MAKAREM & ASSOCIATES, APLC
Ronald W. Makarem, Esq. (SB# 180442)
Samuel D. Almon, Esq. (SB# 243569)
Joshua I. Epstein, Esq. (SB# 344453)
11601 Wilshire Boulevard, Suite 2440
Los Angeles, CA 90025-1760
Phone: (310) 312-0299; Fax (310) 312-0296

RAHM LAW GROUP, APC
Michael F. Rahmanou, Esq. (SB# 290239)

Attorneys for Plaintiff HECTOR M. BARRAZA-BENITEZ, on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HECTOR M. BARRAZA-BENITEZ, individually, and on behalf of all other aggrieved employees, Plaintiff, vs. DMCG, INC., a California corporation; BAIL HOTLINE BAIL BONDS, INC., a California corporation; and DOES 1 through 20, inclusive, Defendants.	Case No.: 23STCV03269 **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT** **[Filed concurrently with the Declaration of Joshua I. Epstein; Declaration of Hector M. Barraza-Benitez; and (Proposed) Order]** Date: June 3, 2027 Time: 10:00 AM Dept: 508 Reservation ID: 589119027612

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

PLEASE TAKE NOTICE that on June 3, 2027, at 10:00 am or as soon thereafter as counsel may be heard in Department 508 of the Los Angeles Superior Court, Stanley Mosk Courthouse, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff HECTOR M. BARRAZA-BENITEZ ("Plaintiff") will, and hereby does, respectfully move for the Court's approval, pursuant to Labor Code section 2699, of a settlement of Plaintiff's claims under the Labor Code Private Attorneys General Act ("PAGA") as detailed in the Parties' PAGA Settlement Agreement ("Agreement" herein) attached as Exhibit A to the Declaration of Joshua I. Epstein filed concurrently in support hereof.

Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate, and reasonable. The motion is based upon this Notice, the attached Memorandum of Points and Authorities, the accompanying Declaration of Joshua I. Epstein and all exhibits thereto, including the Agreement, the Declaration of Hector M. Barraza-Benitez, the [Proposed] Order Granting Approval of PAGA Settlement lodged herewith, the complete files and records of this case, and any other evidence or oral argument which may be considered by the Court at the time of the hearing.

DATED: October 2, 2026

MAKAREM & ASSOCIATES, APLC

Joshua Epstein

Ronald W. Makarem
Samuel D. Almon
Joshua I. Epstein
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL HISTORY

Plaintiff HECTOR M. BARRAZA-BENITEZ ("Plaintiff") and Defendants DMCG, Inc. ("DMCG") and Bail Hotline Bail Bonds, Inc. ("BHBB") (together, "Defendants") (hereinafter collectively with Plaintiff the "Parties"), pursuant to Labor Code section 2699, reached a negotiated settlement of Plaintiff's claims under the Labor Code Private Attorneys General Act ("PAGA") as detailed in the Parties' PAGA Settlement Agreement ("Agreement") attached as Exhibit A to the Declaration of Joshua I. Epstein ("Epstein Decl.") filed concurrently in support hereof.

A. Plaintiff's Representative Action and Individual Arbitration

On May 11, 2022, Plaintiff provided written notice of his intent to file a claim for civil penalties under PAGA to the LWDA against Defendants, which was assigned LWDA Case No. LWDA-CM-883374-22. (Epstein Decl., ¶ 3.)

On February 14, 2023, Plaintiff filed the Action against DMCG, Inc. and Bail Hotline Bail Bonds, Inc. in the Los Angeles Superior Court, Case No. 23STCV03269, asserting a single cause of action for civil penalties under PAGA. (Epstein Decl., ¶ 4.) Defendant Bail Hotline Bail Bonds, Inc. answered the Complaint on April 21, 2023, and Defendant DMCG, Inc. answered the Complaint on June 1, 2023. (*Id*.)

Defendants moved to compel Plaintiff's individual PAGA claim to arbitration pursuant to Plaintiff's written agreement with DMCG. (Epstein Decl., ¶ 5.) The Court granted the motion to compel arbitration, compelled Plaintiff's individual PAGA claim to arbitration, and stayed the non-individual PAGA claims. (*Id*.)

On or about December 10, 2024, Plaintiff initiated his individual arbitration claim with the American Arbitration Association, which was assigned AAA Case No. 01-24-0009-0862 (the "Individual Arbitration"). (*Id.*) Plaintiff propounded and responded to discovery during the Individual Arbitration. (*Id.*) PAGA Counsel also took several depositions of Defendants' employees, including former Office Manager David Molina, Executive of Operations Gilberto McGuire, and

HR Manager Sheryl Maglanque. (*Id.*) The Individual Arbitration is currently stayed pending approval of this PAGA Settlement by the Court and will be dismissed immediately following the Effective Date. (*Id.*)

B. Investigation, Mediation and Settlement Agreement

In advance of mediation, Defendants produced time and payroll records for a sampling of Aggrieved Employees, as well as employment policy documents, to allow Plaintiff to fully evaluate the claims in the Action. (Epstein Decl., ¶ 6.) PAGA counsel utilized a qualified expert to assist in the review and analysis of possible penalties. (*Id.*) PAGA Counsel also considered Defendants' production of documents concerning Defendants' policies and procedures. (*Id.*)

On March 5, 2026, the Parties participated in a mediation with Steve Mehta, Esq. (Epstein Decl., ¶ 7.) After a full day of mediation, the Parties were unable to reach an agreement. (*Id.*) However, the Parties continued to negotiate with the assistance of the mediator and were eventually able to reach a settlement, which includes a resolution of both the Individual Arbitration and the Action. (*Id.*) The Parties thereafter completed a long-form settlement of Plaintiff's PAGA claims, for which the Parties now jointly seek this Court's approval under Labor Code section 2699. (*Id.*)

As part of the Agreement executed by the Parties, Defendants agreed to pay the Gross Settlement Amount of $537,500.00 in consideration for release of the Released PAGA Claims, which means all claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice during the PAGA Period. (See Epstein Decl., ¶ 8.) Because of Defendants' other financial obligations, the Gross Settlement Amount will not be paid in a single payment; it will instead be funded in three separate installments: $134,375.00 (25% of the Gross Settlement Amount) within sixty (60) days of the Effective Date, $201,562.50 (37.5%) within nine (9) months of the Effective Date, and $201,562.50 (37.5%) within sixteen (16) months of the Effective Date. (Epstein Decl., ¶ 8.) Each payment from the Gross Settlement Amount is made in the same percentage that each installment bears to the Gross Settlement Amount. (*Id.*) The release of the Released

PAGA Claims is effective on the date when Defendant DMCG fully funds the entire Gross Settlement Amount. (*Id*.) The PAGA Period runs from December 11, 2021, to the Effective Date. (*Id*.)

Under the Agreement, the PAGA Penalties—that is, the portion of the Gross Settlement Amount remaining after the Court-approved PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administration Expenses Payment, and service payment to the Aggrieved Employee Representative—are to be paid from the Gross Settlement Amount, with 75 percent allocated to the LWDA PAGA Payment and 25 percent allocated to the Individual PAGA Payments to the Aggrieved Employees. (Epstein Decl., ¶ 9.) The Parties and their respective counsel agree that the settlement of the PAGA claims for the consideration and on the terms set forth herein is fair, reasonable, and adequate, given all known facts and circumstances and the risks inherent in litigation, including potential appellate issues. (*Id*.) In addition, Plaintiff, as a designated private attorney general, believes the settlement amount entered into is in the best interest of the LWDA and that the PAGA Settlement is fair, reasonable, and adequate, given the inherent risk of litigation. (*Id*.)

The Plaintiff now requests the Court's approval of the Parties' Agreement of this representative action entitled *Hector M. Barraza-Benitez v. DMCG, Inc., et al*., Los Angeles Superior Court Case No. 23STCV03269 (the "Action"). Plaintiff's counsel represents that the LWDA was provided the relevant portions of the Agreement pursuant to Labor Code § 2699. (Epstein Decl., ¶ 10, Exh. B.)

II. LEGAL ANALYSIS

Under Labor Code § 2699 (l)(2), the Parties must obtain approval of their PAGA settlement from the Court and hereby seek the Court's approval. As explained by the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969, the Parties do not have to follow class action procedural rules in this PAGA Action and therefore need not follow the class action procedures for obtaining an approval of the settlement, and thus submit this motion for approval. In ruling on Plaintiff's approval motion, the Court shall consider whether the Parties'

settlement is "fair and reasonable[.]" (*Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 76, *disapproved of on other grounds by Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 552 P.3d 835.)

A. Plaintiff Submitted a Copy of the Agreement to the LWDA

Labor Code § 2699(l)(2) requires that any proposed settlement of a PAGA action be submitted to the LWDA. Plaintiff has completed this requirement by concurrently submitting a copy of the Agreement and this filing to the LWDA through its online portal. (Epstein Decl., ¶ 11.) PAGA Counsel has also timely transmitted to the LWDA each of the other PAGA documents required in this Action, namely the initial notice of violations (Labor Code § 2699.3 (a)) and the Operative Complaint (Labor Code § 2699(l)(1)). (Epstein Decl., ¶ 11.)

B. Court Approval of a PAGA Settlement is Unlike Class Action Approval

Labor Code § 2699(l)(2) provides that the superior court shall review and approve any settlement of any civil action filed pursuant to the PAGA. "Since a representative action under PAGA allows an individual employee to seek monetary relief arising out of unlawful conduct directed at a group of employees, PAGA actions bear a superficial resemblance to a type of class action. There are, however, several factors distinguishing representative PAGA actions and class actions. First, a unique feature of a representative action under PAGA is that it is 'fundamentally a law enforcement action designed to protect the public and penalize the employer for past illegal conduct.' (internal citation omitted). The purpose is not to collect damages on behalf of other employees or provide restitution to victims of Labor Code violations." (*Cunningham v. Leslie's Poolmart, Inc*. (C.D. Cal. June 25, 2013), 2013 U.S. Dist. LEXIS 90256, *16-17, 2013 WL 3233211; see *Franco v. Athens Disposal Co., Inc*. (2009) 171 Cal. App. 4th 1277, 1300 ["Restitution is not the primary object of a PAGA action, as it is in most class actions."].)

Moreover, there is no requirement that the Court apply the same level of scrutiny in approving a PAGA settlement as it does with class actions. Indeed, the California Supreme Court has held that an employee who sues an employer under the PAGA need not satisfy class action

requirements. (*Arias*, *supra*, 46 Cal. 4th at p. 974.) For example, "PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action." (*Baumann v. Chase Inv. Servs. Corp*. (9th Cir. 2014) 747 F.3d 1117, 1122.)

C. The LWDA Did Not Investigate Plaintiff's PAGA Allegations

The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the same time that it is submitted to the Superior Court for review and approval. (Lab. Code § 2699(l)(2).) However, the Labor Code does not authorize the LWDA to interfere with, obstruct, object, or otherwise impede a request for approval of a PAGA settlement. Indeed, the time for the LWDA to comment on a settlement is during the short window in which it must inform the aggrieved employee that it declines to investigate. (Lab. Code section 2699.3(a)(2)(B).) Once that window shuts, the aggrieved employee is deputized to act on behalf of the LWDA in a civil action. The Labor Code is clear that all that is required to obtain court approval of a PAGA settlement is for the proposed settlement to be sent to the LWDA. (Lab. Code § 2699(l)(2).)

Here, the LWDA had opportunity to investigate and obtain civil penalties by citation after Plaintiff submitted his PAGA notice to the LWDA. (Epstein Decl., ¶ 12.) "If the [LWDA] intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice." (Lab. Code section 2699.3(a)(2)(B).) "Within 120 calendar days of that decision, the [LWDA] may investigate the alleged violation and issue any appropriate citation." (*Id*.) Here, the LWDA chose not to investigate the alleged violation. All that is required now regarding LWDA involvement is for the requisite documentation to be submitted to the LWDA pursuant to Labor Code § 2699(l)(2). That has been done. (Epstein Decl., ¶ 12.)

D. The PAGA Settlement in this Case is Fair, Adequate, and Reasonable

Plaintiff conducted a thorough investigation into the facts of the Action, including by reviewing Defendants' production of responsive documents and information requested for media-

tion. (Epstein Decl., ¶ 13.) Defendants produced time and payroll records for a sampling of Aggrieved Employees, as well as employment policy documents. (*Id*.) PAGA Counsel analyzed this data, including time and payroll records and wage statements, in order to evaluate the potential penalties and for respective counsel to engage in meaningful settlement discussions, and utilized a qualified expert to assist in the review and analysis of possible penalties. (*Id*.) PAGA Counsel also took several depositions of Defendants' employees. (*Id*.) PAGA Counsel closely reviewed the documents and data provided by Defendants to determine the amount of potential PAGA penalties and other remedies potentially available to Plaintiff and the aggrieved individuals based on the claims alleged in the Action. (*Id*.)

As a result of this investigation, Plaintiff learned that there are approximately 458 Aggrieved Employees, including Plaintiff, throughout the State of California who worked approximately 23,298 PAGA Pay Periods during the PAGA Period. The PAGA Period runs from December 11, 2021, through the Effective Date. (Epstein Decl., ¶ 14.) The Gross Settlement Amount of $537,500.00 represents over $23 per PAGA Pay Period, with the PAGA Penalties allocated 75 percent to the LWDA PAGA Payment and 25 percent to the Aggrieved Employees as Individual PAGA Payments. (*Id*.)

If the actual number of PAGA Pay Periods exceeds the represented number of 23,298 by more than ten percent (10%) the Gross Settlement Amount will increase proportionally, unless DMCG elects to end the PAGA Period earlier than the Effective Date. Any such increase will be paid as follows: (25% of the Gross Settlement Amount) within sixty (60) days of the Effective Date, (37.5% of the Gross Settlement Amount) within nine (9) months of the Effective Date, and (37.5% of the Gross Settlement Amount) within sixteen (16) months of the Effective Date. If the number of PAGA Pay Periods reaches 25,628, DMCG may decline to have the PAGA Period end on the Effective Date and may instead select an earlier end date, so long as that date is after June 30, 2026. In no event may DMCG pay less than $537,500.00 to resolve the Action; $537,500.00 is the minimum amount DMCG has agreed to pay. DMCG must make its election

no later than ten (10) business days after providing the Aggrieved Employee Data to the Administrator, and if it fails to do so the PAGA Period is deemed terminated upon reaching the 10% escalator. (*Id*.)

This settlement is fair and reasonable considering the probability of recovery in this matter and the role of judicial discretion in right-sizing any penalty amount. (Epstein Decl., ¶ 15.) For PAGA claims, the courts are not obligated to impose the maximum penalties and have discretion to lower the penalties. Specifically, Labor Code § 2699(e)(2) provides that a court may lower penalties if it finds that a higher amount would result in an award that is "unjust, arbitrary and oppressive or confiscatory." In the present Action, Defendants argued that an award of penalties would be unjust, arbitrary, oppressive, or confiscatory and that any potential violations were corrected. (Epstein Decl., ¶ 15.)

In addition, the settlement amount is fair and reasonable in light of applicable case law. (See *Thurman v. Bayshore Transit Management, Inc*. (2012) 203 Cal.App.4th 1112, 1136 ["[T]he trial court reasonably determined that imposition of the maximum statutory penalty amount against defendants would be unjust—if not also arbitrary, oppressive, or confiscatory."]; see also *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 ["Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly took the circumstances proffered by Starbucks into consideration when it imposed the penalty, as evident from the significant reduction of the $50 maximum penalty (per initial violation) to the penalty imposed, only $5 per initial violation."].)

Furthermore, PAGA settlements of amounts significantly lower have been approved. (See, e.g., *Navarro v. Ordaz Cultured Marble & Onyx, Inc*. (N.D. Cal. Feb. 23, 2015) No. C 13-00847 LB, Doc No. 71, slip op. at *2 [approving $20,000 PAGA settlement for 13 aggrieved employees]; *Franco v. Ruiz Food Prods., Inc*. (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 [approving PAGA penalties of $10,000 for 2,055 class members and aggrieved employees]; *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 [approving PAGA

settlement payment of $10,000 for approximately 1,869 class members and aggrieved employees]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 [approving $10,000 PAGA settlement payment for approximately 2,752 class members and aggrieved employees].) Here, this settlement amount on behalf of the Aggrieved Employees and the state is significantly more than previously approved settlements for similar claims.

E. Plaintiff's Attorneys' Fees and Costs are Fair and Reasonable

In the Agreement, Defendants agreed, subject to Court approval, to pay PAGA Counsel an award of reasonable attorneys' fees of thirty-five percent (35%) of the Gross Settlement Amount, or One Hundred Eighty-Eight Thousand One Hundred Twenty-Five Dollars ($188,125.00), and a PAGA Counsel Litigation Expenses Payment in such amount as may be approved by the Court. Defendants will not oppose the request for litigation expenses, provided that all expenses presented to the Court for approval were reasonably incurred and related to this litigation. To date, Makarem & Associates has incurred $30,061.42 in litigation costs. (Epstein Decl., ¶ 16, Exh. C.) In terms of their actual time spent on the matter, PAGA Counsel have collectively spent 284.80 hours, and multiplying those hours by their hourly rates, PAGA Counsel's incurred fees total $228,137.00. (*Id*.) PAGA Counsel anticipate spending additional time working with the Administrator through the disbursement and accounting process. (Epstein Decl., ¶ 17.)

The reasonableness of the requested fee is further supported by the experience and qualifications of PAGA Counsel. Makarem & Associates, APLC is a Los Angeles firm whose practice is substantially devoted to wage and hour class and representative litigation. The firm settled *Porter, et al. v. Equinox Holdings, Inc.*, Alameda County Superior Court Case No. RG19009052, for $36 million, has settled numerous other matters for seven figures, and has obtained seven-figure judgments in complex litigation matters. (Epstein Decl., ¶¶ 22, 33.) At any given time the firm has in excess of 30 wage and hour class and representative actions pending in various stages of litigation, and it has been appointed class counsel in dozens of wage and hour class actions,

including on contested certification motions. (Id., ¶¶ 32, 34.)

The attorneys who performed substantial work on this Action are likewise experienced in this area. Ronald W. Makarem has been approved as class counsel in wage and hour class actions over 30 times, has been named a California Super Lawyer from 2010 to the present, and received the CLAY award for "Attorney of the Year" from California Lawyer Magazine in 2012. (Epstein Decl., ¶ 23.) Daniel J. Bass has litigated employment class and representative actions for more than a decade and has been approved as class counsel over 20 times. (Id., ¶ 24.) Samuel D. Almon is a graduate of the University of Chicago Law School and a former federal appellate law clerk who has been selected as a Southern California Super Lawyer in employment law each year since 2022. (Id., ¶ 25.) Plaintiff is also represented by co-counsel Michael F. Rahmanou of Rahm Law Group, APC, who has litigated employment class and representative actions since approximately 2015 and has been appointed class counsel in prior wage and hour matters. (Id., ¶ 30.)

PAGA Counsel's time records reflect that the attorneys of Makarem & Associates and Rahm Law Group collectively expended 284.80 hours prosecuting this Action, exclusive of the additional time that will be expended appearing at the hearing on this Motion and through final accounting. (Epstein Decl., ¶¶ 35, 37.) The following table summarizes that time:

Attorney	Experience	Billing Rate	Types of Tasks Assigned	Hours	Lodestar
Ronald W. Makarem	29+ years	$1,150	Case evaluation and litigation strategy; settlement negotiations; review and approval of settlement terms	12.00	$13,800.00
Samuel D. Almon	20+ years	$1,050	Litigation strategy; attended mediation; expert consultation; settlement structure; analysis of fees and costs; review of approval motion and supporting declarations	19.80	$20,790.00
Daniel J. Bass	12+ years	$795	Initial investigation and document review; client and witness communications; pleadings and opposing motion to compel arbitration; and litigation strategy	87.70	$69,721.50
Michael Rahmanou	12+ years	$795	Initial investigation; primary point of contact for Plaintiff; helped develop case strategy; attended the mediation in this action; and contributed to the negotiation and drafting of the Agreement and the preparation of this Motion and the supporting papers	40.00	$31,800.00

Attorney	Experience	Billing Rate	Types of Tasks Assigned	Hours	Lodestar
Joshua I. Epstein	9+ years	$795	Litigating individual arbitration; written discovery; depositions; expert consultation; mediation; long-form settlement agreement; approval motion and supporting declarations	90.30	$71,788.50
Mary Lipscomb	6+ years	$725	Legal research; document and record review; brief drafting	8.50	$6,162.50
Nizam Shaikh	1+ years	$550	Legal research; document review; drafting of approval motion and supporting declarations	17.40	$9,570.00
David Vergara Murayama	Less than 1 year	$495	Preliminary document review; analysis of time, payroll and wage statement data	9.10	$4,504.50
Total				284.80	$228,137.00

The hourly rates reflected above are the rates that PAGA Counsel have submitted to, and that have been accepted by, courts throughout the State of California in applications and motions for attorneys' fees, and they are in line with rates approved for attorneys of comparable skill and experience in this community. (See Epstein Decl., ¶ 36.) "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) When determining a reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the nature of the work performed, the relevant area of expertise, and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632.) The lodestar applying Plaintiff's counsel's rates is significantly lower than it would be if counsel applied the Laffey matrix rates. (Epstein Decl., ¶ 36, Exh. D; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695-696; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. 2005) 366 F.Supp.2d 912, 921-922.)

Multiplying those rates by the hours expended yields a lodestar of $228,137.00, which already exceeds the requested PAGA Counsel Fees Payment of $188,125.00. (Epstein Decl., ¶ 37.) The requested fee therefore requires no multiplier at all; to the contrary, it reflects a negative multiplier, and that is before accounting for the additional time PAGA Counsel will expend through completion of the disbursement and accounting process.

Though there are two methods for determining the appropriateness of a fee award, the starting point for determining a fee's appropriateness is to assess the amount of time spent by the

attorneys working. In *Lealao v. Beneficial California*, *Inc.*, the court held that:

> The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts. [citation omitted]

Lealao (2000) 82 Cal.App.4th 19, 26-27. As stated above, PAGA Counsel's actual fees incurred litigating this case total $228,137.00. (Epstein Decl., ¶ 16.) Beyond a simple review of PAGA Counsel's hours worked, the fee award requested comports with attorneys' fee awards issued by other courts under both the "common fund" and "lodestar" fee methods.

Because the requested award is well within the range approved by California courts, and because it is fully supported by the factors that California courts consider in determining the reasonableness of attorney fee awards in similar cases, PAGA Counsel respectfully submit that their request for $188,125.00 in attorneys' fees is appropriate.

F. The Trial Court has Wide Discretion Over the Amount of the Fee Award

California appellate courts have long recognized that trial courts are ideally situated to assess the quality and effectiveness of counsel's efforts, and have, thus, conferred considerable equitable discretion upon trial courts to determine an appropriate fee award. (See *Serrano v. Priest* (1977) 20 Cal.3d 25, 49; accord, *Glendora Community Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465, 474 [holding that "[t]he rule with respect to attorney[s'] fees is that the amount to be awarded as attorney[s'] fees is left to the sound discretion of the trial court" and that "[t]he trial judge is in the best position to evaluate the services rendered by an attorney in his courtroom; his judgment will not be disturbed on review unless it is clearly wrong."].)

California courts generally recognize two standard methods for calculating attorneys' fee awards in common fund settlements. The more prevalent "percentage of the fund" (also known as the "common fund" or "common benefit") method calculates attorneys' fees based on a percentage of the common benefit bestowed. The "lodestar-plus-multiplier" method uses counsel's

"lodestar" as a basis, determined by multiplying the hours counsel expended by their hourly rates, which the Court may then enhance by a multiplier, taking into account a variety of factors. The "lodestar-plus-multiplier" method is often considered to cross-check the propriety of the "common fund" award.

1. The "Common Fund" Doctrine

The California Supreme Court has held it is advisable for trial courts to employ the "common fund" doctrine to award attorneys' fees and costs to counsel in similar actions, where litigants proceeding in a representative capacity have secured a monetary settlement or judgment on behalf of others. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503-06.) The United States Supreme Court has specifically endorsed the use of the percentage of the fund method in paradigmatic common fund cases such as this one. (*Blum v. Stenson* (1984) 465 U.S. 886, 900 fn. 16 ["... under the 'common fund doctrine,' ... a reasonable fee is based on a percentage of the fund bestowed ..."]; see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.)

PAGA Counsel commenced this Action with the goal of recovering penalties for, among other things, unpaid wages, meal and rest break violations, wage statement violations, waiting time penalties, and recordkeeping violations. This Agreement constitutes the achievement of that goal. As such, PAGA Counsel should be paid their attorneys' fees based on the common benefit they have achieved for the Aggrieved Employees. (*Lealao*, *supra*, 82 Cal.App.4th at pp. 28-36, 50-51 [noting that percentage of the fund awards are appropriate in cases where the common benefit can be quantified]; *Serrano*, *supra*, 20 Cal.3d at pp. 35-40.)

Various federal courts have made attorneys' fee awards of a similar or greater percentage to that requested in this case. (See, e.g.*, In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 [affirming an award equal to 33% of the common fund]; *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494, 500-503 [awarding 45% of $7.3 million settlement fund]; *Beech Cinema, Inc. v. Twentieth Century-Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195,

1197-1199 [approximately 53% of the settlement fund awarded]; *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981) 516 F. Supp. 412, 420 [awarding 36% of settlement fund]; *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-68 [affirming fee award to counsel of one-third of recovery].)

In fact, fees amounting to around 35% of the settlement fund are often awarded. In *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney fee request in an overtime-exemption action; in *Bushnell v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981, Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour action; and in both *Rippee v. Boston Market Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Barry T. Moskowitz awarded a 40% fee to counsel in wage and-hour action.

In this case, 35% of the Gross Settlement Amount in attorneys' fees is fair and reasonable in light of the substantial time spent by PAGA Counsel litigating this case and the substantial benefit to be received by the state and the Aggrieved Employees. (Epstein Decl., ¶ 18.) Moreover, the award is approved by the Plaintiff and Defendants. (*Id*.) Accordingly, the fee request here is warranted. (*Id*.)

2. The Lodestar Approach Demonstrates the Fee Request is Justified

Some California courts also use a lodestar approach, enhanced by a multiplier, in awarding attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the common fund award. (*Lealao*, supra, 82 Cal.App.4th at p. 49; *Salton Bay Marina*, *Inc. v. Imperial Irrigation Dist*. (1985) 172 Cal.App.3d 914, 954.)

The lodestar method requires that a trial court first determine a "lodestar" figure based on

a "careful compilation of the time spent and reasonable hourly compensation of each attorney involved in the presentation of the case." (*Serrano*, *supra*, 20 Cal.3d at p. 48.) Presently, the "lodestar" figure is $228,137.00. The lodestar figure may then be increased by the application of a "multiplier." (*Id*.; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407.) Some of the factors a trial court considers when determining whether to apply a multiplier are: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [citations omitted].) In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied as such. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; see also *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66 [upholding 2.5 multiplier]; *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 [awarding a common fund fee which amounted to a 5.2 multiplier]; *Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1051 [approving a 3.65 multiplier]; *Van Vranken v. Atlantic Richfield Co*. (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 [approving multiplier of 3.6].) The ultimate goal is "to entice competent counsel to undertake difficult public interest cases." (*San Bernardino Valley Audubon Soc. v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755.) Fee awards that are too small "chill the private enforcement essential to the vindication of many legal rights[.]" (*Lealao*, *supra*, 82 Cal.App.4th at p. 53.)

This settlement comes after protracted litigation, and PAGA Counsel has provided this Court with both a summary of their hourly rates and hours billed in this matter that attest to their diligent efforts. To summarize the lodestar, PAGA Counsel's time summaries show that they worked 284.80 hours on this case, not even including the additional time that will be spent appearing at the hearing on this Motion and through the distribution and accounting process thereafter. (Epstein Decl., ¶¶ 16, 35, 37.) Based on their hourly rates, the lodestar calculation produces $228,137.00 in fees. (Id.) As such, if the Court is inclined to award fees based on lodestar, no multiplier at all is required to support Plaintiff's request: the requested fee of $188,125.00 is less

than PAGA Counsel's lodestar incurred to date and reflects a negative multiplier.

G. Plaintiff's Counsel's Costs Are Reasonable

In the course of this litigation, Makarem & Associates has incurred costs totaling $30,061.42 and will incur additional expenses through the completion of the disbursement and accounting process (including, but not limited to, filing this Motion and appearance at the hearing, and other appearances and communications regarding final accounting). (Epstein Decl., ¶¶ 16, 39, Exh. C.) Such litigation-related costs are reimbursable in representative actions. (*In re United Energy Corp. Sec. Litig*. (C.D. Cal. 1989) 1989 U.S.Dist. LEXIS 19146 at *16 [quoting Newberg, Attorney Fee Awards § 2:19 (1987)].)

As one commentator has noted, "the prevailing view is that expenses are awarded in addition to the fee percentage." (Conte, Attorney Fee Awards, § 2:08 at 50-51 (2d ed. 1977); *In re GNC Shareholder Litig.* (W.D. Pa. 1987) 668 F.Supp. 450, 452.) As such, the costs incurred by PAGA Counsel in this litigation are reasonable and appropriate as they served the Plaintiff, the State of California, and the Aggrieved Employees.

H. The Proposed Service Payment to the Plaintiff is Reasonable

The Parties have agreed to a service payment of no more than $10,000.00 to Plaintiff. (Epstein Decl., ¶ 42.) The service award is proper for several reasons. First, the award is proper considering that Plaintiff spent a substantial amount of his own time to ensure that the representative claims could proceed and to ensure that the state and the Aggrieved Employees received a benefit in this case. (Id., ¶¶ 40-44.) Plaintiff worked with counsel to assist in this case. (*Id*.) Specifically, Plaintiff met with his attorneys before the lawsuit was filed and discussed his experiences working for Defendant DMCG at length while searching for all documents he had related to his employment with DMCG. (Declaration of Hector M. Barraza-Benitez ["Barraza-Benitez Decl."] ¶¶ 6-7.) During the litigation, Plaintiff remained in close contact with his counsel and engaged in numerous communications regarding the claims in the case and Defendants' defenses to those claims. (*Id*.) Plaintiff also had numerous conversations with his counsel regarding

the potential of the lawsuit, the terms of the ultimate Agreement, and in responding to discovery requests. (*Id*.) It is estimated that over the course of the lawsuit, Plaintiff spent 52 hours working on the case for the benefit of both himself, the state, and the other aggrieved employees. (*Id*.; Epstein Decl., ¶ 43.)

Second, the Parties, who conducted arms-length settlement negotiations, have agreed that the service award is fair and reasonable in light of: (i) Plaintiff's efforts in the litigation; and (ii) his execution of a full, general release Effective on the date when Defendant DMCG fully funds the entire Gross Settlement Amount.

Lastly, courts have frequently approved substantial incentive payments to representatives in similar lawsuits. (*In re Southern Ohio Correctional Facility* (S.D. Ohio 1997) 175 F.R.D. 270, 272 [recognizing that "[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during … litigation."]; *Ingram v. The Coca-Cola Co*. (N.D. Ga. 2001) 200 F.R.D. 685, 694 [$300,000 incentive award to each named plaintiff]; *Enterprise Energy Corp. v. Columbia Gas Transmission Corp*. (S.D. Ohio 1991) 137 F.R.D. 240, 250-251 [incentive payments of $50,000]; *In re Dun & Bradstreet Credit Services Customer Litigation* (S.D. Ohio 1990) 130 F.R.D. 366, 373-374 [incentive payments amounting to $35,000 to $55,000 for each representative]; see also *Van Vranken v. Atlantic Richfield Co*. (N.D. Cal. 1995) 901 F.Supp. 294, 299-300 [approving $50,000 participation award]; *Lo Re v. Chase Manhattan Corp*. (S.D.N.Y. 1979) 1979 U.S. Dist. LEXIS 12210, *16-17 [payment of $229,000 out of $1,579,000 settlement fund to settle named plaintiffs claims did not cause the settlement to be unreasonable].)

In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent Aggrieved Employees did not. Rewarding his efforts is a proper incentive for individuals who come forward to challenge employment practices, thus fulfilling the policies and purposes underlying the Labor Code.

I. The Proposed Settlement Administration is Reasonable

The Parties have jointly selected CPT Group as the settlement administrator (the "Administrator") to handle the notice and settlement administration. (Epstein Decl., ¶ 45.) CPT Group is an experienced class and settlement notice administration company, and has acted as claims administrator in numerous wage and hour cases throughout the country. The Administrator has presented a "not to exceed" bid to counsel reflecting that its charges to administer the proposed settlement will not exceed $7,000.00 except for a showing of good cause and as approved by the Court. (*Id*.) Within 15 days after the Effective Date, Defendants will deliver the Aggrieved Employee Data to the Administrator. (*Id*.; Exh. A, 4.2.) Defendants will fund the Gross Settlement Amount in three installments: $134,375.00 within sixty (60) days of the Effective Date (25% of the Gross Settlement Amount), $201,562.50 within nine (9) months of the Effective Date (37.5% of the Gross Settlement Amount), and $201,562.50 within sixteen (16) months of the Effective Date (37.5% of the Gross Settlement Amount). (*Id*.; Exh. A, 4.3.) Within 10 days after Defendants fund each installment of the Gross Settlement Amount, the Administrator will mail checks for the Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the Aggrieved Employee Representative Award Payment, and the Administration Expenses Payment. Provided, however, that each of the aforementioned payments shall be in the same percentage that each installment payment bears to the Gross Settlement Amount. That is, (i) the first payment of the Individual PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the Aggrieved Employee Representative Award Payment, and the Administration Expenses Payment shall be for 25% of the amount due to each recipient, (ii) the second payment shall be for 37.5% of the amount due to each recipient; and (iii) the third payment shall be for 37.5% of the amount due to each recipient. (*Id*.; Exh. A, 4.4.) The Administrator will mail the Individual PAGA Payments to the Aggrieved Employees via First Class U.S. Mail. (*Id*.; Exh. A, 4.4, 4.4.1.) The face of each check shall prominently state the date, not less than 180 days after the date of mailing, when the check will be voided, and the Administrator will cancel all

checks not cashed by the void date. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without a USPS forwarding address. (*Id.*; Exh. A, 4.4.2.) Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. (*Id.*; Exh. A, 4.4.2.) For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall re-distribute those funds to Aggrieved Employees who have cashed their checks, on a pro rata basis. (*Id.*; Exh. A, 4.4.3.)

III. CONCLUSION

Based on the foregoing, the Plaintiff respectfully requests that the Court grant this motion, approve the Parties' PAGA settlement, and enter the [Proposed] Order Granting Approval of PAGA Settlement lodged concurrently herewith.

DATED: October 2, 2026

MAKAREM & ASSOCIATES, APLC

Joshua Epstein

Ronald W. Makarem
Samuel D. Almon
Joshua I. Epstein
Attorneys for Plaintiff