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Attorneys for Plaintiff, *Dameta O'Brien*, on the following page.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KERI GALLOWAY and LISA GEORGES, individually and on behalf of all other aggrieved employees of DEFENDANTS in the State of California,

Plaintiffs,

vs.

MEDIX STAFFING SOLUTIONS, INC., an Illinois Corporation; THE ILLUMINATION FOUNDATION, a California Nonprofit Public Benefit Corporation; LOGISTICS HEALTH INC., a Wisconsin Corporation; DOES 1 through 20, inclusive,

Defendants.

Case No.: 20STCV44053
Related Case No.: CGC-22-599848

[Honorable Christopher Lui, Department 76]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed with the Declaration of Kane Moon, Declaration of Arin Norijanian, Declaration of Ashkan Y. Shakouri, Declaration of Jodey Lawrence, [Proposed Order] and [Proposed] Judgment]

Complaint Filed: November 17, 2020

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Attorneys for Plaintiff, *Dameta O'Brien*

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on _______________, 2025, at ________ , in Department 76 of the Superior Court of California, County of Los Angeles, located at 111 North Hill Street, Los Angeles, California 90012, pursuant to California Labor Code sections 2698, *et seq.*, Plaintiffs Keri Galloway, Lisa Georges, and Dameta O'Brien (collectively, "Plaintiffs") will move the Court for an Order:

1. Approving the Private Attorneys General Act Settlement Agreement ("Settlement") entered into by Plaintiffs and Defendant Medix Staffing Solutions, Inc.;
2. Appointing Arin Norijanian and James H. Demerjian of Arin James, APC; Ashkan Y. Shakouri of Shakouri Law Firm, Inc.; and Kane Moon, Allen Feghali, and Jacquelyne VanEmmerik of Moon Law Group, P.C. as PAGA Counsel and approving the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment;
3. Appointing Phoenix Class Action Administration as Administrator and approving the Administration Expenses Payment;
4. Approving the Release of Claims by Plaintiffs, the Aggrieved Employees, PAGA Counsel, and Labor and Workforce Development Agency;
5. Directing consummation of the Settlement pursuant to its terms and provisions;
6. Dismissing the Action with prejudice;
7. Entering Judgment approving the Settlement; and
8. Reserving continued jurisdiction over the Parties, Action, and Settlement solely for purposes of (i) enforcing the Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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The Motion will be based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Kane Moon and Exhibits thereto, the Declaration of James H, Demerjian and Exhibits thereto, the Declaration of Ashkan Y. Shakouri and the Exhibits thereto, the Declaration of Jodey Lawrence and the Exhibits thereto, the records and files in the Action, and any further evidence or argument the Court may properly receive before or at the Hearing.

Dated: June 19, 2025

Respectfully submitted,

ARIN | JAMES APC

By:____________________________________
Arin Norijanian
James H. Demerjian
Attorneys for Plaintiffs, *Keri Galloway and Lisa Georges*

SHAKOURI LAW FIRM

By:____________________________________
Ashkan Y. Shakouri
Attorney for Plaintiffs, *Keri Galloway and Lisa Georges*

MOON LAW GROUP, P.C.

By:____________________________________
Kane Moon
Allen Feghali
Jacquelyne VanEmmerik
Attorneys for Plaintiff, Dameta O'Brien

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Keri Galloway, Lisa Georges, and Dameta O'Brien (collectively, "Plaintiffs") move the Court for approval of the Private Attorneys General Act Settlement Agreement ("Settlement") entered into by Plaintiffs and Defendant Medix Staffing Solutions, Inc. ("Defendant" or "Medix") (Plaintiffs and Defendant, the "Parties") in full resolution of the Private Attorneys General Act ("PAGA") claims alleged in the above-captioned representative action (the "Action") on behalf of Plaintiffs, the Aggrieved Employees, and the State of California.

II. LEGAL STANDARD

The PAGA claims alleged in the Action on behalf of Plaintiffs, the Aggrieved Employees, and the State of California were alleged pursuant to PAGA, which states: "[T]he...court shall review and approve any settlement of any civil action filed pursuant to this part." California Labor Code ("Labor Code") section 2699(e)(2). The California Supreme Court has interpreted this provision as ensuring "any negotiated resolution [of a PAGA claim] is fair to those affected." *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549. However, the California Supreme Court has not defined specific criteria by which trial courts are to review and approve proposed PAGA settlements. *Id*. Nonetheless, California courts largely consider whether a proposed PAGA settlement provides "genuine and meaningful [relief] consistent with the underlying purpose of the statute" and is reasonable in light of the potential verdict value of all claims released. *See O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135; *see also* Labor Code section 2699(e)(2).

For the reasons set out below, the Settlement provides genuine and meaningful relief to Plaintiffs, the Aggrieved Employees, and the State of California consistent with the underlying purpose of PAGA and is reasonable in light of the potential verdict value of all claims released. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 383; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86, quoting *Williams*, *supra*, 3 Cal.5th at 546 ("[C]ivil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones,' not to redress employees' injuries."). Plaintiffs therefore respectfully request the Court to enter the

Proposed Order and Judgment submitted herewith, approving the Settlement pursuant to Labor Code sections 2698, *et seq.*

III. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Relevant Facts and Procedural History

Defendant is a staffing agency that staffs healthcare companies throughout California. *Declaration of Kane Moon* ("*Moon Decl.*"), ¶ 3. Plaintiffs contend they and their former coworkers were subjected to the same unlawful labor practices. *Id*. at ¶ 3.

On July 31, 2020, Plaintiff Keri Galloway submitted to the LWDA, and sent via certified mail to Defendants Medix Staffing Solutions, Inc. and The Illumination Foundation, a written notice pursuant to Labor Code section 2699.3. *Settlement*, ¶ 2.1. A true and correct copy of Plaintiff Kery Galloway's notice is attached to the *Declaration of Arin Norijanian* ("*Norijanian Decl.*") as **Exhibit XX**.

On August 26, 2020, Plaintiff Lisa Georges submitted to the LWDA, and sent via certified mail to Defendants Medix Staffing Solutions, Inc. and Logistics Health, Inc., a written notice pursuant to Labor Code section 2699.3. *Id.* at ¶ 2.2. A true and correct copy of Plaintiff Lisa George's notice is attached to the *Declaration of Ashkan Y. Shakouri* ("*Shakouri Decl.*") as **Exhibit XX**.

On November 17, 2020, Plaintiffs Keri Galloway and Lisa Georges filed a Complaint against Defendants Medix Staffing Solutions, Inc., The Illumination Foundation, and Logistics Health, Inc., which alleged eleven causes of action for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"); and on November 9, 2021, Plaintiffs Keri Galloway and Lisa Georges filed a First Amended Complaint against Defendants Medix Staffing Solutions, Inc., The Illumination Foundation, and Logistics Health, Inc., which alleged additional facts in support of their eleven causes of action for civil penalties under PAGA ("Galloway Complaint"). *Id.* at ¶ 2.3.

On May 21, 2022, Plaintiff Dameta O'Brien submitted to the LWDA, and sent via certified mail to Defendants Medix Staffing Solutions, Inc. and OptumServe Health Services, Inc., a written notice pursuant to Labor Code section 2699.3. *Id.* at ¶ 2.4. A true and correct copy of the PAGA Notice is attached to the *Declaration of Kane Moon* as **Exhibit 1**.

On May 27, 2022, Plaintiff Dameta O'Brien filed a Class Action Complaint against

Defendants Medix Staffing Solutions, Inc. and OptumServe Health Services, Inc., which alleged eight individual and eight class causes of action under the California Labor Code ("Labor Code") and California Business and Professions Code; and on July 29, 2022, Plaintiff Dameta O'Brien filed a First Amended Class and Representative Action Complaint against Defendants Medix Staffing Solutions, Inc. and OptumServe Health Services, Inc., which alleged an additional cause of action for civil penalties under PAGA ("O'Brien Complaint"). *Id*. at ¶ 2.5.

On October 4, 2022, Defendants Medix Staffing Solutions, Inc. and The Illumination Foundation filed a Motion to Compel Plaintiffs Keri Galloway and Lisa Georges' individual PAGA causes of action to arbitration and a Motion to Dismiss Keri Galloway and Lisa Georges' representative PAGA causes of action; and on December 6, 2022, the Court stayed the Action in its entirety pending the California Supreme Court decision in *Adolph v. Uber Technologies, Inc.*, (2023) 14 Cal.5th 1104. *Id*. at ¶ 2.6.

On September 16, 2022, Defendant Medix Staffing Solutions, Inc. filed a Motion to Compel Plaintiff Dameta O'Brien's individual causes of action to arbitration and a Motion to Strike Plaintiff Dameta O'Brien's representative PAGA cause of action; and on November 29, 2022, the Court granted the former and denied the latter, resulting in a stay of Plaintiff Dameta O'Brien's representative PAGA cause of action. *Id*. at ¶ 2.7.

On October 13, 2022, Plaintiff Dameta O'Brien filed a Motion to Dismiss All Class Allegations Without Prejudice, and on November 1, 2022, the Court granted an Order thereon. *Id*. at ¶ 2.8.

On or around February 29, 2024, Counsel for Defendant Medix Staffing Solutions, Inc. and Counsel for Plaintiffs Keri Galloway and Lisa Georges met and conferred, and agreed to attempt to resolve their Action through private mediation. *Id*. at ¶ 2.9.

On or around December 1, 2023, Counsel for Defendant Medix Staffing Solutions, Inc. and Counsel for Plaintiff Dameta O'Brien met and conferred, and agreed to attempt to resolve their Action through private mediation. *Id*. at ¶ 2.10.

On September 24, 2024, the Parties participated in a global, private mediation with an experienced wage-and-hour mediator, the Honorable Carl West (Ret.), at which they agreed to the terms now encompassed in the Settlement. *Id.* at ¶ 2.11. True and correct copies of the Settlement and LWDA case record confirming submission of the Settlement to the LWDA are attached to the *Declaration of Kane Moon* as **Exhibit 2** and **Exhibit 3**, respectively.

On May 6, 2025, the Parties stipulated to permit Plaintiffs to file a Second Amended Complaint for Damages, which (1) names Plaintiff Dameta O'Brien as a plaintiff and PAGA representative, (2) names OptumServe Health Services, Inc. as a defendant, and (3) alleges all non-overlapping factual and legal allegations as alleged in the O'Brien Complaint, effectively consolidating Plaintiffs' various actions into one, and on May 22, 2025, the Court granted an Order thereon. *Moon Decl.,* ¶ 15.

B. Statement Of The Claims

The operative Complaint alleges twelve claims for Civil Penalties Under PAGA [Labor Code sections 2698, *et seq*.]. *Id.* at ¶ 16. The claims are based on Defendant's alleged failure to pay minimum and overtime wages, including as a result of not paying Aggrieved Employees for all off-the-clock hours worked; failure to provide meal and rest periods, including as a result of not adopting policies and practices which would allow Aggrieved Employees to be timely and fully relieved from their work duties during such time; failure to issue itemized wage statements; failure to pay wages due and payable twice each calendar month; failure to pay wages due upon termination; failure to maintain adequate and accurate payroll records; failure to pay for accrued time off upon separation; failure to provide required written notice under Labor Code section 2810.5; failure to pay for all hours worked; and failure to indemnify necessary business expenses including expenses for the required use of their personal cellphones. *Id.*

C. Discovery and Investigation

Ahead of mediation, the Parties agreed to engage in an informal exchange of data and documents, including, but not limited to (1) the total number of Aggrieved Employees; (2) the total number of pay periods worked by the Aggrieved Employees; (3) employee handbooks in effective during the relevant time period; and (4) a sample of the time and corresponding payroll records of the Aggrieved Employees from August 18, 2020, to February 19, 2022. *Id.* at ¶ 17. Following Defendant's production, PAGA Counsel retained an expert data analyst to analyze and prepare a damage analysis based on the sample records. *Id.* Further, PAGA Counsel personally examined the sample records and contrasted the same with applicable law. These actions enabled PAGA Counsel to participate in mediation with an informed understanding of Defendant's maximum and realistic potential liability. *Id*.

C. <u>Settlement Negotiations</u>

On September 24, 2024, the Parties participated in private mediation with experienced wage-and-hour class and representative action mediator, the Honorable Carl West (Ret.). *Id.* at ¶ 18. The settlement negotiations were at arm's length and, though conducted in a professional manner, adversarial. *Id.* The Parties went into the mediation willing to settle the dispute but also prepared to litigate their respective positions through trial and appeal if a settlement was not reached. *Id.*

At mediation, on the one hand, Defendant asserted that it is not liable for civil penalties based on (1) unpaid minimum and overtime wages as a result of Aggrieved Employees performing required off-the-clock work, as it did not permit Aggrieved Employees to work off the clock and clearly expressed this within its written policies; (2) meal period and/or rest break violations, as a vast majority of meal periods and rest breaks were taken, and where a violation appears in the sample time records, such violation was either the result of an employee voluntarily choosing to forego a meal period or rest break or waived by an applicable meal period or rest break waiver; and (3) unreimbursed business expenses, and certainly not for all pay periods within the PAGA Period, as not all Aggrieved Employees utilized their personal cellphones for work-related purposes on a weekly basis. *Id*. at ¶ 19.

On the other hand, Plaintiffs pushed back on Defendant's defenses utilizing the sample of the time and corresponding payroll records of the Aggrieved Employees, including by highlighting the meal period violations and unreimbursed business expenses evident on their face. However, Plaintiffs also recognized that, if not through settlement, the issues presented in the Action were likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation would likely lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. *Id*. at ¶ 20.

D. Key Terms of the Settlement

1. "Aggrieved Employee" means all persons who worked for Defendant Medix Staffing Solutions, Inc. in California as hourly paid or non-exempt employees placed at a customer, partnership, firm, corporation, limited liability company, association, or other entity that was or is a client of Defendant Medix Staffing Solutions, Inc., including, but not limited to, The Illumination Foundation, Logistics Health, Inc., OptumServe Health Services, Inc., OptumCare Management, LLC, OptumCare Services, Inc., OptumServe, Inc., Optum Services, Inc., OptumInsight, Inc., Optum360 Services, Inc., OptumRx, Inc., and PATH, during the PAGA Period of July 31, 2019, to the date the Court issues the Approval Order.[1] *Id.* at ¶ 1.4.

2. Defendant agrees to pay an all-inclusive, non-reversionary Gross Settlement Amount of $1,670,000.00. *Id.* at ¶¶ 1.12, 3.1. Aggrieved Employees are not required to submit a claim as a condition of payment. *Id.* at ¶ 3.1.

3. The Settlement provides for a PAGA Counsel Fees Payment of not more 33.9% of the Gross Settlement Amount, or $566,666.67, and a PAGA Counsel Expenses Payment of not more than $38,000.00. *Id.* at ¶ 3.1.1. If the fees payment approved by the Court is less than the maximum allocation, the difference will be added to the Net Settlement Amount. *Id*. The actual costs are less than the maximum allocation. *See* Exh. 4; Declaration of Arin Norijanian, Exh XX; Declaration of Ashkan Y. Shakouri, Exh. XX. In accordance with the Settlement, the difference will be added to the Net Settlement Amount.

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[1] The Settlement defines "PAGA Period" as "the period that starts on July 31, 2019, and ends on the date the Court issues the Approval Order" *Settlement*, ¶ 1.22. Paragraph 8.2, in turn, includes an Escalator Clause that stipulates "[i]f the number of PAGA pay periods during the PAGA Period is more than 10% greater than 232,905 (*i.e.,* if there are approximately 256,196 or more pay periods worked by Aggrieved Employees), Medix agrees to increase the Gross Settlement Amount proportionately by 1% (*i.e.*, if there is an 11% increase in the number of pay periods during the PAGA Period, Medix has the option to increase the Gross Settlement Amount proportionately by 1%). Alternatively, Medix has the option to modify the release date in the PAGA Period to a date in which the actual number of pay periods does not exceed 10%." *Id*. at ¶ 8.2. The end date of the PAGA Period is yet to be determined. Moon Decl., ¶ 31, n.1.

Settlement, ¶ 3.1.1. At this time, PAGA Counsel's costs total $XX, with $14,794.54 incurred by Moon Law Group, P.C., $XX incurred by Arin James APC, and $XX incurred by Shakouri Law Firm. *Moon Decl.*, Exh. 4; *Norijanian Decl.*, Exh. XX; *Shakouri Decl.*, Exh XX. A true and correct copy of PAGA Counsel's itemized, current lists of actual costs are attached to the *Declaration of Kane Moon* as **Exhibit 4**, the *Declaration of Arin Norijanian* as **Exhibit XX**, and the *Declaration of Ashkan Y. Shakouri* as **Exhibit XX**.

4. The Settlement provides for an Administration Expenses Payment of not more than $35,000.00 for reimbursement of the Administrator's reasonable fees and expenses. *Id.* at ¶¶ 1.2, 3.1.2. In the event the actual administration expenses approved by the Court are less than the maximum allocation, the difference will be added to the Net Settlement Amount. *Id.* at ¶ 3.1.2. The Parties jointly appoint Phoenix Class Action Administration ("Phoenix") as the neutral entity to administer the Settlement based on its bid of $26,750.00. *Id.* A true and correct copy of Phoenix's administration costs is attached to the *Declaration of Kane Moon* as **Exhibit 5**.

5. PAGA Penalties are to be paid from the Gross Settlement Amount equal to the Gross Settlement Amount less the PAGA Counsel Expenses Payment, PAGA Counsel Fees Payment, and Administration Expenses Payment. *Id.* at ¶ 3.1.3. PAGA Penalties will be allocated 75% to the LWDA ("LWDA PAGA Payment") and 25% to the Aggrieved Employees ("Individual PAGA Payments"), pursuant to Labor Code section 2699, subd. (m). *Id.*

6. Aggrieved Employees will receive a letter explaining the Settlement. *Id.* at ¶ 4.3.1.. A true and correct copy of the letter is incorporated as part of the Settlement as **Exhibit A**.

7. The Effective Date means the date the Approval Order and judgment thereon ("Judgment") become final. *Id.* at ¶ 1.11. For purposes of this Agreement, the Judgment "becomes final" upon the later of the following: (i) if no appeal is

filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Judgment (i.e., 61 calendar days after notice of entry of the Judgment); (ii) if an appeal is filed, the date the Judgment is affirmed after all appeals are exhausted. *Id*.

8. No later than thirty (30) calendar days after the Effective Date, Medix shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator. *Id.* at ¶ 4.2. No later than seven (7) calendar days after Medix fully funds the Gross Settlement Amount, the Administrator shall mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Expenses Payment, the PAGA Counsel Fees Payment, and the Administration Expenses Payment. *Id.* at ¶ 4.3.

9. *Plaintiffs' Release.* Effective on the date Medix fully funds the Gross Settlement Amount, Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to release the Released Parties from all claims, transactions, or occurrences that occurred during their employment or alleged employment with Released Parties, including, but not limited to, all claims that were, or reasonably could have been, alleged based on the facts contained in the operative Complaint and PAGA Notices, which shall include, but not be limited to, claims for civil penalties under PAGA for violations of the Labor Code based on Released Parties' alleged failure to pay all wages due (including minimum wages, straight time wages, regular rate wages, and overtime wages), failure to provide compliant meal periods or pay meal period premiums in lieu thereof, failure to authorize and permit compliant rest periods or pay rest period premiums in lieu thereof, failure to provide accurate and itemized wage statements, failure to timely pay all wages due during employment and at the time of termination, failure to reimburse employees for all business-related expenses, failure to maintain adequate and accurate payroll records, failure to

pay for accrued time off upon separation, failure to provide written notice under Labor Code section 2810.5, failure to pay for all hours worked, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said representative causes of action, any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, harassment claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act (including the Equal Pay Act), the California Labor Code, specifically including but not limited to the Private Attorney General Act pursuant to Labor Code 2699, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, 1866, and 1991, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., Section 503 of the Rehabilitation Act of 1973, the California Constitution, the California Government Code, the Employee Retirement Income Security Act, the California Pregnancy Discrimination Act, the Immigration Reform and Control Act, the National Labor Relations Act, California's Occupational Safety and Health Act, or the Federal equivalent, the Families First Coronavirus Response Act, the California Supplemental paid sick leave law or any other federal, state, or local paid sick leave law, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. *Id.* at ¶ 5.1. Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believes to exist, but Plaintiffs expressly agree to fully, finally, and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' alleged employment with Defendants. This Release is intended to resolve any claims that can be validly released ("Plaintiffs' Release"). *Id.* Plaintiffs' Release does not release any claims or actions to enforce this Agreement; any claims based on occurrences outside the PAGA Period; or any claims that cannot be released by Plaintiffs as a matter of law, including, but not limited to, Plaintiffs' right to file a charge with or participate in a charge by the California Civil Rights Department or any other federal, state, or local administrative body or government agency authorized to enforce laws related to employment, claims for Workers' Compensation, unemployment compensation, or state disability insurance benefits pursuant to the terms of applicable state law. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. *Id.* at ¶ 5.1.1. Plaintiffs specifically stipulate and agree that, upon the date on which the Approval Order becomes "Final," they shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law. *Id.* at ¶ 5.1.2.

10. *Release by the LWDA and Aggrieved Employees.* Effective on the date Medix fully funds the Gross Settlement Amount, Plaintiffs, the Aggrieved Employees and the State of California (through Plaintiffs as Private Attorneys General) and

their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to release the Released Parties from (i) all PAGA claims asserted in the operative Complaint and PAGA Notices, (ii) all PAGA claims that could reasonably have been asserted in the operative Complaint and PAGA Notices, and (iii) all PAGA claims arising out of the same operative facts, irrespective of theory of recovery, including claims for civil penalties under PAGA for violations of the California Labor Code based on Released Parties' alleged failure to pay all wages due (including minimum wages, straight time wages, regular rate wages, and overtime wages), alleged failure to provide compliant meal periods or pay meal period premiums in lieu thereof, alleged failure to authorize and permit compliant rest periods or pay rest period premiums in lieu thereof, alleged failure to provide accurate and itemized wage statements, alleged failure to properly or timely pay all wages due during employment and at the time of termination, alleged failure to reimburse employees for all business-related expenses, alleged failure to maintain adequate and accurate time and payroll records, alleged failure to pay for accrued time off upon separation, alleged failure to provide written notice under Labor Code section 2810.5, alleged failure to pay for all hours worked, and all penalties, attorneys' fees, costs, and other amounts recoverable under said representative causes of action, to the extent permissible ("Released Claims"), during the PAGA Period. *Id.* at ¶ 5.2.

11. *Release by PAGA Counsel.* Effective on the date Medix fully funds the Gross Settlement Amount, PAGA Counsel and their present and former attorneys, employees, agents, successors, and assigns, will be deemed to release the Released Parties from all claims for fees or expenses incurred in connection with the claims alleged in the operative Complaint and the facts stated in the operative Complaint and PAGA Notices. *Id.* at ¶ 5.3.

///

IV. THE SETTLEMENT MERITS APPROVAL

The Settlement merits approval because the PAGA Penalties are reasonable, providing genuine and meaningful relief to the LWDA and Aggrieved Employees consistent with the dual purpose of PAGA and pursuant to Labor Code section 2699(e); and the Settlement allocations, including the PAGA Counsel Fees Payment, and PAGA Counsel Expenses Payment, are reasonable and permissible. *See Williams*, *supra*, 3 Cal.5th at 546; *Moon Decl.*, ¶ 32.

A. The PAGA Penalties Are Reasonable

The PAGA Penalties are comprised of all civil penalties awarded under the Settlement. *Settlement*, ¶ 1.24. In particular, the PAGA Penalties are comprised of the LWDA PAGA Payment and all Individual PAGA Payments. *Id.* at ¶¶ 1.13, 1.16. The LWDA PAGA Payment makes up seventy-five percent (75%) of the PAGA Penalties and will be allocated to the LWDA for the education of employees and employers about their rights and responsibilities under the Labor Code. *See Id.*; Labor Code section 2699(i). The Individual PAGA Payments make up twenty-five percent (25%) of the PAGA Penalties and will be allocated to all Aggrieved Employees on a pro-rata basis for the alleged Labor Code violations they suffered from during the PAGA Period. *Id.* at ¶ 1.13.

1. The PAGA Penalties Provide Genuine And Meaningful Relief To The LWDA And Aggrieved Employees Consistent With The Dual Purpose Of PAGA

The PAGA Penalties provide genuine and meaningful relief to the LWDA and Aggrieved Employees consistent with the dual purpose of PAGA: remediation and deterrence. *See Kim*, *supra*, 9 Cal.5th at 86, quoting *Williams*, *supra*, 3 Cal.5th at 546 ("[C]ivil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones,' not to redress employees' injuries.") In terms of remediation, the PAGA Penalties will redress approximately 12,000 Aggrieved Employees for Labor Code violations they suffered from during the PAGA Period. *Moon Decl.,* ¶ 38. Each Individual PAGA Payment will be calculated in proportion to the number of pay periods each Aggrieved Employee worked for Defendant during the PAGA Period ("PAGA Pay Periods"), ensuring Aggrieved Employees receive payment in direct correspondence with the number of violations they suffered from. Settlement, ¶ 3.1.3.1. Further, the PAGA Penalties, which are estimated to be at least $1,030,333.33,[2] will indirectly redress other California employees, as the LWDA PAGA Payment will contribute substantial funding, i.e., $772,749.99, to the LWDA, the state administrative agency dedicated to upholding the very labor laws the payment will help enforce and educating California employees and employers about their rights and responsibilities under the Labor Code. *Moon Decl.*, ¶ 38. In terms of deterrence, the PAGA Penalties will prevent the occurrence of future violations by Defendant, as they are considerable, and the process the Parties underwent to reach the Settlement was costly, time-consuming, and exhaustive, such that the prospect of a similar settlement amount or process is likely to discourage future violative labor policies and practices. Indeed, to litigate, mediate, and ultimately settle this Action, Defendant had to incur significant costs to, among other actions, hire legal counsel, engage in extensive discovery, and hire a mediator.

2. <u>The PAGA Penalties Are Reasonable Pursuant To Labor Code Section 2699(e)</u>

Labor Code section 2699(e) states: "For purposes of this part, whenever the [LWDA] has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty...[A] court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code section 2699(e). This section grants the Court discretion to limit a PAGA civil penalties award where the circumstances and facts justify reduction, or where such award is unreasonable or excessive.

Here, the circumstances and facts do not justify a reduction of the PAGA Penalties. First, the circumstances do not justify a reduction of the PAGA Penalties because they demonstrate the PAGA Penalties are a product of exhaustive discovery, a fact-intensive and reliable analysis by PAGA counsel and their data expert, and arm's length negotiations between the Parties.

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[2] The PAGA Penalties equal the Gross Settlement Amount ($1,670,000.00) less the PAGA Counsel Fees Payment ($566,666.67), maximum allocation for PAGA Counsel Litigation Expenses Payment ($38,000.00), and maximum allocation for Administration Expenses Payment ($35,000.00). *Settlement*, ¶ 3.2.

For example, the Parties engaged in an exhaustive exchange of data and documents, which included, but was not limited to (1) the total number of Aggrieved Employees; (2) the total number of pay periods worked by the Aggrieved Employees; (3) employee handbooks in effective during the relevant time period; and (4) a sample of the time and corresponding payroll records of the Aggrieved Employees from August 18, 2020, to February 19, 2022. *Moon Decl.*, ¶ 17. The comprehensive nature of this exchange demonstrates the diligent, thorough nature of the pre-mediation discovery. Further, PAGA Counsel commissioned an expert to analyze the sample of time and corresponding payroll records and to calculate Defendant's violation rates for the underlying factual allegations. *Id*. The use of an expert analyst demonstrates the fact-intensive, reliable nature of PAGA Counsel's findings and exposure calculations. Moreover, Defense and PAGA Counsel utilized an experienced, mutually selected mediator to facilitate their adversarial discussions. *Id*. at ¶ 18. The use of a knowledgeable and neutral mediator demonstrates the Parties' genuine goal of reaching a reasoned, duly valued settlement.

Second, the facts do not justify a reduction of the PAGA Penalties because they are supported by the merit and value of the underlying factual allegations. For example, one of the main underlying factual allegations of Plaintiffs' PAGA claims was that Defendant failed to pay Aggrieved Employees meal period premium wages for unwaived, short, late, and/or missed first and second meal periods. *Id*. at ¶ 34. The sample of time and corresponding payroll records demonstrated that Aggrieved Employees recorded approximately 754,744 meal periods for shifts greater than five hours and that 10.8% were recorded after the end of the fifth hour but were not waived or compensated through attendant meal period premium wages. *Id*. In evaluating this claim, PAGA Counsel considered that the alleged meal period violations were demonstrable on the face of the sample records and were identified in roughly 30.5% of all pay periods. *Id.* In addition, PAGA Counsel considered that the sample records could not support a record-based analysis of interrupted meal periods, which Plaintiffs claim resulted in a majority of meal period violations, and thus, an award of civil penalties for any pay period in which a violation occurred was apt and likely to earn Court approval. *Id*.

Plaintiffs' PAGA claims were also based on allegations that Defendant failed to reimburse Aggrieved Employees for all necessary business expenses incurred. The sample of time and corresponding payroll records demonstrated that Aggrieved Employees were never reimbursed for any expenses, yet Plaintiffs personally experienced and observed other Aggrieved Employees experience Defendant's policy and practice of requiring Aggrieved Employees to utilize their personal cellphones to communicate about scheduling and other work-related topics on a weekly basis. *Id*. at ¶ 35. In evaluating this claim, PAGA Counsel considered that, on the one hand, Plaintiffs' claims support the allegation that Aggrieved Employees suffered from an unreimbursed business expense violation *each pay period* as a result of having to use their personal cellphones daily but not being reimbursed for such use. *Id*. On the other hand, PAGA counsel considered that, while the sample records demonstrated that Defendant did not reimburse any expenses, they did not also establish that Aggrieved Employees actually incurred reimbursable business expenses, and thus, the Court was likely to discretionarily decrease a maximum penalty award. *Id*.

Though these civil penalties were either demonstrable on the face of the sample of time and corresponding payroll records produced by Defendant and/or based on reasonable assumptions, they were nonetheless reasonably discounted based on other applicable mitigating factors. *Id.* at ¶ 37. This is also true for the additional civil penalties supported by Plaintiffs' off-the-clock and rest break allegations. *Id.* at ¶¶ 33-36. Specifically, PAGA Counsel's data analyst determined that Defendant's maximum potential exposure was $23,290,500.00, which encompasses the civil penalties based on the above-analyzed underlying factual allegations and all civil penalties based on Plaintiffs' off-the-clock and rest break allegations. *Id.* at ¶ 36. However, PAGA Counsel discounted such penalties significantly to account for Defendant's defenses and other extenuating, relevant considerations. *Id.* at ¶ 37.

In terms of Defendant's defenses, Defendant argued that the provability and manageability of Plaintiffs' underlying off-the-clock and violative rest break allegations were poor given the highly individualized nature of such claims; that any and all off-the-clock work was performed voluntarily, and was never a requirement; that any and all violative rest breaks were on-duty, missed, short, and/or late by choice and not as a result of non-compliant policies or practices; that rest break violations are not demonstrable, to any extent, on the face of the time and corresponding payroll records; that not all Aggrieved Employees utilized their personal cellphones for work-related purposes; and that not all Aggrieved Employees who utilized their personal cellphones for work-related purposes did so on a weekly basis. *Id.* at ¶ 19. Based on these arguments, PAGA Counsel discounted Defendant's maximum potential exposure[3] by eighty percent (80%), or $18,632,400.00, as roughly eighty percent (80%) of Plaintiffs' underlying factual allegations were reasonably affected by such defenses. *Id.* at ¶ 37.

In terms of other extenuating, relevant considerations, PAGA Counsel further discounted Defendant's resultant maximum potential exposure of $4,658,100.00 ($23,290,500.00 - $18,632,400.00) by fifty percent (50%), or $2,329,050.00, to account for the formal discovery expenses saved by participating in early mediation; the critical Due Process concerns attendant with all penalty awards; the risk that any ensuing case law could threaten Plaintiffs' standing to pursue a representative action given their individual claims are subject to individual arbitration; the discretionary nature of civil penalties awarded under PAGA; the risk of significant delay; trial and appellate risk if PAGA Counsel were to pursue and be awarded an inflated representative action settlement; and the belief that settlement was in the best interest of the Aggrieved Employees and State of California, as it avoided such risks and the accompanying expenses of further litigation by way of early resolution. *Id.* at ¶ 37.

Based on these discounts, PAGA Counsel participated in mediation with the understanding that $2,329,050.00 ($4,658,100.00 - $2,329,050.00) was a reasonable penalties award pursuant to Labor Code section 2699(e). *Id*. The Gross Settlement Amount of $1,670,000.00 therefore represents roughly 72% of Plaintiff's assumed realistic recovery. *Id*. This sum is backed by the data produced by Defendant and takes into account all relevant considerations. Thus, the PAGA Penalties are neither unjust nor oppressive, yet remain significant enough to uphold the dual purpose of PAGA. *See Williams*, *supra*, 3 Cal.5th at 546.

B. <u>The PAGA Counsel Fees Payment Is Reasonable And Permissible</u>

The PAGA Counsel Fees Payment is reasonable and permissible because it (1) was calculated

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[3] PAGA Counsel and their expert determined Defendant's maximum potential exposure was $3,116,400.00, based on the foregoing and based on Defendant's pre-mediation production and PAGA Counsel's extrapolation that there were 5,194 total pay periods. *Id.* at ¶ 32.

using the common fund doctrine and aligns with leading treatises on awards calculated using the common fund doctrine, (2) comports with Labor Code section 2699(g); (3) is commensurate with PAGA Counsel's significant experience, reputation, and ability in representative action settlements; and (4) is reasonable under the lodestar method. *Moon Decl.*, ¶ 40.

1. <u>The PAGA Counsel Fees Payment Was Calculated Using The Common Fund Doctrine And Aligns With Leading Treatises On Awards Calculated Using The Common Fund Doctrine</u>

a) The Common Fund Doctrine Is Applicable In Representative Action Settlements

The common fund doctrine provides that, when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff for the benefit of all results in the creation or preservation of that fund, the plaintiff may be awarded attorneys' fees and costs out of the fund. *Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 273. The common fund doctrine is therefore applicable in representative action settlements, as representative action settlements produce a specific fund to which a number of persons are entitled in common and are the product of an action brought by a plaintiff for the benefit of a number of persons. *See Petrovic v. Amoco Oil Co.* (8th Cir. 1999) 200 F.3d 1140, 1153.

b) The Common Fund Doctrine Is Favorable In Representative Action Settlements

The common fund doctrine was recognized in *Quinn v. State of California* (1995) 15 Cal.3d 162 as favorable in class and representative action settlements. In *Quinn*, the California Supreme Court specified that the common fund doctrine (1) offsets those who "expend attorneys' fees in winning a suit which creates a fund from which others derive benefits" by requiring "those passive beneficiaries to bear a fair share of the litigation costs." *Quinn*, *supra*, 15 Cal.3d at 167. In *Quinn*, the California Supreme Court further specified that the common fund doctrine promotes "…fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; and encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly…compensated should his efforts be successful." *Id.*

c) The PAGA Counsel Fees Payment Aligns With Leading Treatises On Fee Awards Calculated Using the Common Fund Doctrine

The PAGA Counsel Fees Payment aligns with leading treatises on fee awards calculated using the common fund doctrine, which concur that "Usually, [fifty percent] of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained..." *See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03. Here, the PAGA Counsel Fees Payment equals 33.9% of the Gross Settlement Amount, or $566,666.67, which aligns with prevailing guidelines established in California case law and academic literature and is consistent with prior awards approved in California. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 (stating that cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million.).

2. <u>The PAGA Counsel Fees Payment Comports With Labor Code Section 2699(g)</u>

Labor Code section 2699(g) states: "any employee who prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs." This fee-shifting provision acknowledges that PAGA counsel accept significant risk of substantial expenses and consumption of time and other resources in litigating a PAGA action, and thus, that it is reasonable for them to recover reasonable fees and costs if successful in litigating the same.

Here, this Action arose under Labor Code sections 2698, *et seq.* Labor Code section 2699(g) therefore applies. The prosecution of this Action involved significant financial risk to PAGA Counsel, as they undertook this matter solely on a contingency basis, with no guarantee of recovery. *Moon Decl.*, ¶ 62(d). This risk was magnified by the fact that, once PAGA Counsel undertook the litigation, they were committed to pursuing the Action to its conclusion and placing the fiduciary duty to the Aggrieved Employees and the State of California ahead of all other concerns. The PAGA Counsel Fees Payment therefore comports with the fee-shifting provision of Labor Code section 2699(g).

3. **The PAGA Counsel Fees Payment Is Commensurate With The Experience, Reputation, And Ability Of PAGA Counsel In Representative Actions**

Here, the experience, reputation, and ability of PAGA Counsel support the PAGA Counsel Fees Payment, as fees are generally awarded commensurate with the experience, reputation, and skill of counsel, and PAGA Counsel have significant and specific experience in litigating wage and hour class and representative actions on behalf of California employees. *Moon Decl*., ¶¶ 37-48. Moreover, PAGA Counsel has been involved as lead or co-counsel in a multitude of class and representative actions resulting in beneficial results to aggrieved employees in California. *Id*. This experience has familiarized PAGA Counsel with this rapidly evolving area of law, such that they possess significant expertise in this narrow field. *Id*.

4. **The PAGA Counsel Fees Payment Is Reasonable Under The Lodestar Method**

The lodestar method is commonly used to compute and evaluate the reasonableness of attorneys' fees in PAGA action settlements. *See e.g., Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157. "The 'lodestar method,' or more accurately, the lodestar-multiplier method, for determining a reasonable attorney fee...calculates the fee by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate; once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative multiplier to take into account a variety of other factors..." *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489. Though the lodestar is not customarily used by California courts as the primary method to calculate a reasonable fees award, it is regularly used by the same to cross-check common fund awards. *Id*.

Here, the PAGA Counsel Fees Payment is reasonable in light of PAGA Counsel's total lodestar of $XX, which is based on their XX total hours of attorney time at their respective, customary hourly rates and a positive multiplier of approximately XX.[4] *See Moon Decl.*, ¶ 59; *Norijanian Decl.,* ¶ XX; *Shakouri Decl.,* ¶, XX. A positive multiplier is appropriate based on the contingent risk incurred by PAGA Counsel, the complexity of the issues involved in this Action, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill employed by PAGA Counsel throughout this Action. *Moon Decl.*, ¶¶ 40-54, 62, 66, *et seq*.

C. **<u>The PAGA Counsel Expenses Payment Is Reasonable And Permissible</u>**

The PAGA Counsel Expenses Payment is reasonable and permissible because it comports with Labor Code section 2699(g), which states: "Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs." This provision entitles PAGA Counsel to any out-of-pocket costs and litigation expenses reasonably incurred in investigating, prosecuting, and settling a PAGA representative action. *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.

Here, PAGA Counsel incurred a total of $XX to prosecute this Action.[5] *See Moon Decl.*, Ex. 4; *Norijanian Decl.,* Ex. XX; *Shakouri Decl.,* Ex. XX. This sum reflects the aggregate of all expenses PAGA Counsel necessarily incurred to initiate, litigate, mediate, and ultimately settle this matter, including, but not limited to, all filing, service, and mediation fees. *Moon Decl.*, ¶ 67. Because the sum includes only necessary expenses, it is reasonable. Further, because the Aggrieved Employees have prevailed in this Action, their attorneys are entitled to the awarded costs. Moreover, these expenses are below the maximum amount allowed in the Settlement, and the remainder will revert to the Net Settlement Amount. *Id.*; *Settlement*, ¶ 3.1.1. Therefore, the total requested costs are reasonable and permissible and should be reimbursed in full.

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[4] The total lodestar consists of $93,585.00 from Moon Law Group, P.C. based on 115.3 hours at their respective, customary hourly rates, $XX from Shakouri Law Firm based on XX hours at their respective, customary hourly rates; and $XX from Shakouri Law Firm based on XX hours at their respective, customary hourly rates. *Moon Decl.*, ¶ 59; *Norijanian Decl.,* ¶ XX; *Shakouri Decl.,* ¶, XX.

[5] The total costs consists of $14,794.54 incurred by Moon Law Group, P.C.; $XX incurred by Shakouri Law Firm; and $XX incurred by Shakouri Law Firm. *Moon Decl.*, Ex. 4; *Norijanian Decl.,* Ex. XX; *Shakouri Decl.,* Ex. XX.

V. CONCLUSION

The PAGA Penalties, PAGA Counsel Fees Payment, and PAGA Counsel Expenses Payment are meaningful, reasonable, and permissible under Labor Code sections 2698, *et seq.* For this reason, Plaintiffs respectfully request the Court to grant approval of the Settlement and enter the Proposed Order and Judgment submitted herewith.

Dated: December 5, 2024 Respectfully submitted,

Dated: June 19, 2025 Respectfully submitted,

ARIN | JAMES APC

By:____________________________________
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 725 South Figueroa Street, 31st Floor, Los Angeles, California 90017. On **November [x], 2024** I served the foregoing document described as:

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Attorneys for Defendant

[✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **November [x], 2024** at Los Angeles, California.

	/s/
Type or Print Name	Signature