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Attorneys for Plaintiff Zuly Olin

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ZULY OLIN, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

WELLINGTON FOODS, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CVRI2201857

REPRESENTATIVE ACTION

[Assigned for All Purposes to the Honorable
Harold W. Hopp, Department 1]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

[Filed with the Declaration of Kane Moon, the
Declaration of Plaintiff Zuly Olin the Declaration of
Jodey Lawrence, [Proposed] PAGA Approval Order,
and [Proposed] Judgment]

PAGA APPROVAL HEARING

Date: May 28, 2026

Time: 8:30 a.m.

Dept: 1

Reservation ID: 246641081798

Action filed: May 10, 2022

FAC filed: July 19, 2022

Trial date: Not set

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

PLEASE TAKE NOTICE that on May 28, 2026 at 8:30 a.m. in Department 1 of the Riverside County Superior Court, at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, Plaintiff Zuly Olin (“Plaintiff”) will, and hereby move the Court for an Order and Judgment, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

1. Approving the PAGA Settlement Agreement and Release (“Settlement”) between Plaintiff and Defendant Wellington Foods, Inc. (“Defendant”);
2. Appointing Moon Law Group, PC as Plaintiff’s Counsel;
3. Approving the requested Attorney’s Fees of \$130,000.00, subject to potential increase under an escalator clause;
4. Approving the requested Attorney’s Costs of \$26,103.35;
5. Appointing Plaintiff as the PAGA representative;
6. Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator and approving \$4,250.00 as the Settlement Administration Costs;
7. Approving the scope of the Released Claims;
8. Approving a non-reversionary Gross Settlement Amount of at least \$390,000.00, subject to potential increase under an escalator clause;
9. Approving at least \$224,646.65 for PAGA penalties as settlement of the Settled Claims, subject to potential increase pursuant to the escalator clause, to be distributed as 75% (at least \$168,484.99) to the LWDA and 25% (at least \$56,161.66) to PAGA Employees;
10. Directing consummation of the Settlement pursuant to its terms and provisions;
11. Entering Judgment and dismissing the above-captioned action with prejudice; and
12. Retaining jurisdiction over the Parties, this action, and this Settlement, including following any entry of Judgment for purposes of enforcement, interpretation, settlement administration, and any post-Judgment issues that arise.

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

1
2 DATED: March 11, 2026
3

Respectfully submitted,

MOON LAW GROUP, PC

4 By: _____
5 Kane Moon
6 Lilit Ter-Astvatsatryan
7 Michael Citrin
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Kane Moon
Lilit Ter-Astvatsatryan
Michael Citrin

Attorneys for Plaintiff Zuly Olin

TABLE OF CONTENTS

TABLE OF AUTHORITIES	1
I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT	2
A. Plaintiff’s Claims and Procedural Background	2
B. Discovery and Investigation	5
C. Settlement Negotiations	5
D. Key Terms of the Proposed Settlement	6
III. DISCUSSION	10
A. Availability of Civil Penalties	10
B. The Settlement Merits Approval.....	11
1. The Relief is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes of Deterrence and Punishment under PAGA	11
2. The Settlement Amount Provides a Realistic Value for the Claims that is within the “Ballpark” of Reasonableness	12
3. The Settlement is a Fair and Reasonable Result Following a Thorough Investigation and Accounting of Various Litigation Risks	16
C. The Enhancements to Plaintiff Are Reasonable and Should Be Approved.....	17
D. The Requested Attorneys’ Fees/Costs are Reasonable and Should be Approved.....	18
1. Plaintiff’s Counsel Request an Award of Fees Based on the Common Fund Method.....	18
2. The Matter Involves a Fee and Cost Shifting Provision under PAGA.....	19
3. Counsel’s Experience, Reputation, and Ability Support the Requested Fee Award	20
4. While the Lodestar Method Is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees	20
5. Plaintiff’s Counsel’s Costs Were Actually and Reasonably Incurred	22
IV. CONCLUSION	22

TABLE OF AUTHORITIES

FEDERAL CASES

Angeles v. U.S. Airways, Inc. (N.D. Cal. Feb. 19, 2013)

No. C 12–05860 CRB, 2013 WL 622032 4

In re Activision Securities Litigation (N.D. Cal. 1989) 723 F.Supp.1373 18

In re Pacific Enterprises Securities Litigation (9th Cir. 1995) 47 F.3d 373 19

Hensley v. Eckerhart (1983) 461 U.S. 424 21

Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106 21

O’Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110..... 2, 11

Pedroza v. PetSmart, Inc. (C.D. Cal. June 14, 2012)

No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073 5

Staton v. Boeing Co. (9th Cir. 2003) 327 F.3d 938 22

Villalobos v. Calandri Sunrise Farm LP (C.D. Cal. July 22, 2015)

No. C CV 12-2615 PSG (JEMx), 2015 WL 12732709 2

Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759..... 18

STATE CASES

Caliber Bodyworks, Inc. v. Superior Court (2005) 134 Cal.App.4th 36 11

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105..... 18

Dunlap v. Superior Court (2006) 142 Cal.App.4th 330..... 11

Gentry v. Super. Ct. (2007) 42 Cal.4th 443 17

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 21

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116..... 15

Munoz v. BCI Coca-Cola Bottling Co. of L.A. (2010) 186 Cal.App.4th 399 15

Quinn v. State of California (1975) 15 Cal.3d 162..... 18

Serrano v. Priest (1977) 20 Cal.3d 25 18

Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19 20

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 21

STATUTES

California Private Attorneys General Act, Labor Code §§ 2698, <i>et seq.</i>	1
Labor Code § 90.5.....	17
Labor Code § 2699(a)	10
Labor Code § 2699(e)(2)	16
Labor Code § 2699(f)(2)(A)	14
Labor Code § 2699(f)(2)(B)	14
Labor Code § 2699(k)(1)	19, 22
Labor Code § 2699(s)(1).....	4
Labor Code § 2699(s)(2).....	1, 2, 11
Labor Code § 2699.3.....	11
Labor Code § 2699.5.....	11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Zuly Olin (“Plaintiff”) seek approval of a non-reversionary \$390,000.00 gross settlement
4 of claims for civil penalties alleged pursuant to the California Private Attorneys General Act, Labor Code
5 sections 2698, *et seq.* (“PAGA”). After a full day of mediation with experienced and neutral mediator
6 Steve Serratore, Esq., and months of extended settlement negotiations, Plaintiff reached a resolution with
7 Defendant Wellington Foods, Inc. (“Defendant”) (collectively, Plaintiff and Defendant are the “Parties”).
8 The Parties have executed a PAGA Settlement Agreement and Release (the “Settlement”). (Declaration
9 of Kane Moon in Support of Motion for Approval of PAGA Settlement and Release [“Moon Decl.”], ¶
10 2; Ex. 1) Pursuant to Labor Code section 2699(s)(2), Plaintiff now files this motion seeking an order
11 approving the proposed Settlement.

12 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the
13 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff’s motion and the
14 hearing date. (Moon Decl., ¶ 3, Ex. 2.) To date, the LWDA has not indicated any objection to the
15 Settlement.

16 The proposed Settlement seeks to resolve all alleged claims for civil penalties pursuant to the
17 California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). Plaintiff brought
18 this PAGA action on behalf of herself and all individuals who are or previously were employed by
19 Defendant in the State of California and classified as non-exempt or hourly-paid employees at any time
20 during the period from May 8, 2021 through the date the Court grants approval of the Settlement.¹ (Moon
21 Decl., ¶ 4.)

22 Settlement of a PAGA claim requires court approval. Pursuant to the operative PAGA statute, the
23 “court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant
24

25 ¹ Pursuant to paragraph B.2.f. of the Settlement, if the total number of Pay Periods in the PAGA
26 Period exceeds 14,186, Defendant may elect either (i) to increase the Gross Settlement Amount on a
27 pro-rata basis equal to the percentage increase in the number of pay periods worked by the PAGA
28 Employees above 10%, or (ii) the final day of the Settlement Period shall be set on the day before the
number of the Pay Period reaches 15,605. (Settlement, ¶ B.2.f.) Defendant shall inform the Court of its
election on the hearing date of the PAGA Approval hearing. (*Id.*)

1 to this part.” (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed settlement,
2 the primary issue to be decided is whether the settlement is fair, adequate, and reasonable. Specifically,
3 the issue is whether the PAGA penalties to which the parties have agreed provide “genuine and
4 meaningful” relief that is “consistent with the underlying purpose of the statute to benefit the public,” and
5 whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v.*
6 *Calandri Sunrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709,
7 at *5; *see also O’Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

14 The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the
15 LWDA and the estimated **290** PAGA Employees will, cumulatively, receive no less than **\$224,646.65**,
16 as PAGA penalties. (Moon Decl., ¶ 22.) This is a significant recovery, not only because further litigation
17 may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by
18 Defendant, but also because an investigation by experienced Plaintiff’s Counsel and analysis of discovery
19 revealed minimal identifiable violations, the discretionary nature of awarding PAGA penalties, and the
20 risk of not being able to proceed on a representative basis at all due to the potential manageability issues
21 and current state of the law. For these reasons, as set forth more fully below, Plaintiff respectfully requests
22 the Court enter the proposed order and proposed judgment submitted concurrently herewith.

23 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

24 **A. Plaintiff’s Claims and Procedural Background**

25 Defendant is an industry leading contract manufacturer of dietary supplements. (Moon Decl., ¶
26 5.) Plaintiff worked for Defendant as a Production Lead on an assembly line from August 2018 until
27 December 2021. (Declaration of Plaintiff Zuly Olin in Support of Motion for Approval of PAGA
28 Settlement and Release [“Plaintiff Decl.”], ¶ 2.) Throughout her employment, Plaintiff was classified

1 as non-exempt and paid on an hourly basis. (*Id.*) Plaintiff contends that she, and other PAGA
2 Employees, were subjected to the same or similar unlawful labor practices during their employment with
3 Defendant. (Moon Decl., ¶ 5.)

4 Plaintiff's claims for unpaid wages stems from allegations of Defendant's failure to pay
5 employees for all hours worked, including as a result of Defendant's failure to compensate employees
6 for off-the-clock and Defendant's rounding practice of PAGA Employees' time which resulted in
7 underpayment. (*Id.* at ¶ 6.) Plaintiff's meal and rest period claims are based on allegations that due to the
8 nature of her work and Defendant's employment practices, PAGA Employees regularly experienced
9 missed, untimely, or interrupted breaks, and that Defendant failed to provide any premiums for non-
10 compliant rest breaks or all premiums for non-compliant meals. (*Id.*) Plaintiff also alleges that Defendant
11 failed to reimburse employees for all reasonable and necessary business expenses incurred, including
12 expenses incurred for the use of employees' personal cellphone for work purposes. (*Id.*) Plaintiff further
13 alleges she and other employees did not receive all wages owed at the time of termination nor accurate
14 itemized wage statements due to Defendant's failure to pay all wages and premiums. (*Id.*) Accordingly,
15 Plaintiff alleges Defendant is liable for civil penalties under PAGA. (*Id.*)

16 Because of the foregoing alleged violations of the Labor Code, Plaintiff filed a Class Action
17 Complaint on May 10, 2022, alleging Defendant systematically: (1) failed to pay minimum wages, (2)
18 failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit
19 rest breaks, (5) failure to indemnify necessary business expenses, (6) failed to timely pay final wages at
20 termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business
21 practices. (*Id.* at ¶ 7.)

22 Pursuant to PAGA, on May 8, 2022, Plaintiff submitted a notice of the alleged Labor Code
23 violations to the California Labor and Workforce Development Agency (the "LWDA"), with certified
24 mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 8, Ex. 3.) The administrative
25 exhaustion period under PAGA expired without the LWDA indicating any intent to investigate the
26 allegations. (Moon Decl., ¶ 8.) On July 19, 2022, Plaintiff filed a First Amended Class and Representative
27 Action Complaint to allege a ninth cause of action for civil penalties under PAGA. (*Id.*) Accordingly,
28 Plaintiff is duly authorized to act as private attorneys general with respect to the PAGA claims

involved in this action. (*Id.*) In compliance with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the complaints containing the Court-assigned case number. (*Id.* at ¶ 9.) To date, the LWDA has not sought to intervene in this Action. (*Id.*)

On October 3, 2022, the Court granted Defendant’s Motion to Compel Arbitration in part and ordered Plaintiff to submit her individual claims to arbitration. (*Id.* at ¶ 10.) The Court also stayed the non-individual PAGA claim, pending the California Supreme Court’s review of *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023) (“*Adolph*”). (*Id.*)

On November 4, 2022, Plaintiff submitted her individual claims to arbitration with AAA, which was assigned Case No. 01-22-0004-6880. (*Id.* at ¶ 10.) On or around May 9, 2024, the Parties reached an individual settlement and fully executed an individual settlement agreement where Plaintiff agreed to release her individual claims against Defendant. (*Id.*) Pursuant to the fully executed settlement agreement, the Parties agreed that Plaintiff’s release of her individual claims shall have no effect as to whether Plaintiff is an “aggrieved employee” for purposes of pursuing Plaintiff’s non-individual PAGA claim in this Action. (*Id.*) Plaintiff’s release pursuant to the individual settlement agreement did not include Plaintiff’s claims under PAGA in this Action. (*Id.*)

On July 8, 2024, pursuant to the California Supreme Court’s ruling in *Adolph*, the Parties stipulated to lift the stay of this Action. (*Id.* at ¶ 12.)

Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations. (*Id.* at ¶ 13.) Defendant argues that all employees were properly paid for all hours worked and that employees are not permitted to work off-the-clock, and that its round policy was neutral on its face and in compliance with California law. (*Id.*) As for the regular rate claim, Defendant argues there was no issue with paying employees the proper regular rate of pay because any additional remuneration was discretionary and thus, not required to be incorporated into the regular rate of pay. (*Id.*) Defendant maintains all employees were provided with the opportunity to take code-compliant meal and rest breaks and that missed breaks, if any, were solely the result of employees’ voluntary choice. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendant argues penalties are not warranted because employees suffered no actual damage or harm as a result. (*Id.*; see, e.g., *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL 622032, at *10 [“A plaintiff must adequately

1 plead an injury arising from an employer's failure to provide full and accurate wage statements, and the
2 omission of the required information alone is not sufficient."].) Additionally, Defendant alleges its good-
3 faith belief that it paid all wages precludes the imposition of waiting time penalties because Plaintiff would
4 be unable to show Defendant's alleged conduct was done willfully or knowingly. (Moon Decl., ¶ 10; *see*,
5 *e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11-298 GHK (DTBx), 2012 WL
6 9506073, *5.) For these reasons, Defendant claims it did not engage in any unfair business practices and
7 denies liability under PAGA. (Moon Decl., ¶ 13.) Defendant also maintains the claims are not susceptible
8 to proof on a representative basis because of the individualized and varying nature of each employee's
9 experience, making this matter unmanageable. (*Id.*)

10 **B. Discovery and Investigation**

11 The Parties engaged in informal discovery exchange prior to mediation. Defendant provided
12 information and documents, which enabled Plaintiff's Counsel to meaningfully investigate Plaintiff's
13 allegations and assess the value of the PAGA claims. (*Id.* at ¶ 14.) Specifically, Defendant produced
14 Plaintiff's time and corresponding payroll records for approximately 23.3% of all PAGA Employees.
15 (*Id.*)

16 Prior to mediation, Plaintiff's Counsel reviewed and analyzed all the information that Defendant
17 produced, including time and pay records provided by Plaintiff. (*Id.* at ¶ 15.) Plaintiff's Counsel retained
18 an expert to analyze the records and prepare a damage analysis prior to mediation. (*Id.*) The time and pay
19 records analyzed contained 32,536 shifts actually worked (representing approximately 25.2% of all
20 shifts), which allowed the expert to prepare an analysis with a high degree of certainty. (*Id.*) Further,
21 Plaintiff's Counsel investigated the applicable law regarding the claims and defenses asserted in this
22 action. (*Id.*) Accordingly, Plaintiff's Counsel were able to evaluate the probability of success on the merits
23 and Defendant's monetary exposure. (*Id.*) In sum, Plaintiff and her Counsel's familiarity with the facts of
24 the case and the legal issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

25 **C. Settlement Negotiations**

26 On November 20, 2025, the Parties participated in a full day of private mediation facilitated
27 by Steve Serratore, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 16.) The
28 negotiations were at arm's length and although conducted in a professional matter, were adversarial.

(*Id.*) Both sides went into the mediation willing to explore the potential for a settlement of the dispute, but they were also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) Negotiations were protracted, with extended discussions and instances in which it appeared the Parties would not reach a resolution. (*Id.*) Following a full discussion of the strengths and weaknesses of the claims and defenses, the Parties ultimately reached a resolution, the material terms of which are encompassed within the Settlement at issue. (*Id.*)

In reaching a resolution, the Parties recognized that the issues presented in this action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.* at ¶ 17.) Plaintiff and her Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*) In sum, Plaintiff and her Counsel believe the proposed Settlement is in the best interests of PAGA Employees and the LWDA. (*Id.*)

Plaintiff's Counsel are not aware of any other class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals, some of whom would also be PAGA Employees as defined in this action. (*Id.* at ¶ 28.) Plaintiff's Counsel have come to this conclusion after a reasonable inquiry and review of the LWDA's PAGA Case Search website, this Court's case search website, and other information reasonably available online. (*Id.*) Additionally, Defendant has not indicated there is any other related case pending as of the date of this declaration. (*Id.*)

D. Key Terms of the Proposed Settlement

The Settlement's key financial and other terms include:

1. PAGA Employees: The PAGA Employees include all persons who were employed by Defendant in California as non-exempt, hourly-paid employees at any time from May 8, 2021 through the date of approval of the Settlement. (Settlement, ¶¶ 10, 19.) There are estimated **290 PAGA Employees** who worked for an estimated **14,186 PAGA Pay Periods**. (*See id.* at ¶ B.2.f.; Moon Decl., ¶ 18.)

1 2. Gross Settlement Amount: Defendant agrees to pay a non-reversionary Gross Settlement
2 Amount of \$390,000.00, subject to increase pursuant to the escalator clause. (Settlement, ¶¶ B.2.,
3 B.2.f.)

4 3. Estimated Pay Periods: Defendant estimates that there are approximately 14,186 Pay
5 Periods during the PAGA Period. (*Id.* at ¶ B.2.f.) If the total number of pay periods as of the end of the
6 PAGA Period exceeds the above figure by greater than 10%, then, at Defendant’s sole discretion, either:
7 (i) the Gross Settlement Amount shall increase on a pro-rata basis equal to the percentage increase in
8 the number of pay periods worked by the PAGA Employees above 10% (for example, if the number of
9 pay periods increases by 11%, the Gross Settlement Amount will increase by 1%), or (ii) the final day
10 of the Settlement Period shall be set on the day before the number of the pay period reaches 15,605
11 (14,186, plus 10% of 14,186). (*Id.*) Defendant to inform the Court of its election on the date of the
12 PAGA approval hearing. (*Id.*)

13 4. Attorneys’ Fees and Costs: The Settlement provides for payment to Plaintiff’s Counsel for
14 Attorney’s Fees and Costs of 1/3 of the Gross Settlement Amount, which is estimated to be \$130,000.00,
15 plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiff’s Counsel’s
16 litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not
17 to exceed \$30,000.00, both of which will be paid from the Gross Settlement Amount. (*Id.* at ¶¶ B.2.a.,
18 B.2.b.) To date, Plaintiff’s Counsel has incurred a total of \$26,103.35 in litigation costs. (Moon Decl., ¶
19 21, Ex. 4.)

20 5. Plaintiff’s Incentive Award: The Settlement provides an Incentive Award of \$5,000.00
21 to Plaintiff. (*Id.* at ¶ B.2.c.) This Incentive Award is in addition to the Individual Payments she will
22 receive as a PAGA Employee and in recognition of her service as the PAGA representative. (*Id.* at ¶
23 A.7.)

24 6. Settlement Administration Costs: The Settlement provides that Settlement
25 Administration Costs will be paid from the Gross Settlement Amount, up to a maximum payment of
26 \$10,000.00. (*Id.* at ¶ B.2.d.) The Parties propose Phoenix Class Action Administration Solutions
27 (“Phoenix”) as the third-party settlement administrator (“Settlement Administrator”). (*Id.* at ¶ A.16.) A
28 true and correct copy of Phoenix’s quote for \$4,250.00 is attached hereto as **Exhibit 5**. . The Declaration

of Jodey Lawrence on Behalf of Phoenix is filed concurrently herewith. Prior to selecting Phoenix, Plaintiff's Counsel sought quotes from two highly regarded and experienced administration firms: 1) Phoenix Class Action Administration Solutions, who provided a quote of \$4,250.00; and 2) Simpluris, Inc, who proved a quote of \$4,212.00. (Moon Decl., ¶ 23.) Phoenix was selected as the proposed Settlement Administrator based on its competitive bid and its experience in administering PAGA settlements. (*Id.*)

7. Tax Allocation: All settlement payments to PAGA Employees will be treated as miscellaneous income for which a 1099 will be issued. (Settlement, ¶ A.8.) The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement. (*Id.* at ¶ C.15.)

8. PAGA Penalties Fund: After deducting the Attorney's Fees, Attorney's Costs, Incentive Award, and Settlement Administration Costs in the amounts approved by the Court, the remainder will be allocated as the PAGA Penalties Fund and distributed as 75% to the LWDA and 25% to the PAGA Employees. (*Id.* at ¶¶ A.12., B.2.e., C.11.) Accordingly, the PAGA Payment is estimated to be no less than **\$224,646.65**,² which will be distributed 75% (i.e., no less than 75% * \$224,646.65 = **\$168,484.99**) to the LWDA and 25% (i.e., no less than 25% * \$224,646.65 = **\$56,161.66**) to PAGA Employees pursuant to PAGA law governing Plaintiff's claims. (Moon Decl., ¶ 25.) It is estimated that the **290 PAGA Employees** will receive and average individual settlement payment of **\$193.66 each** (\$56,161.66 / 290), with a corresponding Pay Period Value of **\$3.96 per Pay Period** (\$56,161.66 / 14,186). (*Id.*)

9. Letter to PAGA Employees: The Settlement Administrator will issue each PAGA Employee one check for their share of the PAGA Penalties Fund along with an explanatory letter, attached as **Exhibit A** of the Settlement. (Settlement, ¶ A.9.)

² The estimated PAGA Penalties Fund was calculated by deducting the following amounts from the Gross Settlement Amount (\$390,000.00): \$130,000.00 for the Attorneys' Fees, \$26,103.35 for the Attorneys' Costs, \$5,000.00 Incentive Award, and \$4,250.00 for the Settlement Administration Costs. (*See* Settlement, ¶¶ 6, 12(d), 14-15.)

1 10. Funding and Distribution Timing: Within Sixty-Five (65) days after the Effective Date,
2 Defendant will wire the settlement funds to the Administrator. (*Id.* at ¶ C.7.) Within ten (10) calendar
3 days following the funding of the Settlement, the Settlement Administrator shall issue from the
4 Settlement Fund Account Individual Settlement Payments, based on the twenty-five percent (25%) of
5 the PAGA Payment, to PAGA Employee's last known mailing address. (*Id.* at ¶ C.12.)

6 11. Uncashed Funds: Prior to mailing, the Settlement Administrator will perform a search
7 based on the National Change of Address Database for information to update and correct for any known
8 or identifiable address changes. (*Id.*) Any checks returned as non-deliverable on or before the Void Date
9 will be sent promptly *via* regular First-Class U.S. Mail to the forwarding address affixed thereto. (*Id.*) If
10 no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the
11 correct address using a skip trace or other search using the name, address, or Social Security number of
12 the PAGA Employee involved, and will then perform a single re-mailing. (*Id.*) Any check re-mailings
13 will not extend the 180-day period to cash a check. (*Id.*) Any checks issued to PAGA Employees shall
14 remain valid and negotiable for one hundred and eighty (180) calendar days from the date of their
15 issuance and then shall become void on the 181st day after issuance, i.e., the Void Date. (*Id.*) The Parties
16 agree that, within fourteen (14) calendar days after the Void Date, any unclaimed funds in the Settlement
17 Fund Account as a result of the failure to cash Individual Settlement Payment checks prior to the Void
18 Date shall be handled in accordance with California Code of Civil Procedure section 384 and transmitted
19 to California's Unclaimed Property Fund in the name of the PAGA Employee. (*Id.*)

20 12. Released Claims: Upon entry of final judgment and funding of the Gross Settlement
21 Amount in full ("Effective Date"), Plaintiff, on behalf of herself, and the State of California releases the
22 Released Parties from all claims for civil penalties under PAGA arising from the same facts and/or
23 claims alleged in the operative Complaint as well as those included in Plaintiff's letter to the LWDA,
24 including claims under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 245,
25 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2699, 2699.3, 2802, as well as
26 IWC Wage Orders, including, but not limited to, Wage Orders 1 to 17, or claims that were pled or that
27 could have been pled based on the facts alleged in the operative Complaint during the Settlement Period.
28 (*Id.* at ¶ B.3.) The period of the release shall extend to the limits of the PAGA Period. (*Id.*) The *res*

1 *judicata* effect of the judgment will be the same as that of the release. (*Id.*) In consideration for the
2 benefits provided under this Agreement, including but not limited to the Incentive Award, and subject
3 to Court approval, Plaintiff expressly waives and relinquishes any and all rights and benefits under Civil
4 Code section 1542 with respect to all claims, known and unknown, suspected or unsuspected. (*Id.* at ¶
5 B.3.a.) Plaintiff understands and acknowledges that this waiver applies to claims that Plaintiff does not
6 know or suspect to exist at the time of execution of this Agreement, and that such claims, if known,
7 might have materially affected Plaintiff's decision to enter into this Settlement. Plaintiff acknowledges
8 that Plaintiff has been advised of the provisions of California Civil Code section 1542. (*Id.*) Plaintiff
9 acknowledges that this waiver is a material term of the Settlement and that Plaintiff has knowingly
10 and voluntarily waived the protections of Civil Code section 1542 as set forth herein. (*Id.*) Had
11 Plaintiff been entirely successful at trial on her individual wage and hour claims, the optimistic value of
12 Plaintiff individual claims is approximately \$43,729.92. (Moon Decl., ¶¶ 29, 51-59.) Considering the
13 likelihood of prevailing and other attendant risks, the realistic value of Plaintiff individual claims is
14 approximately \$14,576.64. (*Id.* at ¶¶ 29, 51-59.) The Settlement provides an Incentive Award to Plaintiff
15 in the amount of \$5,000.00, subject to Court Approval. (*Id.* at ¶ B.2.c.)

16 **III. DISCUSSION**

17 **A. Availability of Civil Penalties**

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

1 *Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142
2 Cal.App.4th 330.)

3 Here, in compliance with Labor Code section 2699.3, Plaintiff submitted notices of the
4 Labor Code violations at issue to the LWDA, and they exhausted administrative remedies
5 without the LWDA noticing any intent to investigate the claims. (Moon Decl., ¶ 8.) Accordingly,
6 Plaintiff is duly authorized to act as a private attorneys general pursuant to PAGA. (*Id.*)

7 **B. The Settlement Merits Approval**

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

10 **1. The Relief is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes**
11 **of Deterrence and Punishment under PAGA**

12 The \$390,000.00 Gross Settlement Amount amounts to genuine and meaningful relief
13 “consistent with the underlying purpose of the statute to benefit the public.” (Moon Decl., ¶ 42; *see*
14 *O’Connor*, 201 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA
15 claims was 0.1% of the estimated full worth].) This is an excellent result, particularly because, under
16 the Settlement, PAGA Employees and the LWDA will receive timely, guaranteed relief and will avoid
17 the risk of not being able to recover anything at all. (Moon Decl., ¶ 42.)

18 The Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory
19 purposes - deterrence and punishment, on the one hand, and providing PAGA Employees with
20 genuine and meaningful relief on the other. (Moon Decl., ¶ 43.) As a result of this litigation,
21 Defendant had to hire legal counsel, engage in employee-wide discovery, and participate in
22 mediation. (*Id.*) Assuming approval is granted, Defendant will also have to pay civil penalties
23 pursuant to PAGA. (*Id.*) Not including its own attorneys’ fees and costs, Defendant will pay at least
24 \$390,000.00 to resolve this matter-of which at least \$224,646.65 is allocated toward PAGA penalties
25 and will be distributed as 75% to the LWDA and 25% to PAGA Employees, in compliance with
26 PAGA law governing the claims in this Action. (*See Settlement*, ¶ A.12.) This amount represents
27 roughly **47.51%** of the realistic exposure of \$472,866.67. (Moon Decl., ¶ 41.) Additionally, the
28 release obtained under the Settlement does not preclude PAGA Employees from pursuing any

individual (non-PAGA) claims they may have against Defendant or the other Released Parties.
(Settlement at ¶ A.14.)

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

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arm’s-length negotiations between the Parties. (Moon Decl., ¶ 31.) Plaintiff’s Counsel performed an extensive investigation into the facts, claims, and defenses at issue and Defendant’s potential liability, including a review of governing law and analysis of informal discovery, including Defendant’s written policies and time/pay data for a majority of PAGA Employees. (*Id.* at ¶¶ 14–15.) Plaintiff’s Counsel used the foregoing discovery and investigation to prepare for mediation and, with the assistance of a statistics expert, assessed the probability of success on the merits and Defendant’s monetary exposure, discussed the strengths and weaknesses of the claims and defenses in depth at mediation and months of continued negotiations, and ultimately negotiated the resulting Settlement. (*Id.* at ¶¶ 14–17.)

Based on Plaintiff’s Counsel’s analysis of the arguments and information provided by Defendant, on an expert analysis of the time and pay records, and on information from Plaintiff, Plaintiff’s Counsel evaluated Defendant’s both maximum (*optimistic*) and risk-adjusted (*realistic*) potential exposure in preparation for mediation. (*Id.* at ¶ 28.) Although the expert’s analysis revealed that the time and pay records supported several violations by Defendant, those identifiable violations were primarily limited to the unpaid overtime, regular rate, and meal break claims. (*Id.*) The records themselves did not provide strong support for the off-the-clock work, rest period, and expense reimbursement claims, and derivative penalties for those claims, as these claims are predominantly testimony based. (*Id.*) In other words, Plaintiff’s analysis revealed that certain claims were not as strong as originally believed. (*Id.*)

Because Defendant did not require employees to record rest periods, nor is Defendant required to record rest periods, there are no records to establish the rest period claim on the merits. (*Id.* at ¶ 29.) Additionally, there are no records to establish the off-the-clock work claim on the merits. (*Id.*) Rather, proof of these claims would need to be supported by declarations from PAGA Employees regarding missed rest periods and off-the-clock work as the records themselves cannot demonstrate what breaks were missed, when, and why, and they cannot demonstrate the time, if any, PAGA Employees spent

1 working off the clock. (*Id.*)

2 Indeed, the exposure figures that were calculated for mediation were based on assumed high
3 violation rates that would not likely be demonstrated at trial, as they assume either the participation of all
4 PAGA Employees (which would be difficult given the particularly large size of this group), or
5 alternatively, the use of surveys or statistical data as a surrogate (which would still require the participation
6 of a majority of PAGA Employees to establish a sound representation of all non-exempt employees). (*Id.*
7 at ¶ 30.) The reality is that many, if not all, employees would be unwilling to participate due to fear of
8 retaliation. (*Id.*) However, even assuming those employees would be willing to participate, obtaining
9 such declarations would potentially reveal that each PAGA Employee had a different experience. (*Id.*)
10 The individualized nature of their employment experience and the numerosity of employees affected
11 present significant risk with manageability and proof on the merits. (*Id.*)

12 Even as to the claims the rounding, meal period, and regular rate claims, our analysis found that
13 Defendant's exposure is less than initially believed. (*Id.* at ¶ 31.) As to the rounding claim, Plaintiff alleges
14 that Defendant recorded employees' time to the nearest minute but rounded payable time to the nearest
15 quarter hour. (*Id.*) According to Plaintiff's expert analysis, 62.7% of employees during the statutory period
16 experienced a net underpayment attributable to rounding, and 41% of pay periods reflected a net
17 underpayment due to rounding. (*Id.*) However, Defendant contends its rounding practice is neutral and
18 compliant with California law as it also resulted in overpayment to Defendant's employees and that it did
19 not intend for its rounding policy to result in any underpayment to its employees. (*Id.*) Plaintiff's expert
20 found that 37.9% of shifts and 31.3% of PAGA Employees were overpaid due to Defendant's rounding
21 practice. (*Id.*) Additionally, Defendant's rounding practice resulted in only an average of 0.9 minutes
22 (approximately 54 seconds) of underpayment per shift. (*Id.*) As a result, Defendant's alleged failure to
23 pay PAGA Employees because of its rounding policy would likely be found to be unintentional. (*Id.*)

24 As to Plaintiff's meal period claim, a review of the time and pay records shows only a 9.6%
25 violation rate during the PAGA Period. (*Id.* at ¶ 35.) Additionally, the records demonstrate that 4.7% of
26 the violations included a meal waiver and that Defendant paid meal premiums for 0.6% of the violations.
27 (*Id.*) Defendant also argues that its payment of meal premiums and use of meal waivers indicate that it
28 did not intentionally fail to provide PAGA Employees with meal breaks. (*Id.*) As a result, Defendant's

1 alleged failure to provide PAGA Employees with meal periods would likely be found to be unintentional.
2 (*Id.*)

3 With respect to the regular rate claim, Plaintiff alleges that Defendant failed to incorporate all non-
4 discretionary bonuses into the regular rate of pay for purposes of paying overtime, sick pay, and meal
5 break premiums. (*Id.* at ¶ 36.) Plaintiff's expert reviewed the records and found 33 additional payments,
6 such that 45.8% of employees had overtime and additional compensation, 37.5% of employees had sick
7 pay and additional compensation, and 4.2% of employees had meal premiums and additional
8 compensation. (*Id.*) However, Defendant argued that it did not fail to incorporate any remuneration into
9 the regular rate of pay because the 33 additional payments were discretionary. (*Id.*) Additionally, only
10 12.2% of pay periods had overtime and additional compensation, 1.7% of pay periods had sick pay and
11 additional compensation, and only 0.1% of pay periods had meal premiums and additional compensation.
12 (*Id.*) As a result, to the extent that Defendant failed to incorporate non-discretionary bonuses into the
13 regular rate of pay, which Defendant disputes, the exposure is *de minimis*. (*Id.*) Moreover, these violation
14 rates assume Plaintiff would be able to show the 33 bonus payments were non-discretionary payments
15 that should have been factored into the regular rate. (*Id.*) Based on Defendant's argument that the bonuses
16 were discretionary and the low violation rate, Defendant's alleged failure to incorporate these bonuses
17 into the regular rate of pay for purposes of paying overtime, sick pay, and meal break premiums would
18 likely be found to be unintentional. (*Id.*)

19 The likelihood that Defendant could assert viable legal defenses would likely further reduce its
20 overall exposure. (*Id.* at ¶ 37.) For example, the individualized and testimony-intensive nature of the
21 claims could bar manageability of this representative action or otherwise significantly reduce Defendant's
22 overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic as it presumes
23 Plaintiff would be able to stack the penalties, although penalty stacking is not expressly permitted by
24 PAGA. (*Id.* at ¶ 38.) Rather, without either (i) a prior finding by the LWDA or a court within the past five
25 years that the employer violated PAGA or (ii) evidence that the employer's conduct was malicious,
26 fraudulent, or oppressive, PAGA only provides for a maximum \$100 penalty for each pay period. (Lab.
27 Code § 2699(f)(2)(A)–(B).) Moreover, Plaintiff's Counsel believe it would be unrealistic to expect the
28 Court would award the full (penalty-stacked) exposure given the discretionary nature of awarding

1 penalties and given Defendant's defenses, including that any failure to pay premiums or regular rate
2 wages, was not knowingly or willfully done, and additionally, to the extent employees received wage
3 statements that were allegedly inaccurate, employees suffered no actual resulting damage or harm. (Moon
4 Decl., ¶ 38.) Moreover, awarding the full penalties amount would likely raise Due Process concerns,
5 especially considering the records demonstrate that there are low violation rates for the underlying claims.
6 (*Id.*) For the foregoing reasons, the *realistic* exposure is thus far below the *optimistic* claim by claim
7 estimate. (*Id.* at ¶ 39.)

8 Based on the foregoing, Plaintiff's Counsel believe it is more reasonable to assess penalties on a
9 \$100 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the estimated
10 14,186 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 40.) Accordingly,
11 Plaintiff's Counsel estimate Defendant's maximum PAGA exposure to be **\$1,418,600.00** (\$100 x
12 14,186). (*Id.*) The Gross Settlement Amount \$390,000.00 represents approximately 27.49% of the
13 maximum exposure figure (\$34990,000.00 / \$1,418,600.00). (*Id.*) However, based on the discovery,
14 Defendant's arguments at mediation, an understanding that the claims are heavily dependent on the
15 unlikely participation by PAGA Employees and their varying employment experience, and other
16 important considerations discussed above, it is reasonable to assume a violation occurred only in one-
17 third of all pay periods, which results in a realistic (*risk-adjusted*) exposure of **\$472,866.67**
18 (\$1,418,600.00 / 3). (*Id.*) Based on this, the Parties settled on the Gross Settlement value of \$390,000.00.
19 (*Id.*) The Gross Settlement Amount of \$390,000.00 represents roughly **82.48%** of the realistic exposure
20 (\$390,000.00 / \$472,866.67). (*Id.*)

21 The proposed Settlement therefore represents a substantial recovery when compared to the
22 reasonably forecasted recovery. (*Id.* at ¶ 41.) When considering the risks of litigation, the uncertainties
23 involved in continued litigation, the burdens of proof necessary to establish liability, and the probability
24 of appeal, it is clear the Gross Settlement Amount of \$390,000.00 is within the "ballpark" of
25 reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.*
26 (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
27 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require "an explicit statement of the maximum
28 amount the plaintiff class could recover if it prevailed on all its claims," but instead, only an

“understanding of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

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

Plaintiff’s Counsel have conducted a thorough investigation into the facts of the allegations. (Moon Decl., ¶ 44.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff’s Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the Settlement is in the best interests of the PAGA Employees and the State of California. (*Id.*)

Although Plaintiff’s Counsel believe there is merit to Plaintiff’s allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 45.) Plaintiff’s Counsel also recognize that proving the amounts of penalties owed to each PAGA Employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiff’s Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 46.) Indeed, a Court may reduce PAGA penalties “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.” (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 46.) While Plaintiff’s Counsel believe there would be no persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and significantly reduce any award of penalties. (*Id.* at ¶ 47.) This wide range of potential recovery and additional delays and risks of trial provide justification to settle for a reasonable amount of recovery at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in preparation for mediation, the maximum exposure did not comport with the realistic exposure that Defendant faced, as discussed above. (*Id.*)

Plaintiff’s Counsel took into account the risk of not being able to proceed on a representative basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk that

1 even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary nature
2 of awarding PAGA penalties. (*Id.* at ¶ 48.) The provisions of the Labor Code triggering PAGA
3 penalties in this case include Labor Code sections 203, 210, 226, 1197.1, and 2802. (*Id.*) However,
4 PAGA penalties are not mandatory, but rather, permissive. (*Id.*) Accordingly, it is entirely possible
5 that even if Plaintiff would be successful at trial, assuming she first able to win on the merits regarding
6 their individual claims at arbitration and then defeat the manageability issues presented at litigation
7 by the large number of PAGA Employees in this action, Plaintiff may still be awarded substantially
8 less than what was obtained through the Settlement. (*Id.*)

9 The Settlement avoids the significant risks, burdens, and the accompanying expense of further
10 litigation. (*Id.* at ¶ 49.) Moreover, Plaintiff would have to proceed with arbitration of his individual
11 claims and win on the merits before proceeding with litigation of the representative PAGA claims. (*Id.*)
12 Preparation for trial and the prospect of appeals in the wake of any summary judgment ruling would
13 remain for the Parties. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and
14 costs through trial, a lengthy and uncertain process that could result in recovering less than was settled
15 for. (*Id.*)

16 **C. The Enhancements to Plaintiff Are Reasonable and Should Be Approved**

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

26 Here, in light with the Settlement and subject to the Court’s approval, Plaintiff requests an
27 Incentive Award of \$5,000.00. (Settlement, ¶ C.10.) Plaintiff and Plaintiff’s Counsel respectfully
28 submit that the requested enhancement is reasonable in recognition of Plaintiff’s role as named Plaintiff

1 and PAGA Representative, for the risks to future employment inherent in undertaking this role and for
2 their service and participation in litigation that resulted in a fair settlement under PAGA. (Moon Decl.,
3 ¶¶ 48–51; Olin Decl., ¶¶ 12–18.)

4 **D. The Requested Attorneys’ Fees/Costs are Reasonable and Should be Approved**

5 In line with the Settlement, Plaintiff’s Counsel request an award of attorneys’ fees in an
6 amount of one-third of the Gross Settlement Amount (i.e., no less than \$130,000.00, subject to
7 potential increase under the escalator clause), plus reimbursement for actual litigation costs in
8 the amount of \$30,000.00. (See Settlement, ¶ B.2.a, -b.)

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

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

15 Here, Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of
16 recovery/common fund” theory. (Moon Decl., ¶ 84.) The purpose of this approach is to “spread litigation
17 costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire
18 burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of*
19 *Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’ fees in
20 winning a suit which creates a fund from which others derive benefits, may require those passive
21 beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of*
22 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common
23 fund doctrine has been applied “consistently in California when an action brought by one party creates a
24 fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].) The reasons for
25 applying this doctrine include:

26 fairness to the successful litigant, who might otherwise receive no benefit because his
27 recovery might be consumed by the expenses; correlative prevention of an unfair
28 advantage to the others who are entitled to share in the fund and who should bear their
share of the burden of its recovery; encouragement of the attorney for the successful
litigant, who will be more willing to undertake and diligently prosecute proper

1 litigation for the protection or recovery of the fund if he is assured that he will be
2 properly and directly compensated should his efforts be successful.

3 (*Id.* at p. 111.)

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

8 **This court is compelled to ask, “Is this process necessary?” Under a cost-benefit**
9 **analysis, the answer would be a resounding, “No!”** Not only do the *Lindy* and *Kerr-*
10 *Johnson* analyses consume an undue amount of court time with little resulting advantage
11 to anyone, but, in fact, it may be to the detriment of the class members.

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

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

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

28 The Settlement at issue is beneficial in that it limits the risk of continued expenses and
consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff’s

1 Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action
2 involved significant financial risk for Plaintiff’s Counsel who undertook this matter on a contingent basis,
3 with no guarantee of recovery. (Moon Decl., ¶ 89.) Once Plaintiff’s Counsel undertook this litigation on
4 behalf of the PAGA Employees, they committed to pursue it to its conclusion, and were accordingly
5 precluded from focusing on, or taking on, other cases which could have resulted in a larger, and
6 less risky, monetary gain. (*Id.* at ¶ 90.)

7 **3. Counsel’s Experience, Reputation, and Ability Support the Requested Fee Award**

8 As demonstrated by their prior experience in pursuing class and representative actions on behalf
9 of employees, Plaintiff’s Counsel possess considerable expertise in litigating class action and
10 representative matters. (*Id.* at ¶¶ 63-80.) Plaintiff’s Counsel have been involved as lead counsel or co-
11 counsel in a multitude of class and representative actions resulting in beneficial results to class members
12 and PAGA employees in California. (Moon Decl., ¶¶ 63-80.) Because it is reasonable to compensate
13 Plaintiff’s Counsel commensurate with their skill, reputation, and experience, the requested fee award is
14 supported here.

15 Plaintiff’s Counsel’s experience in wage-and-hour class and representative actions was integral
16 in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of this
17 Settlement. (Moon Decl., ¶ 81.) Practice in the narrow field of wage-and-hour litigation requires skill and
18 knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural
19 law of representative action litigation. (*Id.* at ¶ 79.) Based on these and other factors, Plaintiff’s Counsel
20 have frequently received fee awards of this percentage from the gross recovery for PAGA employees.
21 (*See id.* at ¶¶ 67, 73.) Thus, the requested fee award is reasonable and fair.

22 **4. While the Lodestar Method Is Not Necessary in Common Fund Cases, the Court May** 23 **Perform a Cross-Check to Award Fees**

24 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.”
25 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar
26 method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging
27 cases. (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload of an already overtaxed
28 judicial system,’ (2) is ‘insufficiently objective and produce[s] results that are far from homogenous,’ (3)

1 ‘creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of
2 law,’ (4) ‘is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the
3 settlement fund or the amounts recovered by the Plaintiff or of an overall dollar amount,’ (5) ‘encourages
4 lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,’ (6) ‘creates a
5 disincentive for the early settlement of cases,’ (7) deprives trial courts of ‘flexibility to reward or deter
6 lawyers so that desirable objectives, such as early settlement, will be fostered,’ (8) ‘works to the particular
7 disadvantage of the public interest bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.*
8 [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–
9 49].)

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

24 Further, “California case law permits fee awards in the absence of detailed time sheets.”
25 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) The Court “should defer to
26 the winning lawyer’s professional judgment as to how much time he was required to spend on
27 the case.” (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Generally, hours
28 are reasonable if they were “reasonably expended in pursuit of the ultimate result achieved in

the same manner that an attorney traditionally is compensated by a fee-paying client.” (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.)

Here, Plaintiff’s Counsel combined current lodestar is *no less than \$106,765.00* which is based on *no less than 131.7* of attorney time spent to-date at their customary hourly rates. (*See Moon Decl.*, ¶ 85.) Thus, in comparison to this lodestar, the total fee request of \$130,000.00 represents a multiplier of **1.22** (\$130,000.00 / \$106,765.00. (*See Moon Decl.*, ¶ 88(c).) Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation, including to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Moon Decl.*, ¶ 86.) The amount of fees requested under the Settlement is warranted based on the contingent risk that Plaintiff’s Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the PAGA Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff’s Counsel. (*Id.* at ¶ 88.) Plaintiff’s Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.* at ¶ 86.) Thus, the request for attorneys’ fees is more than reasonable under a lodestar check.

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

Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff’s Counsel seek reimbursement in the total amount of \$26,103.35 for expenses that were actually and reasonably incurred in this litigation. (*Moon Decl.*, ¶ 93, Ex. 4.) Moreover, this amount is below the maximum allocation under the Settlement and thus, the remainder will be added to the PAGA Payment (Settlement, ¶ B.2.b.) Thus, costs should be reimbursed in full.

IV. CONCLUSION

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

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DATED: March 11, 2026

Respectfully submitted,

MOON LAW GROUP, PC

By:_____

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