THE MARKHAM LAW FIRM
David R. Markham (SBN 71814)
dmarkham@markham-law.com
Lisa R. Brevard (SBN 323391)
lbrevard@markham-law.com
888 Prospect Street, Suite 200
La Jolla, CA 92037
Telephone: (619) 399-3995/Facsimile: (619) 615-2067

Attorneys for Plaintiff Monique Bravo

[Additional Counsel on Next Page]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MONIQUE BRAVO, an individual, on behalf of herself and all others similarly situated, Plaintiff, vs. OPTUMCARE MANAGEMENT, LLC, a California Corporation, Defendants.	Lead Case No. 22STCV12240 ("Bravo I") (Consolidated with Case No. 23STCV17426 ("Bravo II")) ASSIGNED FOR ALL PURPOSES TO: Honorable Brock T. Hammond, Dept. 407 **<u>CONSOLIDATED REPRESENTATIVE ACTIONS</u>** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT ("PAGA") SETTLEMENT** Date: September 10, 2026 Time: 8:30 a.m. Dept: 407 Reservation No.: 267317946638 Complaint filed: April 11, 2022

COHELAN KHOURY & SINGER
Isam C. Khoury (SBN 58759)
ikhoury@ckslaw.com
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Maggie K. Realin (SBN 263639)
mrealin@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001/Facsimile: (619) 595-3000

UNITED EMPLOYEES LAW GROUP
Walter L. Haines (SBN 71075)
whaines@uelglaw.com
8605 Santa Monica Blvd., #63354
West Hollywood, CA 90069
Telephone: (562) 256-1047/Facsimile: (562) 256-1006

Attorneys for Plaintiff Monique Bravo

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San Diego, CA 92101

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605 C Street, Suite 200
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I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, Plaintiff Monique Bravo seeks court approval of the PAGA Representative Action Settlement Agreement and Release ("Settlement Agreement" or "SA")[1] reached by Plaintiff and Defendants OptumCare Management, LLC and Optum Care, Inc. ("Optum" or "Defendants"). Plaintiff filed two PAGA representative actions. The first action, entitled *Monique Bravo v. Optumcare Management, LLC,* Los Angeles County Superior Court, Case No. 22STCV12240 ("*Bravo I*" and Lead Case) is a PAGA action premised on a claim of misclassification on behalf of 263 Nurse Case/Care Managers ("NCMs") employed by Optumcare Management, LLC in California from February 2, 2021 to March 2022, when NCMs were reclassified from exempt to non-exempt. The *Bravo I* PAGA action is also premised on a claim for failure to reimburse business expenses.

The second PAGA action, entitled *Monique Bravo v. Optum Care, Inc.*, Los Angeles County Superior Court, Case No. 23STCV17426 ("*Bravo II*"), alleges that NCMs were not reimbursed for necessary business expenses such as home internet expenses. It covers a period of February 2, 2021 to April 26, 2026 and includes 522 NCMs. There is a total of 640 NCMs across both *Bravo I* and *Bravo II* actions. *Bravo I* and *Bravo II* were consolidated on June 15, 2026, for purposes of settlement under *Bravo I*, the Lead Case.

Defendants will pay a Gross Settlement Amount of $630,000.00 to settle Plaintiff's PAGA claims in *Bravo I* and *Bravo II*. Plaintiff believes the civil penalties secured by the Settlement are significant in light of the claims and defenses, and fulfill PAGA's underlying purpose to benefit the public and to deter future labor law violations. As such, the Court should approve the Settlement. Plaintiff's request for attorneys' fees in the amount of $220,500.00, reimbursement of litigation costs in the amount of $16,936.46, and settlement administration costs to Phoenix Settlement Administrators ("Phoenix") in the amount of $7,140.75 are also reasonable and should be approved. Thus, Plaintiff respectfully requests that the Court enter an

[1] A copy of the Settlement Agreement is attached as Exhibit 1 to the Declaration of Isam Khoury ("Khoury Decl."), ¶11.

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San Diego, CA 92101

order and judgment granting approval of the Settlement, under Labor Code section 2699(s)(2).

II. FACTS AND PROCEDURE

Plaintiff Monique Bravo filed two related PAGA actions against Optum arising from her work as a Nurse Case Manager ("NCM"). Optum is in the business of reviewing insurance authorizations and benefits for facilitating patient care. In their job duties, NCMs communicate with patients, physicians/doctor's offices and other care coordinators, to review requests for insurance authorizations against health plan guidelines and objective plan criteria. Bravo Decl., ¶5.

Bravo I (filed April 11, 2022) centers on misclassification. Plaintiff alleges that NCMs were improperly classified as exempt employees from February 2, 2021 through March 2022, when Optum reclassified the position to non-exempt. Plaintiff claims NCMs did not meet any exemption because their duties involved applying objective health plan guidelines to insurance authorization reviews, without discretion, managerial authority, or the ability to deny claims. Khoury Decl., ¶12. Plaintiff alleges that NCMs worked under intense time pressure driven by strict review deadlines and daily quotas, resulting in regular overtime, including extended hours and weekends. Bravo Decl., ¶6. She further alleges that meal and rest breaks were effectively noncompliant because they were frequently interrupted by time-sensitive communications requiring immediate response. Bravo Decl., ¶¶7-8. Based on this alleged misclassification, *Bravo I* includes claims for unpaid overtime wages, missed meal and rest breaks, and derivative wage statement and waiting time penalties, as well as unreimbursed business expenses. Khoury Decl., ¶12.

Bravo II (filed July 25, 2023) is narrower and focuses solely on unreimbursed business expenses between February 2, 2021 and the present. Plaintiff alleges that NCMs who began working from home due to the Covid pandemic were not reimbursed for necessary business expenses such as home internet costs. Khoury Decl., ¶13.

The cases were deemed related and have been heavily litigated, with substantial written discovery, document production, and depositions completed. Khoury Decl., ¶15.

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III. DISCOVERY AND INVESTIGATION

Plaintiff and her counsel conducted extensive investigation and discovery into the claims alleged in this action. The Parties engaged in multiple rounds of written discovery and document production. Plaintiff sat for an all-day deposition. Plaintiff took two PMQ depositions, and at the time the parties agreed to mediate the case, were working to schedule additional PMQ depositions on the remaining topics, which included the decision to reclassify the position and basis for the original classification. Khoury Decl., ¶17.

Based on this discovery and investigation, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. Khoury Decl., ¶17.

IV. SETTLEMENT NEGOTIATIONS

On January 26, 2026, the Parties participated in a full-day mediation with Daniel Turner, Esq., a well-regarded mediator vastly experienced in wage and hour class actions. Although Settlement was not reached at the mediation, Mr. Turner tendered a mediator's proposal that the Parties accepted. After many conversations and emails, a detailed Settlement Agreement was fully signed on June 1, 2026. SA, ¶2.2.1; Khoury Decl., ¶18. *Bravo I* and *Bravo II* have now been consolidated for purposes of settlement under *Bravo I*, the Lead Case. Khoury Decl., ¶16.

On the same date this motion is filed with the Court, it will be served upon Defendants and provided to the Labor and Workforce Development Agency ("LWDA") electronically through the LWDA's website using the appropriate intake form. SA, ¶7.3; Khoury Decl., ¶45, Ex. 7 - LWDA Confirmation of Receipt.

V. SUMMARY OF SETTLEMENT

A. <u>Settlement Terms</u>

The "Aggrieved Employees" include three groups: (1) NCMs employed by OptumCare Management, LLC in California from February 5, 2021 to March 18, 2022 who were classified as exempt (*Bravo I* Misclassification Group);(2) NCMs employed by OptumCare Management, LLC in California from February 5, 2021 to December 18, 2022 for reimbursement claims (*Bravo I* Reimbursement Group); and (3) similarly-situated nurse case management employees of Optum Care, Inc. in California who worked as telecommuters from May 21, 2022 through

April 26, 2026, for reimbursement claims (*Bravo II* Reimbursement Group). The *Bravo I* Reimbursement Group includes all of the individuals who worked any pay periods in the *Bravo I* Misclassification Group. SA, ¶1.1; Khoury Decl., ¶14.

The PAGA claims of the Aggrieved Employee Group shall be settled for the Gross Settlement Amount ("GSA") of $630,000.00 which is inclusive all attorneys' fees and costs to Plaintiff's Counsel, Settlement Administration Costs, and payment to the LWDA and the Aggrieved Employee Group.

The GSA shall be allocated as follows:

GROSS SETTLEMENT AMOUNT:	**$ 630,000.00**
Plaintiffs' Counsel's Fees:	-$ 220,500.00
Plaintiffs' Counsel's Litigation Costs:	-$ 16,936.46
Administration Costs:	-$ 7,140.75
NET SETTLEMENT FUND:	**$ 385,422.79**
Labor Workforce & Development Agency: 75%	$ 289,067.09
Aggrieved Employees: 25%	$ 96,355.70

Two-thirds (2/3) of the PAGA Payment to the Aggrieved Employees shall be allocated to the *Bravo I* Misclassification Group and one-third (1/3) of the PAGA Payment shall be allocated to the *Bravo I* Reimbursement Group and *Bravo II* Reimbursement Group, proportionally to the respective PAGA periods worked by Aggrieved Employees who belong to these groups. SA, ¶6.1.

This allocation is fair, as Plaintiff believes the misclassification claims in *Bravo I* are stronger, and encompass the related meal and rest break claims, as well as derivative wage statement and waiting time penalties claims. Khoury Decl., ¶19. Each employee's share is calculated on a pro rata basis by determining a value per pay period for each group, then multiplying that value by the number of pay periods the employee worked within the applicable group(s). SA, ¶6.1.

With an aggregate 4,847 pay periods worked by *Bravo I* Misclassification Group, each member will receive an estimated $13.12 per pay period. There are an aggregate 8,297 pay periods worked by the *Bravo I* Reimbursement Group and an aggregate 23,684 pay periods worked by the *Bravo II* Reimbursement Group, who will receive an estimated $0.99 per pay

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period. The *Bravo I* Reimbursement Group includes all of the individuals who worked any pay periods in the *Bravo I* Misclassification Group. The aggregate pay periods worked across all three groups is 31,981. Khoury Decl., ¶20.

Plaintiff will receive monetary compensation from Defendants separately, in exchange for a general release, for settlement of her individual wage claims, as specified in a separate and confidential individual settlement agreement, which can be presented to the Court for an *in camera* review, at the court's request. Bravo Decl., ¶21.

B. <u>The Release</u>

The Settlement releases all claims under PAGA that were or could have been alleged in the *Bravo I* Action and the *Bravo II* Action, respectively, based on the facts or claims alleged in any version of the filed complaints or enumerated in the letters sent by Plaintiff to the LWDA irrespective of the underlying theory of recovery supporting the claim for PAGA penalties. SA, ¶1.22. This includes any claims for civil penalties under Labor Code section 2699. For *Bravo I*, this includes, but is not limited to, claims based on misclassification of NCMs, failure to pay wages for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to provide accurate wage statements, failure to pay wages due at separation of employment, failure to pay wages timely during employment, and failure to reimburse business expenses, including claims arising under California Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1198, 2802, and the applicable IWC Wage Orders. For *Bravo II*, this includes, but is not limited to, claims based on unreimbursed business expenses under California Labor Code section 2802. SA, ¶1.22.

A PAGA "judgment [ ] is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986. Aggrieved employees are not given notice, nor an opportunity to opt-out or object, and are not bound by the judgment except as to civil penalties. *Id.* at p. 987; *Turrieta v. Lyft, Inc*. (2021) 69 Cal.App.5th 955, 970-71.

"Released Parties" means Defendants, and their predecessors, successors, subsidiaries, parent companies, other corporate affiliates, shareholders, members, agents, and assigns,

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including but not limited to UnitedHealth Group, Inc., and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them. SA, ¶1.23.

C. <u>Settlement Administration</u>

Defendants will provide contact information to Phoenix, who will mail each Aggrieved Employee a cover letter explaining the settlement, the basis for the payment, that an employee cannot opt out of the settlement, and a settlement check. SA, ¶8.2; Ex. A – Settlement Cover Letter; Declaration of Michael Moore on behalf of Phoenix ("Phoenix Decl."), ¶8. Phoenix will perform all services reasonably necessary to locate mailing addresses, calculate, issue and mail payments to aggrieved employees and the LWDA, with tax forms, and, 180 days after mailing, will send the amount of uncashed settlement checks to the California State Controller for deposit in the Unclaimed Property Fund in each employee's name. SA, ¶¶4.3, 4.4, 6.3.

VI. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT

A. <u>The Standard of Review and Approval of PAGA Settlements</u>

The PAGA statute provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Lab. Code § 2699(s)(2). The statute, however, does not require a two-step (preliminary and final approval) process or otherwise mimic the class action approval requirements when the parties reach a settlement only as to PAGA civil penalties. *See Arias,* 46 Cal.4th at 975 (class action requirements "need not be met when an employee's representative action against an employer is seeking civil penalties" under PAGA). "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purpose to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 77.

A PAGA representative action to recover civil penalties "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties." *Iskanian v. CLS Transportation, Los Angeles* (2014) 59 Cal.4th 348, 381. When evaluating a PAGA

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settlement, a trial court "must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." *Moniz*, 72 Cal.App.5th at 89. In addition, a court must independently determine whether a PAGA settlement is fair, adequate, and reasonable using similar factors that apply to the evaluation of the fairness of a class action settlement, "including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount." *Id*. at 77.

B. <u>The Settlement is Fair, Reasonable, and Adequate</u>

The Gross Settlement Amount of $630,000.00 is consistent with PAGA's goal of penalizing Defendants for the alleged violations, deterring future violations, and providing a benefit to the public through enforcement of state labor laws. Khoury Decl., ¶21. The Settlement provides a substantial benefit to the State of California, with the LWDA receiving $289,067.09, as 75%[2] of the Net Settlement Amount, to assist with future enforcement of state labor laws. The Settlement also provides a substantial benefit to the Aggrieved Employees, who will share approximately $96,355.70 as 25% of the Net Settlement Amount, based on the pro rata share of the number of pay periods worked by each individual within each subgroup. *Id*. at ¶22. Accordingly, the Settlement fulfills the underlying purposes of the statute and confers a benefit to the public.

In assessing whether the Settlement is fair, reasonable, and adequate, the Court may balance the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a meaningful amount in civil penalties despite facing significant challenges and risks had the litigation continued. Plaintiff considered several factors in reaching the decision to settle at this point in the litigation, including (a) the risk that the Plaintiff's claims could not be manageably tried; (b) the risk and uncertainty in proving liability and PAGA penalties at trial; (c) the prospect that the Court could substantially reduce any award of civil penalties on the grounds that "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or

[2] The pre-amendment PAGA provisions apply because Plaintiff submitted her PAGA letters before June 19, 2024.

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confiscatory," pursuant to Labor Code section 2699(e)(2);[3] and (e) the risk that Defendants would appeal any unfavorable judgment. Continued litigation would be an expensive, time-consuming and uncertain proposition, and could lead to an unfavorable judgment and/or a lengthy and unsuccessful appeal. Khoury Decl., ¶23.

If the PAGA representative action continues, there are risks Plaintiff would not prevail on the merits. For example, with respect to her misclassification claim at issue in *Bravo I*, Defendants will contend that Plaintiff's role as a Nurse Case Manager required the application of specialized clinical knowledge and the exercise of discretion in evaluating complex medical information against health plan criteria, supporting application of the administrative exemption. Khoury Decl., ¶24. Although Plaintiff characterizes the guidelines as "objective," Optum will argue that NCMs assessed clinical documentation, identified when additional information was needed, and made recommendations that informed physician determinations. Defendants will further contend that this application of professional judgment to varied scenarios, rather than purely mechanical tasks, supports exempt status even though final approval authority rested with physicians, and will also rely on Plaintiff's LVN license and role in facilitating patient care. Khoury Decl., ¶25.

If Optum prevails on its determination that Plaintiff and other NCMs were properly classified as exempt, Plaintiff's overtime, and meal and rest break claims will fail, along with the derivative wage claims based on alleged misclassification. Khoury Decl., ¶26.

Second, with respect to Plaintiff's unreimbursed expenses claim, at issue in both *Bravo I* and *II*, Defendants will argue that Plaintiff cannot establish that she incurred necessary or reasonable business expenses subject to reimbursement. For example, Optum will contend that any home internet use was incidental and not materially different from Plaintiff's preexisting personal use, and Plaintiff has not identified any specific incremental costs attributable to her job duties. Khoury Decl., ¶27. Defendants will also assert that their reimbursement policies complied with applicable law during the relevant period and to the extent Plaintiff and other

[3] *See Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 528 (awarding PAGA penalties of only 0.2% of the maximum penalties).

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NCMs did not seek reimbursement of these expenses, this claim would be susceptible to summary judgment. *Hammit v. Lumber Liquidators* (S.D. Cal. 2014) 19 F. Supp. 3d 989, 1001 (granting summary judgment when employee failed to request reimbursement). Defendants also contend that any time the NCMs spent working from home was entirely voluntary, and therefore any expenses they incurred were not reasonable and necessary. Defendants also contend that because Labor Code section 2802 does not set forth any timing obligation with regard to the reimbursement of expenses, the maximum potential penalty for a PAGA claim based on an alleged violation of Labor Code section 2802 is $100 per person.

Should the Court accept Defendants' evidence and arguments, the possibility of penalties could be significantly reduced, if not eliminated. Khoury Decl., ¶28. Considering the risks of continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment, the non-reversionary settlement amount of $630,000.00 is fair, adequate, and reasonable in light of PAGA's purpose to remediate present labor law violations, to deter future violations, and to maximize enforcement of the Labor Code. Khoury Decl., ¶29.

Courts have found that the "subsequent" penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Amaral v. Cintas* (2008) 163 Cal. App. 4th 1157, 1209; *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal. App. 5th 334, 356 ("the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *Bernstein v. Virgin Am., Inc*. (9th Cir. 2021) 990 F.3d 1157, 1173 (reversing judgment as to "heightened civil penalties" because the defendant was not given notice by the Labor Commissioner when the "subsequent" violations occurred.). Defendants argue they complied with the law and, if any violations could be shown, even if the Court were to reject their argument that the maximum penalty based on the Labor Code section 2802 predicate is $100 per person, Plaintiff still can only recover the "initial violation" rates of $100 per pay period. There are 640 NCMs during the PAGA period, who worked a total of 31,981 pay periods during the PAGA Period. Thus, Plaintiff calculates

Defendants' potential exposure as follows:

- Failure to pay wages including overtime (*Bravo I Misclassification Group*): 4,827 total pay periods x $100 = $482,700;
- Failure to provide meal periods (*Bravo I Misclassification Group*): 4,827 pay periods subject x $100 = $482,700;
- Failure to provide rest periods: (*Bravo I Misclassification Group*): 4,827 pay periods x $100 = $482,700;
- Failure to reimburse business expenses (*Bravo I Reimbursement Group*): 8,297 x $100 = $829,700;
- Failure to provide wage statements (*Bravo I Misclassification Group*): 4,827 pay periods x $100 = $482,700;
- Failure to provide timely earned wages (*Bravo I Misclassification Group*): 4,827 pay periods x $100 = $482,700;
- Failure to pay wages at termination of employment (*Bravo I Misclassification Group*): 131 former employees x $100 = $13,100;
- Failure to reimburse business expenses (*Bravo II Reimbursement Group*): 23,684 pay periods x $100 = $2,368,400 (Khoury Decl., ¶30).
- **Maximum PAGA Penalties: $5,624,700**

However, the Court could exercise its discretion to reduce the amount of PAGA penalties under Labor Code section 2699(e)(2). *Thurman v. Bayshore Transit Mgmt, Inc.* (2012) 203 Cal. App. 4th 1112, 1135 (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013) 2013 WL 10936035 at **2-3 (reducing penalty for past PAGA violations from $1.8 million to $500,000, after rejecting numerous other PAGA claims). In *Carrington*, 30 Cal. App. 5th, the court awarded only 0.21% of the maximum penalties, and the court of appeal affirmed. *Id*. at 529. If a similar reduction had been applied here, Plaintiff would have recovered less than $11,000 ($5.1 million × 0.0021 reduction).

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The proposed $630,000.00 settlement obviates all of these risks, and represents 11.2% of Defendants' maximum potential exposure (11.2% of $5,624,700 maximum exposure), of what may have been obtained through lengthy, expensive, and risky litigation, or 26% for Plaintiff's strongest misclassification claims (26% of $2,426,600). The settlement amount is reasonable, fulfills the purpose of PAGA and provides a substantial amount to the LWDA for education and enforcement. Khoury Decl., ¶31.

The settlement was reached after extensive discovery, review and analysis of all relevant policies, expert analysis, and protracted negotiation. Taking all factors into consideration, Plaintiff's Counsel concluded the settlement is more than "fair, reasonable, and adequate," and avoids the risk, that after extended litigation, there could be little or no recovery. Khoury Decl., ¶¶18, 23, 29, 31. For these reasons, the Court should find that the Settlement is fair, reasonable, and adequate.

VII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Plaintiffs' Counsel requests $220,500.00 for their attorneys' fees,[4] (35% of the GSA), and $16,936.46 in litigation costs. As of the date of the filing of this Motion, Plaintiff's Counsel will have incurred $205,313.75 in attorneys' fees and $16,936.46 in litigation costs to obtain approval of the Settlement. Khoury Decl., ¶¶32-33, 41, Exs. 3-4, 6; Declaration of David R. Markham, ("Markham Decl."), ¶¶12, 14-18; Ex. 1; Declaration of Walter L. Haines ("Haines Decl."), ¶¶7-9; Declaration of Peggy Reali ("Reali Decl."), ¶¶10-11.

The PAGA provides for reasonable attorney's fees and costs, but "does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims." "Under Ninth Circuit [and California] law, the district court has discretion in common fund cases to choose either the 'percentage-of-the-fund or the lodestar method' to determine a reasonable attorney's fee." *Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1047; *Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 503; *Ramirez v. Benito Valley Farms,*

[4] The fee split is as follows: 50.34% is allocated to Cohelan, Khoury & Singer, 16.33% to The Markham Law Firm, and 33.33% to United Employees Law Group. The client consented to this split in writing. Khoury Decl., ¶34.

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LLC (N.D. Cal. 2017) 2017 U.S. Dist. LEXIS 137272, *18.[5] "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.

The California Supreme Court affirmed the granting of attorneys' fees in common fund cases based on a percentage of the recovery. *Laffitte,* 1 Cal.5th at p. 503. A fee award based on a percentage of the common fund recovery here is proper as it spreads the attorneys' fees among all beneficiaries of the fund, aligns the incentives between plaintiffs' counsel, the State, and the aggrieved employees, is a better approximation of the market conditions in a contingency case, and encourages counsel to seek early settlement and avoid unnecessarily prolonging the litigation. *Id*. The Court also approved an optional lodestar cross-check. *Id*. at p. 504.

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A. <u>The Results Achieved Support the Fee Request</u>

The most important factor to consider in granting a fee award is the success obtained. *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A*. (C.D. Cal. June 10, 2005) 2005 U.S. Dist. LEXIS 13627, at *27 (*citing Hensley v. Eckerhart* (1983) 461 U.S. 424). In the face of uncertainties associated with continued litigation of Plaintiff's claims, Defendants' vigorous denials and affirmative defenses, Plaintiff believes the results achieved are excellent. Counsel fulfilled the purpose of PAGA by obtaining $630,000.00 in penalties to distribute to the State, the LWDA for enforcement and education, and to the allegedly aggrieved employees, as well as to compensate the Plaintiff's Counsel representing the interests of the State.

B. <u>The Requested Fees Are Reasonable Under the Common Fund Method</u>

A request for attorneys' fees as a percentage of the gross settlement amount is supported by the "common fund theory," where "one who expends attorney 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." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (citing *Quinn v. State of California* (1975) 15 Cal.3d 162); *Laffitte*, 1 Cal.5th at p. 503 (trial court "may

[5] California trial courts may use cases applying Federal Rule 23 for guidance in class issues. *Vasquez v. Sup. Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.

determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). The percentage is properly based upon the maximum settlement amount, rather than upon the amount of funds distributed to aggrieved employees. *Williams v. MGM-Pathe Commc'n Co*. (9th Cir. 1997) 129 F.3d 1026. 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 p. 110, fn. omitted.

The lodestar analysis may be used to cross-check a percentage-of-recovery award. *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558. However, the Supreme Court of California clarified that:

> [W]hen an attorney fee is awarded out of the common fund preserved or recovered by means of litigation [citation], the award is not per se unreasonable merely because it is calculated as a percentage of the common fund.

Laffitte, 1 Cal.5th at p. 486. The *Laffitte* court further held that "trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . [and] also retain the discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." *Id*. at p. 506.

California courts routinely award attorneys' fees equaling one-third or more of the common fund. *See*, *e.g.*, *Laffitte*, 1 Cal.5th at p. 506 (affirming fee award representing one-third of a non-reversionary fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ("fee awards in class actions average around one-third of the recovery"). In addition, a fee award in the amount of one-third of the common fund is reasonable because it best reflects the market rate for contingency fees. *See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 47 ("[A]ttorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace.").

Here, Plaintiff's request for attorneys' fees in the amount of 35% of the GSA is reasonable given the significant result achieved on behalf of the State of California and the Aggrieved Employees. First, the settlement amount of $630,000 represents over 11% of the

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605 C Street, Suite 200
San Diego, CA 92101

realistic value of the PAGA claims. Khoury Decl., ¶31. Second, Plaintiff's counsel litigated this case on a contingent basis, incurring almost $17,000 in costs with no guarantee of recovery. *Id*. at ¶¶ 38, 41. Plaintiff's counsel invested almost 400 hours of attorney and support staff time into this action, with payment deferred to the end and entirely contingent on the outcome. *Id*. at ¶¶32, 38; Markham Decl., ¶¶11-12, 14-18; Ex. 1; Haines Decl., ¶¶4, 7-9; Reali Decl., ¶¶10-11. Thus, Plaintiff's request for attorneys' fees of $220,500.00, or 35% of the GSA, is reasonable under California law.

C. <u>The Requested Fees Are Reasonable Under the Lodestar Cross-Check</u>

Plaintiff's request for attorneys' fees is reasonable based upon a crosscheck of PAGA Counsel's lodestar with the application of a multiplier. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc*. (2000) 82 Cal.App.4th 615, 622. The moving party meets its burden in this regard by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 254-55; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1810; *Nightengale v. Hyundai Motors America* (1994) 31 Cal.App.4th 99, 103. The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82 Cal.App.4th at p. 622 (citing *Serrano*, 20 Cal.3d at pp. 48-49).

While a percentage fee may be cross-checked against a lodestar increased by a risk multiplier, courts are not required to engage in this exercise, and many California courts decline to do so. *See, e.g. Glass v. UBS Fin. Servs., Inc*. (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist LEXIS 8476, at *11 (finding "no need to conduct a lodestar cross-check [as] [c]lass counsel's prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded"); *Lopez v. Youngblood* (E.D. Cal. Sept. 1, 2011) 2011 U.S. Dist LEXIS 99289, *39 ("A lodestar cross-check is not required in this circuit, and in a case such as this, is

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605 C Street, Suite 200
San Diego, CA 92101

not a useful reference.”).

Here, the lodestar of Plaintiff’s counsel is $205,313.75 which is based on 390.05 hours of attorney and support staff time at customary hourly rates. Khoury Decl., ¶¶32-33, 39-40, Exs. 3-5; Markham Decl., ¶¶12-18; Ex. 1; Haines Decl., ¶¶7-9; Reali Decl., ¶¶10-14. This results in a multiplier of 1.07. Khoury Decl., ¶36. “Multipliers can range from 2 to 4, or even higher.” *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 255. “The customary range for multipliers is between 1.0 and 4.0.” *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012) 2012 WL 5948951, at * 7 (citing *Vizcaino v. Microsoft Corp.* (9th. Cir. 2002) 290 F.3d 1043, 1051 n. 6). In *Vizcaino,* 290 F.3d 1043, the court approved a similar multiplier of 3.65, and in an appendix to the opinion, determined that a range of multipliers in common fund cases is generally between 0.6 and 19.6, with most cases having multipliers between 1.0 and 4.0. *Id.* at p.1052; see also, Khoury Decl., ¶37. Thus, this multiplier is reasonable.

1. Plaintiff Counsel’s Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.” *Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8. 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 (noting that “[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”). It is well established that reasonable fees for support staff services may be included as part of a fee award. *See Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951 (“necessary support services for attorneys, e.g. secretarial and paralegal services, are includable within an award of attorney fees”); *Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 268-270 (“[a]n award of attorney’s fees which does not compensate for paralegal service time would not fully compensate the attorney”).

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Here, the 390.05 hours expended to litigate and settle this action were reasonable. Khoury Decl., ¶¶32-33, Exs. 3-4.

2. Counsel's Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA Am. Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3. The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172. "Affidavits of the plaintiff's attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiff's attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407; *Bouman v. Block* (9th Cir. 1991) 940 F.2d 1211, 1235 (the submission of "declarations stating that the rate was the prevailing market rate in the relevant community [was]… sufficient to establish the appropriate rate for lodestar purposes").

Plaintiff's Counsel's skill and experience support their hourly rates and are in line with rates typically approved in California wage and hour class actions. Their practices are limited to litigating class and representative actions on behalf of employees and consumers, and their firms have been appointed Class Counsel or co-Class Counsel in over 300 such cases. Khoury Decl., ¶¶2-10; *see also* Markham Decl., ¶¶3-9; Haines Decl., ¶3; Reali Decl., ¶¶6-9. Plaintiff's Counsel's skill and experience support their hourly rates: Cohelan Khoury & Singer: Founding Partner Isam C. Khoury - $1,100, Partner, Maggie Realin - $700; The Markham Law Firm: Founding Partner, David R. Markham - $815, Associate Lisa Brevard - $500; The United Employees Law Group: Founding Partner Walter L. Haines - $725; Associate Peggy Reali - $875. These rates are in line with those typically approved in California wage-and hour class action litigation. Indeed, the Laffey Matrix would actually provide for a rate increase. Khoury Decl., ¶39, Ex. 5 - Laffey Matrix; Markham Decl., ¶13; Haines Decl., ¶7; Reali Decl., ¶¶13-15.

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Given Counsel's skill and experience, these rates are reasonable.

D. <u>Litigation Expenses Are Reasonable</u>

Plaintiff's Counsel are entitled to reimbursement of reasonable litigation costs under PAGA. *See* Lab. Code § 2699(k)(1). The Settlement provides for reimbursement of costs not to exceed $25,000. Plaintiff's Counsel seeks reimbursement of actual costs of $16,829.09. These costs are reasonable and were necessary to prosecute this case. Khoury Decl., ¶¶33, 41, Exs. 4 and 6; Markham Decl., ¶¶12, 18, Ex.1. Accordingly, Plaintiff's Counsel requests the Court approve the reimbursement of costs in the amount of $16,829.09.

VIII. THE REQUESTED ADMINISTRATION COSTS ARE REASONABLE

The Settlement provides for settlement administration costs not to exceed $7,140.75 to be paid from the Gross Settlement Amount to Phoenix. SA, ¶¶1.25, 4.3. The Parties requested bids from four different administrators, and Phoenix's bid for the capped amount of $7,140.75 was the most competitive. Phoenix Decl., ¶17, Ex. B. Given the number of Aggrieved Employees and the scope of the duties to be performed by the administrator, the Court should approve the settlement administration costs as reasonable.

IX. SETTLEMENT OF PLAINTIFF'S INDIVIDUAL CLAIMS

The Parties agreed to resolve Plaintiff's individual claims. Although by definition not a part of the PAGA action, and court approval is not required, in the interest of providing the Court with all information as it considers approval of the PAGA settlement, the individual settlement for Plaintiff is described here.

Plaintiff released all individual claims and waived Civil Code section 1542, in exchange for a monetary compensation as specified in a separate confidential settlement agreement. Khoury Decl., ¶42. As with the representative PAGA claims, Defendants strongly deny the merits of Plaintiff's individual claims, asserted credible defenses, and resolved the claims only to buy peace and avoid the inconvenience and expense of further litigation. Khoury Decl., ¶43. Subject to the usual litigation risks, the settlement amount is less than what Plaintiff may have reasonably obtained if successful. If considered only as a payment for a general release of claims, no part of the payment is consideration for agreeing to settlement of PAGA claims.

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605 C Street, Suite 200
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605 C Street, Suite 200
San Diego, CA 92101

Khoury Decl., ¶44.

X. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant approval of the Settlement and enter the proposed judgment.

Respectfully submitted,

COHELAN KHOURY & SINGER
THE MARKHAM LAW FIRM
UNITED EMPLOYEES LAW GROUP

Dated: July 2, 2026

By:______________________
Maggie K. Realin
Attorneys for Plaintiff MONIQUE BRAVO, on behalf of herself and all others similarly situated