, LLC*, Los Angeles Superior Court, Case No. 19STCV12114;
- (f) *Jose Montoya v. The Golden 1 Credit Union*, Sacramento Superior Court, Case No. 34-2018-00228252;
- (g) *Malu Vaesau v. Double AA Corporation*, San Francisco Superior Court, Case No. CGC-19-572598;
- (h) *Tyler Jones v. Citiguard, Inc.*, Los Angeles Superior Court, Case No. BC664890; and
- (i) *Venancio Miranda v. Maximum Nursery, Inc.*, Santa Barbara Superior Court, Case No. 19STCV06041.

49. In addition to her work on complex litigation matters and class actions, she has authored published articles on California labor laws, including

- (a) Lilit Ter-Astvatsatryan and H. Scott Leviant, *Where Troester Stops Not Even Troester Knows*, Daily Journal (Los Angeles & San Francisco), July 2, 2019; and
- (b) Lilit Ter-Astvatsatryan and H. Scott Leviant, *Unaccounted Time: Reading the Tea Leaves of Troester*, Daily Journal (Los Angeles & San Francisco), September 12, 2018.

EDWIN KAMARZARIAN'S EXPERIENCE AND QUALIFICATIONS

1 50. Edwin Kamarzarian is an associate attorney at Moon Law Group, PC. Mr.
2 Kamarzarian represents employees in all aspects of employment litigation, including wage and
3 hour class action and representative actions involving claims related to overtime and minimum
4 wages, meal and rest break violations, improper wage statements, PAGA, and unfair business
5 practices.

6 51. Mr. Kamarzarian received his B.A. in Philosophy with honors from the University
7 of California, Riverside, and his J.D. from Southwestern Law School. While in law school, Mr.
8 Kamarzarian served as a certified law clerk for the Los Angeles County District Attorney's office.

9 52. Mr. Kamarzarian's hourly billing rate is \$700.00 per hour, which is his usual hourly
10 rate in wage and hour litigations. Based on Mr. Kamarzarian's 6 years of experience, his Laffey
11 Matrix rate with a 2.5% adjustment is \$595.53 per hour (\$581 Laffey Matrix rate + (2.5% x \$581)).
12 (See Exh. 6.) As compared to the Laffey Matrix rate and when considering his experience, an
13 hourly rate of \$700.00 is reasonable.

14 53. During Mr. Kamarzarian's tenure with Moon Law Group, PC, he has played a
15 meaningful role in obtaining outstanding results for employees who have been wronged by their
16 employers. Mr. Kamarzarian's litigation experience includes, but is not limited to:

17 (a) In July of 2021, Mr. Kamarzarian prepared the briefing submitted to JAMS to deny
18 arbitration of a class and representative action compelled to arbitration, which was
19 successful, resulting in the case being sent back to the superior court in the matter
20 of *Pagoulatos v. Coasthills Credit Union* (Santa Barbara No. 20CV02801).

21 (b) In September of 2021, Mr. Kamarzarian successfully opposed a motion to compel
22 arbitration by arguing Defendant waived its right to arbitrate under the arbitration
23 agreement, resulting in a prompt settlement on a class-wide basis in the matter of
24 *Bustamante v. Virgil Advanced Skill Nursing, Inc.* (LASC No. 19STCV00801).

25 (c) In January 2022, Mr. Kamarzarian helped prepare the briefing in a class certification
26 motion filed by a co-Plaintiff, which was granted, in part, in the matter of *Thong v.*
27 *Outlook Resources, Inc.* (LASC Consolidated No. 20STCV43748).

1 54. Since April 2021, Mr. Kamarzarian's practice has shifted to almost exclusively
2 representing employees in putative wage and hour cases. Mr. Kamarzarian's fees have been
3 repeatedly approved by multiple Courts in this state. Mr. Kamarzarian participated in the
4 litigation and resolution of many wage and hour class actions and representative actions,
5 including obtaining preliminary and final approval of class settlements and approval of PAGA
6 settlements. A selection of cases wherein Mr. Kamarzarian served as Class Counsel or PAGA
7 Counsel includes: *Pagoulatos v. Coasthills Credit Union* (Santa Barbara No. 20CV02801)
8 (\$1,100,00 for a class of approx. 460 members; approving \$400/hr.); *Bustamante v. Virgil*
9 *Advanced Skill Nursing, Inc.* (LASC No. 19STCV00801) (\$700,000 for approx. 348 class
10 members); *Barahona v. Methodist Hosp. of So. Cal.* (LASC No. 20STCV09876) (\$5,000,000 for
11 a class of approx. 3,329 members); *Barrios v. C.B. Nichols Egg Ranch* (San Bernardino No.
12 CIVSB2112296) (\$875,000 for a class of approx. 389 members; approving \$400/hr.); *Campos v.*
13 *Adecco USA, Inc.* (Contra Costa No. C21-00473) (\$170,000 for approx. 822 aggrieved employees;
14 approving \$400/hr.); *Castillo v. Freedom Painting, Inc.* (LASC No. 20STCV22365) (\$250,000 for
15 approx. 345 class members); *Dale v. Con-Lee Restaurants, Inc.* (Santa Clara No. 20CV364938)
16 (\$415,000 for approx. 1,612 class members); *Drews v. Tuff Shed, Inc.* (Sacramento No. 34-2021-
17 00300020-CU-OE-GDS) (\$100,000 for approx. 565 aggrieved employees); *Elliott v. Sage Hosp.*
18 *Res., LLC* (San Diego No. 37-2020-00043180-CU-OE-CTL) (\$450,000 for approx. 454 class
19 members; approving \$400/hr.); *Ellison v. Granite Hills Healthcare & Wellness Ctr., LLC* (San
20 Diego No. 37-2021-00032864-CU-OE-CTL) (\$130,000 for 666 aggrieved employees; approving
21 \$400/hr.); *Galvez v. Yamato Valencia, Inc.* (LASC No. 20STCV22760) (\$300,000 for 439 class
22 members; approving \$400/hr.); *Gonzalez v. A.M. Castaneda, Inc.* (San Diego No. 37-2021-
23 00017374-CU-OE-CTL) (\$350,000 for approx. 311 class members); *Gonzalez v. Paradigm*
24 *Treatment Ctrs., LLC* (LASC No. 21STCV25649) (\$95,000 for 212 aggrieved employees);
25 *Gooding v. AAA Quality Servs., Inc.* (Kern No. BCV-21-100405) (\$510,000 for approx. 308 class
26 members; approving \$400/hr.); *Hickey v. Florence Crittenton Servs. of Orange Cty.* (Orange No.
27 30-2020-01168166-CU-OE-CXC) (\$750,000 for approx. 823 class members); *Kwist v. Castle*
28

1 *Oaks Golf Mgmt., LLC* (Sacramento No. 34-2020-00275335-CU-OE-GDS) (\$150,000 for approx.
2 99 class members; approving \$400/hr.); and *Majdoub v. Argent Hotel Mgmt., LLC* (San
3 Francisco No. CGC-20-582921) (\$1,800,000 for 2,304 class members; approving \$400/hr.)

4 PAGA COUNSEL’S EXPERIENCE AND QUALIFICATIONS

5 55. As demonstrated by the foregoing, my office is qualified to handle this litigation
6 because we are experienced in litigating Labor Code and Wage Order violations in individual,
7 class, and representative actions. The attorneys at my office have been appointed as lead or co-
8 lead counsel in numerous wage and hour class and/or PAGA actions in state and federal courts
9 by way of motion for settlement approval. Including myself, Moon Law Group, PC is comprised
10 of approximately 30 attorneys, all of whom are actively and continuously practicing
11 employment litigation, representing almost entirely employee-plaintiffs, in both individual and
12 class and/or PAGA actions, in this Superior Court and other Superior Courts throughout the
13 State, in the Courts of Appeal, and in various federal courts. The attorneys at my firm have a
14 high level of knowledge and experience in areas of wage and hour class and PAGA actions, and
15 labor and employment law generally.

16 56. Moon Law Group, PC has been engaged in the practice of employment and labor
17 law for over a decade, and presently focuses exclusively on plaintiffs’ employment law. The
18 firm and its lawyers have tried both bench and jury trials (representing both plaintiffs and
19 defendants) relating to employment matters. As noted above, Moon Law Group, PC has been
20 appointed lead or co-lead class counsel in federal and state courts in California. Also, the firm
21 and its lawyers have successfully settled hundreds of cases during that time, including wage
22 and hour class and/or PAGA actions.

23 57. The foregoing experience of myself and other attorneys of Moon Law Group,
24 PC is helpful in assessing the reasonableness of settlements, such as the one at issue here, and
25 from this experience Plaintiff’s Counsel concluded that this litigation could not have been
26 settled on better terms than provided under the proposed Settlement.

58. I do not believe that I or any other attorneys of Moon Law Group, PC have any conflicts of interest with the named Plaintiff, other Aggrieved Employees, or the proposed Administrator. I am not related to Plaintiff. I respectfully submit that Moon Law Group, PC is competent and well suited to act as PAGA Counsel in this action, and we have and will continue to vigorously represent the interests of the Aggrieved Employees.

REQUEST FOR ATTORNEYS' FEES AND COSTS

59. The proposed award of attorneys' fees to PAGA Counsel (\$72,500.00) can be justified under either the lodestar method or percentage recovery method. Plaintiff's Counsel, however, base the requested award of fees on the percentage method.

60. The total current lodestar for Moon Law Group, PC is *not less than* the following:

Attorney	Rate	Hours	Lodestar
Kane Moon	\$950.00	20.4	\$19,380.00
Lilit Ter-Astvatsatryan	\$850.00	24.9	\$21,165.00
Edwin Kamarzarian	\$700.00	28.6	\$20,020.00
	Total:	73.9	\$60,565.00

61. There are additional hours devoted to this litigation by the attorneys and legal assistants in my office that are not reflected in the foregoing lodestar, including additional attorney time that will be spent to obtain and monitor approval of the PAGA Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. I estimate that my office will commit *no less than* 10 hours, although likely more time, to these additional tasks, which are hours not included in the foregoing lodestar total. My office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

62. We can provide complete, detailed billing records in the event the Court requests them but would request the opportunity to redact attorney-client privileged information and any other privileged information. As discussed below, a positive multiplier is warranted in this case.

63. The lodestar method requires the Court to determine a “touchstone” or lodestar figure based on a compilation of time spent and reasonable hourly compensation for each attorney. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579.) 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.) 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.)

(a) Number of Hours Expended by My Office is Reasonable: As set forth in this declaration, my office expended a significant amount of time litigating the case to achieve an excellent result on behalf of the Aggrieved Employees. To date, my office has spent no less than approximately **73.9 hours** litigating this case. In the event the Court grants settlement approval, my office will spend additional time related to this litigation, including to monitor administration of the settlement after approval, committing no less, although likely more, than 10 hours to those additional tasks. The number of hours that my office has and will devote to this case is reasonable. (*See, e.g., Ketchum III v. Moses* (2001) 24 Cal.4th 1122, 1133 [fee award should be fully compensatory and, “absent circumstances rendering the award unjust, an attorney fee award should ordinarily include compensation for *all* the hours *reasonably spent*”] [emphasis in original]; *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 624 [counsel are entitled to compensation for all hours reasonably expended]; *Hensley, supra*, 461 U.S. at pp. 435–36; *Caudle v. Bristow Optical Co.* (9th Cir. 2000) 224 F.3d 1014, 1028; *Cabrales v. Cty. of L.A.* (9th Cir. 1991) 935 F.2d 1050, 1052–53.) As discussed above, my office was required to expend considerable time and resources to investigate, litigate, and successfully settle these claims for the benefit of the Aggrieved Employees.

1 (b) The Attorneys' Hourly Rates are Reasonable: "[T]he established standard when
2 determining a reasonable hourly rate is the 'rate prevailing in the community for
3 similar work performed by attorneys of comparable skill, experience, and
4 reputation.'" (*Camacho v. Bridgeport Fin., Inc.* (9th Cir. 2008) 523 F.3d 973, 979
5 [quoting *Barjon v. Dalton* (9th Cir. 1997) 132 F.3d 496, 502].) This rule applies
6 even when, as here, the attorneys representing a named plaintiff perform the work
7 on a contingent fee basis. (See, e.g., *Robertson v. Fleetwood Travel Trailers of*
8 *Cal., Inc.* (2006) 144 Cal.App.4th 785, 818; *Blanchard v. Bergeron* (1989) 489
9 U.S. 87, 96.) These hourly rates are reasonable in light of the significant
10 experience, expertise, and skill my firm brought to this action. Rates are reasonable
11 if they are "within the range of reasonable rates charged by and judicially awarded
12 comparable attorneys for comparable work." (*Children's Hosp. & Med. Ctr. v.*
13 *Bonta* (2002) 97 Cal.App.4th 740, 783.) The trial court may "find hourly rates
14 reasonable based on evidence of other courts approving similar rates." (*Parkinson*
15 *v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.) The attorneys
16 at Moon Law Group, PC are experienced litigators who specialize in employment
17 law, with a substantial wage and hour class action practice. These rates are not
18 opposed or challenged, and have been approved by other courts, as explained
19 *supra*.

20 (c) Application of a Positive Multiplier Is Warranted: Once this lodestar figure has
21 been determined, the Court may take into account other "enhancement" factors to
22 adjust the lodestar award. As the California Supreme Court has held, contingency
23 fees should be higher than fees for the same legal services paid concurrently with
24 the provision of the services. (*Ketchum III, supra*, 24 Cal.4th at pp. 1132–33; see
25 also *Fischel v. Equitable Life Assurance Soc'y of the U.S.* (9th Cir. 2002) 307 F.3d
26 997, 1008.) "A lawyer who both bears the risk of not being paid and provides legal
27 services is not receiving the fair market value of his work if he is paid only for the
28

1 second of these functions. If he is paid no more, competent counsel will be
2 reluctant to accept fee award cases.” (*Ketchum*, 24 Cal.4th at p. 1133.) Application
3 of that rule is particularly appropriate where the case is brought to redress
4 important rights of vulnerable persons. (*Id.*) A risk enhancement is “earned
5 compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it
6 is intended to approximate market-level compensation for such services, which
7 typically includes a premium for the risk of nonpayment or delay in payment of
8 attorney fees.” (*Id.* at p. 1138.) **Multipliers normally range from two to four or**
9 **higher.** (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 255 [emphasis
10 added]; *see also Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051,
11 n.6 [“most” common fund cases apply a multiplier of 1.0–4.0]; *Been v. O.K. Indus.,*
12 *Inc.* (E.D. Okla. 2011, No. CIV–02–285–RAW) 2011 WL 4478766, *11 [citing a
13 study “reporting [an] average multiplier of 3.89 in survey of 1,120 class action
14 cases” and finding that a multiplier of 1.22 would be “per se reasonable”].) Factors
15 considered in determining whether a lodestar multiplier is appropriate generally
16 include: (1) the risks presented by the contingent nature of the case; (2) the novelty
17 and difficulty of the questions involved and the skill requisite to perform the legal
18 service properly; (3) the nature of the opposition; (4) the preclusion of other
19 employment by the attorney due to acceptance of the case; and (5) the result
20 obtained and the importance of the lawsuit to the public. (*Serrano v. Ivy Baker*
21 *Priest* (1977) 20 Cal. 3d 25, 48–49 [hereinafter “*Serrano III*”].) All these factors
22 favor approval of a multiplier along the lines of those approved in the cases above.
23 To date, my office has incurred no less than **\$60,565.00** in attorneys’ lodestar fees
24 and has advanced **\$19,537.06** in actual litigation costs. After reimbursement of our
25 out-of-pocket expenses, the fee request represents a multiplier of roughly **1.20**.

- 26 i. *Risks presented by the contingent nature of the case:* The major consideration
27 in determining the necessity of a multiplier is the contingent nature of the
28

1 award. (*Ketchum III*, *supra*, 24 Cal.4th at pp. 1132–33; *see also Fischel*, *supra*,
2 307 F.3d at p. 1008.) In determining what multiplier to award, the probability
3 of success must be assessed *ex ante*, that is, as viewed from the outset of the
4 case. (*See, e.g., Harman v. Lyphomed, Inc.* (7th Cir. 1991) 945 F.2d 969, 976.)
5 Further, the possibility of no recovery is only one of the uncertainties involved
6 in taking on such a case. Other uncertainties are the amount that will be
7 recovered, uncertainty as to the cost, both in effort and expenses, and
8 uncertainty about how much time will pass before the recovery is obtained.
9 (*See, e.g., Ketchum*, 24 Cal.4th at pp. 1132–1133, 1138.) My office’s outlay
10 of time and money in this case has been significant. In all, my office has spent
11 approximately 73.9 hours to date investigating, analyzing, researching,
12 litigating, and negotiating a favorable resolution of this case, in addition to a
13 minimum of 10 hours that will be spent following final settlement approval,
14 including to monitor settlement administration and distribution of funds, and
15 has incurred \$19,537.06 in necessary litigation expenses. Unsettled legal issues
16 also presented risks to the claims in this case. My office bore the substantial
17 risk of an uncertain outcome in agreeing to prosecute this representative action
18 case on a contingency fee basis, as well as the difficulties and delay inherent
19 in such litigation. There was the prospect of the enormous cost inherent in
20 PAGA action litigation, as well as extensive negotiations with a corporate
21 Defendant who vigorously opposed Plaintiff’s claims and resisted settlement
22 from the outset. My office risked significant time and expense to ensure a
23 successful settlement. As detailed *supra*, the risks presented in this case were
24 significant, and Defendant’s defenses posed serious risks to the success of this
25 matter on the merits. These risks illustrate the recognition by the California
26 Supreme Court in *Ketchum III* that, if multipliers are not awarded to plaintiff’s
27 counsel in the cases that are successfully settled, counsel’s fees are essentially
28

1 being cut because the lodestar in and of itself would not account for contingent
2 risk.

3 ii. *Difficulty of the questions involved and the skill required:* My office is
4 comprised of skilled attorneys who have had success in wage and hour class
5 and PAGA representative actions. This case required experienced and
6 competent lawyers, as well as expertise in the issues presented herein. To
7 obtain such an attorney on the free market, a client must pay the market rate.
8 While most class and/or representative actions are complex and involve some
9 risk, my office had to overcome several major obstacles in prosecuting this
10 case. Defendant's contentions underscore the risk of prevailing at trial, and any
11 of these obstacles could have prevented recovery completely.

12 iii. *Vigorous opposition by Defendant:* Counsel who skillfully overcome difficult
13 issues or uncompromising opposition in the litigation are entitled to a fee
14 enhancement. (*Serrano III, supra*, 20 Cal.3d at 49.) Here, before eventually
15 agreeing to settle, Defendant asserted a vigorous defense, including moving for
16 summary judgment and adjudication. The settlement effort was protracted,
17 with extended discussions and instances in which it appeared the Parties would
18 not reach a settlement. Further, proceeding to trial would have added years to
19 the resolution of this case because of the difficult legal and factual issues raised
20 and the likelihood of appeals. Indeed, even if Plaintiff prevailed at trial,
21 Defendant would likely have mounted an appeal.

22 iv. *The result obtained would justify an enhancement:* The results obtained in
23 litigation can properly be used to enhance a lodestar calculation where an
24 exceptional effort produced excellent results. (*Graham, supra*, 34 Cal.4th at p.
25 582.) Here, the final settlement figure of \$217,500.00 represents approximately
26 64% of the realistic potential liability of the claims. Considered against the size
27 of the PAGA group, the risks posed by continued litigation, and the importance
28

1 of the employment rights and a speedy recovery, the relief provided under the
2 Settlement represents a very strong result for the Aggrieved Employees.

3 v. *The use of a multiplier is permitted in a PAGA action*: PAGA provides that
4 “[a]ny employee who prevails in any action shall be entitled to an award of
5 reasonable attorney’s fees and costs.” (Lab. Code § 2699(g)(1).) Although,
6 PAGA does not provide a specific standard for evaluating attorneys’ fees in
7 connection with a settlement of PAGA claims, California Courts have employed
8 a lodestar analysis and use of multipliers for this purpose. “Where a settlement
9 produces a common fund for the benefit of the entire class, courts have discretion
10 to employ either the lodestar method or the percentage-of-recovery method. . . .
11 To guard against an unreasonable result, the Ninth Circuit encourages district
12 courts to “cross-check[] their calculations against a second method. . . .
13 Accordingly, the Court calculates attorneys’ fees in the instant case using the
14 percentage-of-recovery method and then cross-checks its calculations against the
15 lodestar method.” (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7,
16 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 [quoting *In re Bluetooth*
17 *Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].) The
18 Court in *Hermosillo* granted, in part, plaintiffs’ counsel’s unopposed motion for
19 attorneys’ fees and costs in a PAGA-only settlement, wherein 33.3% of the gross
20 settlement fund was requested for fees. (*Hermosillo*, at *1–3.) The Court stated,
21 “[w]here the percentage-of-recovery method is used, it is well-established that
22 25 percent of a common fund is a presumptively reasonable amount of attorneys’
23 fees.” (*Id.* at *1.) The Court further stated, “the Ninth Circuit has emphasized
24 that ‘[t]he 25% benchmark rate, although a starting point for analysis, may be
25 inappropriate in some cases. . . . Selection of the benchmark or any other rate
26 must be supported by findings that take into account all the circumstances of the
27 case.’” (*Id.* [quoting *Vizcaino v. Microsoft Corp.* (2022) 290 F.3d 1043, 1048].)
28

1 The Court found the settlement at issue “d[id] not justify an upward deviation
2 from th[e] standard [25%] benchmark rate, given Plaintiff’s Counsels’ effective
3 abandonment of the Aggrieved Employees’ wage and hour [class action] claims
4 after more than 3.5 years of litigation,” and therefore, only approved 25% for
5 fees and a lodestar multiplier of 1.22. (*Id.* at *1, 3.) In contrast to *Hermosillo*,
6 however, the class allegations in the present Action were dismissed shortly
7 following the complaint filing, and therefore, the large majority of Plaintiff’s
8 Counsel’s work in this matter was focused on the settled PAGA claims at issue.
9 Accordingly, the Court should find that the circumstances of the present case
10 justify an award of one-third (33 1/3%) of the Gross Settlement Amount for
11 attorneys’ fees.

12 64. I am informed and believe that the fee and costs provisions under the PAGA
13 Settlement are reasonable. The fee percentage requested is less than that charged by my office for
14 most employment cases. My office invested significant time and resources into the case, with
15 payment deferred to the end of the case, and then, of course, contingent on the outcome.

16 65. The risk to my office has been very significant, particularly if we would not be
17 successful in pursuing this representative action. In that case, we would have been left with no
18 compensation for all the time taken in litigating this case. Indeed, I have taken on a number of
19 class and/or PAGA action cases that have resulted in thousands of attorney hours being expended
20 and ultimately having the Defendant company going bankrupt. The contingent risk in these types
21 of cases is very real and occurs regularly. Furthermore, we were precluded from focusing on, or
22 taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

23 66. Because most individuals cannot afford to pay for representation in litigation on
24 an hourly basis, Moon Law Group, PC represents virtually all its employment law clients on a
25 contingency fee basis, including the named Plaintiff in this litigation. Pursuant to this arrangement,
26 we are not compensated for our time unless we prevail at trial or successfully settle our clients’
27 cases. Because Moon Law Group, PC is taking the risk that we will not be reimbursed for our time
28

1 unless our client settles or wins his or her case, we cannot afford to represent an individual
2 employee on a contingency basis if, at the end of our representation, all we are to receive is our
3 regular hourly rate for services. It is essential that we recover more than our regular hourly rate
4 when we win if we are to remain in practice so as to be able to continue representing other
5 individuals in civil rights employment disputes.

6 67. As of the drafting of this motion, my office has incurred \$19,537.06 in expenses
7 litigating this action. These expenses were reasonably necessary to the litigation and were actually
8 incurred by my office. Moreover, these expenses are below the maximum amount (\$25,000.00)
9 allowed in the PAGA Settlement, and the remainder will revert to the Net Settlement Amount to
10 be paid to the LWDA and Aggrieved Employees. (PAGA Settlement, ¶ 3.2.1.) Therefore, they
11 should be reimbursed in full.

12 68. My office invested significant time and resources into the case, with payment
13 deferred to the end of the case, and then, of course, contingent on the outcome. My office's efforts
14 have included, and will include following an approval order, without limitation, the following:

- 15 a. Numerous interviews with the Plaintiff and review of documents provided by him;
- 16 b. Legal research and investigation regarding the Defendant's practices at numerous
17 points in the litigation;
- 18 c. Preparation and submission of Plaintiff's PAGA notice letter;
- 19 d. Preparation of multiple drafts of the original class action complaint and subsequent
20 first amended complaint, as well as finalization and filing of said complaints;
- 21 e. Extensive "meet and confer" correspondence and discussions with Defendant's
22 counsel to obtain relevant documents and information through formal and informal
23 discovery;
- 24 f. Contacting witnesses;
- 25 g. Analysis of the discovery production and preparation of a damages model with the aid
26 of a statistics expert;
- 27 h. Research and preparation of Plaintiff's mediation brief;
- 28

- i. Attendance and active participation at the mediation;
- j. Drafting, negotiating, and reviewing multiple drafts of the PAGA Settlement and attachments thereto;
- k. Preparation, finalization, and filing of the motion for approval and accompanying filings;
- l. Anticipated preparation for and attendance at the hearing on motion for approval;
- m. Anticipated monitoring approval of the PAGA Settlement and requested awards;
- n. Anticipated overseeing the settlement administration process and distribution of funds; and
- o. Anticipated communications with Plaintiff regarding the case.

69. Through the efforts of my office and Plaintiff in this case, a fair and reasonable resolution has been reached that includes a non-reversionary settlement payment by Defendant of \$217,500.00 to compensate Aggrieved Employees for Defendant's alleged wage and hour practices. I am informed and believe that, without the efforts of my office or Plaintiff, the Labor Code and Wage Order violations alleged in the Complaint would have gone completely unremedied.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on January 31, 2025, at Los Angeles, California.

Kane Moon