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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 JACQUELINE TRUJILLO, individually, and
13 on behalf of all others similarly situated,

14 Plaintiff,

15 vs.
16

17 THE ORIGINAL FISH TACO, LLC, a limited
18 liability company; and DOES 1 through 10,
19 inclusive,

20 Defendants
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Case No.: CIVSB2509470

REPRESENTATIVE ACTION

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

[Filed with (1) the Declaration of Kane Moon, (2)
the Declaration of Plaintiff, (3) the Declaration of
Sean Hartranft, (4) [Proposed] PAGA Approval
Order, and (5) [Proposed] Judgment]

PAGA APPROVAL HEARING:

Date: November 19, 2026

Time: 8:30 a.m.

Dept.: S32

Judge: Hon. Wilfred J. Schneider, Jr.

Action filed: April 4, 2025

FAC filed: June 6, 2025

Trial date: Not set

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

PLEASE TAKE NOTICE that on November 19, 2026, at 8:30 a.m. in Department S32 of the San Bernardino County Superior Court, San Bernardino Justice Center at 247 West Third Street, San Bernardino, California 92415, Plaintiff Jacqueline Trujillo (“Plaintiff”) will, and hereby does, 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 (“Settlement”) between Plaintiff and Defendant The Original Fish Taco, LLC;
2. Approving the requested PAGA Counsel Fees Payment of \$250,000.00, subject to potential increase under the Escalator Clause;
3. Approving the requested PAGA Counsel Litigation Expenses Payment of \$21,583.94;
4. Approving a \$10,000.00 Enhancement Award to Plaintiff;
5. Appointing APEX Class Action Administration as the Administrator and approving an Administration Expenses Payment of \$11,990.00;
6. Approving the scope of the Released PAGA Claims and Released Parties;
7. Approving a non-reversionary Gross Settlement Amount of \$750,000.00;
8. Approving \$456,426.06 for PAGA Penalties in settlement of the Released PAGA Claims, subject to potential increase under the Escalator Clause, to be distributed as 65%, or \$296,676.94, to the LWDA and 35%, or \$159,749.12, to the Aggrieved Employees;
9. Directing consummation of the Settlement pursuant to its terms and provisions;
10. Entering Judgment and dismissing the above-captioned action with prejudice; and
11. 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.

As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

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2 DATED: August 26, 2026
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Respectfully submitted,

MOON LAW GROUP, PC

4 By: _____
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jacqueline Trujillo (“Plaintiff”) seeks approval of a non-reversionary \$750,000.00
4 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys
5 General Act, Labor Code sections 2698, et seq. (“PAGA”). After a full day of mediation with
6 experienced and neutral mediator Lynn Frank, Esq., and subsequent settlement negotiations, Plaintiff
7 reached a resolution with Defendant The Original Fish Taco, LLC (“Defendant”) (collectively,
8 Plaintiff and Defendant are the “Parties”). The Parties have executed a PAGA Settlement Agreement
9 (the “Settlement”), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of
10 Kane Moon in Support of Motion for Approval of PAGA Settlement (“Moon Decl.”) submitted
11 concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiff now files this motion
12 seeking an order approving the proposed Settlement.

13 The Settlement resolves all claims for civil penalties under PAGA that were alleged or could
14 have been alleged based on the factual allegations contained in the PAGA Notice and Operative
15 Complaint during the PAGA Period (“Released PAGA Claims”). (Settlement, ¶ 5.2.) For purposes
16 of settlement, the “PAGA Period” is October 1, 2024, through July 8, 2026, or the modified end date
17 pursuant to Paragraph 8 of the Settlement. (*Id.* at ¶ 1.26.) The Settlement is on behalf of the California
18 Labor and Workforce Development Agency (the “LWDA”), Plaintiff, and all persons employed by
19 Defendant in California and classified as non-exempt employees who worked for Defendant during
20 the PAGA Period (“Aggrieved Employees”). (*Id.* at ¶¶ 1.4, 5.2.) Plaintiff is unaware of any other
21 pending litigation involving similar claims against Defendant that may be affected by approval of the
22 Settlement, nor has Defendant identified any. (*Id.* at ¶ 2.9; Moon Decl., ¶ 24.) Plaintiff reached this
23 conclusion after a reasonable inquiry and review of the LWDA’s PAGA Case Search website, this
24 Court’s case search website, and other information reasonably available online. (Moon Decl., ¶ 24.)

25 Settlement of a PAGA claim requires court approval. Pursuant to the operative PAGA statute,
26 the “court shall review and approve any penalties sought as part of a proposed settlement agreement
27 pursuant to this part.” (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed
28 settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable.

Specifically, the issue is whether the PAGA penalties to which the parties have agreed provide “genuine and meaningful” relief that is “consistent with the underlying purpose of the statute to benefit the public,” and whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at *5; *see also O’Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the LWDA and the estimated **2,015** Aggrieved Employees will, cumulatively, receive no less than **\$456,426.06** as PAGA Penalties. (Moon Decl., ¶ 21.) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant, but also because an investigation by experienced PAGA counsel and analysis of discovery revealed minimal identifiable violations, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and current state of the law. For these reasons, as set forth more fully below, Plaintiff respectfully requests the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims and Procedural Background

Defendant owns and operates restaurant chain doing business as Rubio’s Coastal Grill, with approximately sixty locations in California. (Moon Decl., ¶ 4.) Plaintiff worked for Defendant as a line cook from approximately 2022 until February 22, 2025. (*Id.*) Throughout her employment, Plaintiff was classified as non-exempt and paid on an hourly basis. (*Id.*) Plaintiff contends she and

1 her former coworkers were subjected to the same or similar unlawful labor practices during their
2 employment by Defendant, including failure to pay all wages. (*Id.*)

3 Plaintiff's claims for unpaid wages stem from allegations of Defendant's failure to pay
4 employees all minimum, overtime, and sick pay owed, including by requiring employees to perform
5 uncompensated work before clocking in, after clocking out for meal periods, and after clocking out
6 for the day, and by failing to incorporate all forms of remuneration into the regular rate of pay. (*Id.*
7 at ¶ 5.) Plaintiff's meal and rest period claims are based on allegations that Defendant maintained
8 facially noncompliant written meal and rest break policies, regularly interrupted employees' breaks
9 to require them to work, and failed to pay all required premiums. (*Id.*) Plaintiff also alleges that
10 Defendant failed to reimburse employees for all reasonable and necessary business expenses
11 incurred, including expenses incurred for the use of their personal cellphone and for laundering work
12 uniforms. (*Id.*) Plaintiff further alleges that she and other employees did not receive all wages owed
13 at the time of termination or accurate itemized wage statements due to Defendant's failure to pay all
14 wages and premiums. (*Id.*) Accordingly, Plaintiff alleges Defendant is liable for civil penalties under
15 PAGA. (*Id.*)

16 Because of the foregoing alleged violations of the Labor Code, Plaintiff filed a Class Action
17 Complaint on April 4, 2025, alleging Defendant systematically: (1) failed to pay minimum wages,
18 (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize
19 and permit rest breaks, (5) failure to indemnify necessary business expenses, (6) failed to timely pay
20 final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged
21 in unfair business practices. (*Id.* at ¶ 6.)

22 Pursuant to PAGA, on April 2, 2025, Plaintiff submitted 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 ¶ 7, Ex. 2.) The administrative
25 exhaustion period under PAGA expired without the LWDA indicating any intent to investigate the
26 allegations. (*Id.* at ¶ 7.) On June 6, 2025, Plaintiff filed a First Amended Class Action and
27 Representative Action Complaint to allege a ninth cause of action for civil penalties under PAGA.
28 (*Id.*) Accordingly, Plaintiff is duly authorized to act as a private attorney general with respect to the

1 PAGA claims involved in this action. (*Id.*) In compliance with Labor Code section 2699(s)(1),
2 Plaintiff subsequently submitted to the LWDA a file-stamped copy of the First Amended Complaint
3 containing the Court-assigned case number. (*Id.* at ¶ 8.) To date, the LWDA has not sought to
4 intervene in this action. (*Id.*)

5 After this action was filed, Defendant produced an arbitration agreement between Defendant
6 and Plaintiff containing a class action waiver. (*Id.* at ¶ 9.) The Parties thereafter stipulated to dismiss
7 the class claims, compel Plaintiff’s individual wage claims and the individual portion of her PAGA
8 claim to arbitration, and stay the non-individual portion of her PAGA claim. (*Id.*) On June 23, 2025,
9 the Court granted the Parties’ stipulation. (*Id.*) Thereafter, the Parties agreed to attend a private
10 mediation to resolve Plaintiff’s representative PAGA claims. (*Id.*)

11 Defendant ardently opposes the merits of this case and denies Plaintiff’s factual allegations.
12 (*Id.* at ¶ 10.) Defendant argues that all employees were properly paid for all hours worked and that
13 its written timekeeping policies prohibited employees from working off-the-clock and required them
14 to accurately record all time worked. (*Id.*) As for the regular rate claim, Defendant argues that the
15 additional remuneration identified by Plaintiff constituted discretionary bonuses and therefore was
16 not required to be incorporated into the regular rate of pay. (*Id.*) Defendant maintains that all
17 employees were provided with the opportunity to take code-compliant meal and rest breaks and that
18 any missed breaks were solely the result of employees’ voluntary choices. (*Id.*) As for the
19 unreimbursed business expenses, Defendant maintains that it did not require employees to use their
20 personal cellular phones or incur separately reimbursable uniform-laundry expenses. (*Id.*) To the
21 extent employees received allegedly inaccurate wage statements, Defendant argues that penalties are
22 not warranted because employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.,*
23 *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL 622032, at
24 *10 [“A plaintiff must adequately plead an injury arising from an employer’s failure to provide full
25 and accurate wage statements, and the omission of the required information alone is not sufficient.”].)
26 Additionally, Defendant alleges its good-faith belief that it paid all wages precludes the imposition
27 of waiting time penalties because Plaintiff would be unable to show Defendant’s alleged conduct was
28 done willfully or knowingly. (Moon Decl., ¶ 10; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June

1 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant
2 claims that it did not engage in any unfair business practices and denies liability under PAGA. (Moon
3 Decl., ¶ 10.) Defendant also maintains that the claims are not susceptible to proof on a representative
4 basis because of the individualized and varying nature of each employee’s experience, making this
5 matter unmanageable. (*Id.*)

6 **B. Discovery and Investigation**

7 Before initiating arbitration regarding Plaintiff’s individual claims, the Parties agreed to
8 mediate the representative PAGA claims. (*Id.* at ¶ 11.) The Parties engaged in an informal discovery
9 exchange prior to mediation. (*Id.*) Defendant provided information and documents that enabled
10 Plaintiff’s Counsel to meaningfully investigate Plaintiff’s allegations and assess the value of the
11 PAGA claims. (*Id.*) Specifically, Defendant produced Plaintiff’s personnel file and her time and
12 payroll records, documents regarding Defendant’s written policies and practices in effect during the
13 relevant period, and representative time and corresponding payroll records for approximately 20% of
14 all Aggrieved Employees. (*Id.*)

15 Prior to mediation, PAGA Counsel reviewed and analyzed all the information Defendant
16 produced, including the time and payroll records and Defendant’s written policies, in conjunction
17 with information provided by Plaintiff. (*Id.* at ¶ 12.) PAGA Counsel retained an expert to analyze the
18 time and payroll records and prepare a damages analysis before mediation. (*Id.*) The timekeeping
19 records contained 61,771 shifts actually worked, representing approximately 20% of the estimated
20 Aggrieved Employees, which allowed the expert to prepare an analysis with a high degree of
21 certainty. (*Id.*) Further, PAGA Counsel investigated the applicable law regarding the claims and
22 defenses asserted in this action. (*Id.*) Accordingly, PAGA Counsel were able to evaluate the
23 probability of success on the merits and Defendant’s monetary exposure. (*Id.*) In sum, Plaintiff and
24 her Counsel’s familiarity with the facts of the case and the legal issues involved allowed them to act
25 intelligently in negotiating the Settlement. (*Id.*)

26 **C. Settlement Negotiations**

27 On May 7, 2026, the Parties participated in a full day of private mediation facilitated by Lynn
28 Frank, Esq., an experienced PAGA action mediator. (*Id.* at ¶ 13.) The negotiations were at arm’s

length and although conducted in a professional manner, 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 ¶ 14.) 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 Aggrieved Employees and the LWDA. (*Id.*) In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff's motion and the hearing date. (*Id.* at ¶ 15, Ex. 3.) To date, the LWDA has not indicated any objection to the Settlement. (*Id.* at ¶ 15.)

D. Key Terms of the Proposed Settlement

The Settlement's key financial and other terms include:

1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross Settlement Amount ("GSA") is a non-reversionary \$750,000.00. (Settlement, ¶¶ 1.13, 3.1.) Defendant will fund the GSA in two installments: a first payment of \$375,000.00 no later than twelve (12) months after full execution of the Memorandum of Understanding and a second payment of \$375,000.00 no later than six (6) months after the first payment. (*Id.* at ¶ 4.1.) Within fourteen (14) calendar days after Defendant funds each installment, the Administrator will mail the payments required under the Settlement in accordance with the Court's Approval Order. (*Id.* at ¶ 4.2.) Individual PAGA Payment checks will remain valid for at least 180 calendar days after mailing. Any checks remaining uncashed and cancelled after the void date will be transmitted to Asian Law

1 Alliance, the *cy pres* recipient selected by the Parties, subject to Court approval. (*Id.* at ¶¶ 4.2.1,
2 4.2.3.)

3 2. Escalator Clause. The GSA was negotiated based on Defendant’s representation that the
4 Aggrieved Employees worked approximately 49,886 aggregate PAGA Pay Periods during the PAGA
5 Period. (*Id.* at ¶ 8.) If the actual number of PAGA Pay Periods exceeds 54,874.60, which is 10% more
6 than the estimated count, Defendant may, in its sole discretion, either increase the Net Settlement
7 Amount on a pro rata basis for the pay periods exceeding the 10% cushion or modify the end date of
8 the PAGA Period so that the total number of PAGA Pay Periods does not exceed 54,874.60. (*Id.*)

9 3. Enhancement Award. The Settlement includes an Enhancement Award to Plaintiff of up
10 to \$10,000.00, payable from the GSA. (*Id.* at ¶¶ 1.12, 3.2.1.) The Enhancement Award recognizes
11 Plaintiff’s service as the named plaintiff and is provided in exchange for her individual general release
12 of claims. (*Id.*) If the Court awards less than the amount requested, the unawarded amount will remain
13 in the Net Settlement Amount for distribution as PAGA Penalties to the LWDA and Aggrieved
14 Employees. (*Id.* at ¶ 1.18.)

15 4. Attorneys’ Fees and Costs. The Settlement includes attorneys’ fees in an amount not to
16 exceed one-third of the GSA, currently estimated to be \$250,000.00, plus reimbursement of
17 reasonable out-of-pocket litigation costs not to exceed \$30,000.00, payable to PAGA Counsel from
18 the GSA. (*Id.* at ¶ 3.2.2.) If the actual costs incurred or the fees and costs approved by the Court are
19 less than the amounts requested, the difference will remain in the Net Settlement Amount. (*Id.* at ¶
20 1.18.) My firm has incurred \$21,583.94 in litigation costs. (*Id.*, Ex. 4)

21 5. Administration Costs. The Settlement provides for an Administration Expenses Payment
22 of \$11,990.00, payable from the GSA and subject to Court approval, for the Administrator’s fees and
23 expenses in administering the Settlement. (*Id.* at ¶ 3.2.3.) If the amount approved by the Court is less
24 than the amount requested, the difference will remain in the Net Settlement Amount. (*Id.* at ¶ 1.18.)
25 The Parties jointly selected APEX Class Action Administration (“APEX”) as the neutral entity to
26 administer the Settlement based on its bid of \$11,990.00. (*Id.* at ¶¶ 1.2, 1.18; Moon Decl., ¶ 20, Ex.
27 5; Declaration of Sean Hartranft on Behalf of Apex Class Action LLC in Support of Motion for
28 Approval of Representative Action Settlement, ¶ 7, Ex. B.)

1 6. Net Settlement Amount. After deducting the Enhancement Award, PAGA Counsel Fees
2 Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment from
3 the GSA in the amounts approved by the Court, the remainder will constitute the Net Settlement
4 Amount and be distributed as PAGA Penalties. (Id. at ¶ 1.18.) Accordingly, the Net Settlement
5 Amount is estimated to be no less than **\$456,426.06**,¹ which will be distributed 65% (i.e., 65% *
6 \$456,426.06= **\$296,676.94**) to the LWDA and 35% (i.e., 35% * \$456,426.06= **\$159,749.12**) to
7 Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims. (Moon Decl., ¶ 21.)

8 7. Individual PAGA Payments. Each Aggrieved Employee will be entitled to a pro rata
9 share of the Aggrieved Employees' 35% portion of the PAGA Penalties, directly proportional to the
10 number of PAGA Pay Periods the Aggrieved Employee worked during the PAGA Period, without
11 having to submit a claim form. (Id. at ¶¶ 3.1, 3.2.4.a.) This results in an average Individual PAGA
12 Payment of roughly **\$79.28** for each of the estimated 2,015 Aggrieved Employees (\$159,749.12 /
13 2,015), and a PAGA Pay Period value of **\$3.20** for each of the 49,886 estimated PAGA Pay Periods
14 (\$159,749.12 / 49,886). Individual PAGA Payments will be treated entirely as penalties and, to the
15 extent required by law, reported on IRS Form 1099. (Id. at ¶¶ 1.14, 1.25, 3.2.4.b.)

16 8. Release by Plaintiff: Upon approval by the Court of the Settlement and as of the Effective
17 Date, Plaintiff releases all claims related to her employment with Defendant, including all claims
18 alleged in the Action, and is bound by a Civil Code Section 1542 release and waiver of all claims
19 known and unknown, without exception, except as may be prohibited by law. This release specifically
20 excludes claims for unemployment insurance, disability, social security, and workers' compensation
21 (except for claims pursuant to Labor Code Sections 132a and 4553). (Settlement, ¶ 5.1)

22 9. Release by the State of California and Aggrieved Employees: Upon approval by the
23 Court of the Settlement and as of the Effective Date, Plaintiff, the State of California and all
24 Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and
25

26 ¹ The estimated Net Settlement Amount was calculated by deducting the following maximum
27 amounts from the GSA of \$750,000.00: \$10,000.00 for the Enhancement Award, \$21,583.94 for the
28 PAGA Counsel Litigation Expenses Payment, \$250,000.00 for the PAGA Counsel Fees Payment, and
\$11,990.00 for the Administration Expenses Payment. (See Settlement, ¶¶ 1.18, 3.2.1–3.2.3.)

1 present representatives, agents, attorneys, administrators, successors, and assigns, the Released
2 Parties from all claims, rights, demands, liabilities, causes of action, and theories of liability for
3 PAGA penalties that were pled or could have been pled based on the factual allegations contained in
4 the PAGA Notice and Operative Complaint during the PAGA Period, and as further specified in the
5 Settlement (“Released PAGA Claims”). (*Id.* at ¶ 5.2.)

6 10. “Released Parties” means Defendant and each of its past and present divisions, affiliates,
7 affiliated entities, related entities, parents, subsidiaries, predecessors, successors, joint ventures, joint
8 employers, assigns, and their respective shareholders, owners, officers, directors, employees, agents,
9 trustees, attorneys, managers, operators, insurers, representatives, administrators, fiduciaries,
10 beneficiaries, subrogees, executors, partners, privies, and consultants. (*Id.* at ¶ 1.29.)

11 11. No Related Cases. To the best of the Plaintiff’s knowledge, there is no other pending
12 litigation involving similar claims against Defendant that may be impacted by approval of the
13 Settlement at issue, nor has Defendant pointed to any. (Moon Decl., ¶ 24.) PAGA Counsel came to
14 this conclusion after a reasonable inquiry and review of the LWDA’s PAGA Case Search website,
15 this Court’s case search website, and other information reasonably available online. (*Id.*)

16 **III. DISCUSSION**

17 **A. Availability of Civil Penalties**

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

2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code section 2699.3, Plaintiff submitted notice of the Labor Code violations at issue to the LWDA, and she exhausted administrative remedies without the LWDA noticing any intent to investigate the claims. (Moon Decl., ¶ 7, Ex. 2.) Accordingly, Plaintiff is duly authorized to act as a private attorney general pursuant to PAGA. (*Id.* at ¶ 7.)

B. The Settlement Merits Approval

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

1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes of Deterrence and Punishment under PAGA

The \$750,000.00 GSA amounts to “genuine and meaningful” relief “consistent with the underlying purpose of the statute to benefit the public.” (Moon Decl., ¶ 34; *see O’Connor*, 201 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything at all. (*Moon Decl.*, ¶ 34.)

The Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in employee-wide discovery, and participate in mediation. (Moon Decl., ¶ 35.) Assuming approval is granted, Defendant will also have to pay civil penalties pursuant to PAGA. (*Id.*) Not including its own attorneys’ fees and costs, Defendant will pay at least \$750,000.00 to resolve this matter—of which at least \$456,426.06 is allocated toward PAGA Penalties and will be distributed as 65% to the LWDA and 35% to Aggrieved Employees, in compliance with PAGA law governing the claims in this Action. (*See Settlement*, ¶ 3.2.4.) This amount represents roughly 46% of the realistic exposure for the claims (\$456,426.06 / \$997,720.00), as discussed below. (Moon Decl., ¶ 35.) Additionally, the release obtained under the Settlement does

not preclude Aggrieved Employees from pursuing any individual, non-PAGA claims they may have against Defendant or the other Released Parties. (*See id.* at ¶¶ 5.2–5.3.)

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., ¶ 13.) PAGA 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 an approximate 20% of the Aggrieved Employees. (*Id.* at ¶¶ 11–12.) PAGA 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 ¶¶ 11–14.)

Based on PAGA Counsel’s analysis of the arguments and information provided by Defendant, on an expert analysis of the time/pay records, and on information from Plaintiff, PAGA Counsel evaluated Defendant’s maximum (*optimistic*) and risk-adjusted (*realistic*) potential exposure in preparation for mediation. (*Id.* at ¶ 25.) Although the expert’s analysis revealed that the time and pay records supported several violations by Defendant, the identifiable violations were primarily limited to the meal period claim and discrete rounding and regular rate issues. (*Id.*) The records themselves did not provide strong support for the off-the-clock work, rest period, and expense reimbursement claims, and the derivative penalties based on those claims, because 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, there are no records that directly establish the rest period claim on the merits. (*Id.* at ¶ 26.) Additionally, there are no records that establish the full extent of the off-the-clock work claim because such work, by its nature, would not appear in Defendant’s timekeeping records. (*Id.*) The time and payroll records likewise cannot

1 establish whether Aggrieved Employees incurred necessary business expenses for cellular phone use
2 and laundering their work uniforms. (*Id.*) Rather, proof of these claims would require declarations
3 from Aggrieved Employees regarding missed rest periods, off-the-clock work, and unreimbursed
4 expenses. (*Id.*) The records themselves cannot demonstrate which rest periods were missed, when or
5 why they were missed, the amount of time Aggrieved Employees spent working off-the-clock, or the
6 expenses they incurred. (*Id.*)

7 Indeed, the maximum exposure figures calculated for mediation were based on assumed high
8 violation rates that would not likely be demonstrated at trial, including an assumed 100% rest period
9 violation rate for qualifying shifts and a fixed amount of off-the-clock work per shift. (*Id.* at ¶ 27.)
10 Establishing these assumptions would require either the participation of approximately all the
11 Aggrieved Employees, which would be difficult given the size of the group, or the use of surveys or
12 statistical evidence as a surrogate, which would still require the participation of a substantial number
13 of Aggrieved Employees to establish a reliable representative sample. (*Id.*) The reality is that many
14 employees may be unwilling to participate due to fear of retaliation. (*Id.*) Even assuming those
15 employees were willing to participate, obtaining their declarations could reveal that each Aggrieved
16 Employee had a different experience. (*Id.*) The individualized nature of their employment experiences
17 and the number of employees affected present significant risks regarding representative proof and the
18 merits of the claims. (*Id.*)

19 Even as to the regular rate and meal period claims, Plaintiff's analysis found that Defendant's
20 exposure was less than initially believed. (*Id.* at ¶ 28.) Although the time records reflected net unique
21 meal period violations in approximately 67.6% of the analyzed pay periods, the violation rate fell to
22 approximately 7.6% of shifts over six hours when meal waivers were considered. (*Id.*) The records
23 also showed that Defendant made some meal premium payments. (*Id.*) Defendant argues that its
24 payment of meal premiums and use of meal waivers demonstrate that it did not intentionally fail to
25 provide Aggrieved Employees with meal periods. (*Id.*) Defendant also argues that many meal periods
26 were taken and that, where a violation appears, it resulted from an Aggrieved Employee voluntarily
27 choosing to forgo a meal period, take it after the end of the fifth hour, or end the break early and
28 return to work. (*Id.*) As to the regular rate issue, Plaintiff's expert found that only approximately 0.2%

1 of the analyzed pay periods included overtime and additional compensation, approximately 0.05%
2 included sick pay and additional compensation, and approximately 0.04% included meal period
3 premiums and additional compensation. (*Id.*) Accordingly, to the extent Defendant failed to
4 incorporate additional remuneration into the regular rate of pay for purposes of calculating overtime,
5 sick pay, and meal period premiums, which Defendant denies, the resulting underpayments affected
6 a relatively small percentage of pay periods. (*Id.*) Additionally, the analysis assumes that the bonuses
7 were non-discretionary, which Defendant disputes. (*Id.*)

8 The likelihood that Defendant could assert viable legal defenses would likely further reduce
9 its overall exposure. (*Id.* at ¶ 29.) For example, the individualized and testimony-intensive nature of
10 the claims could bar manageability of this representative action or otherwise significantly reduce
11 Defendant's overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic
12 as it presumes Plaintiff would be able to stack the penalties, although penalty stacking is not expressly
13 permitted by PAGA. (*Id.* at ¶ 30.) Rather, without either (i) a prior finding by the LWDA or a court
14 within the past five years that the employer violated PAGA or (ii) evidence that the employer's
15 conduct was malicious, fraudulent, or oppressive, PAGA only provides for a maximum \$100 penalty
16 for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) Moreover, PAGA Counsel believe it would be
17 unrealistic to expect the Court to award the full (penalty-stacked) exposure given the discretionary
18 nature of awarding penalties and given Defendant's defenses, including that any failure to pay
19 premiums, regular rate wages, or for off-the-clock work was not knowingly or willfully done, and
20 additionally, to the extent employees received wage statements that were allegedly inaccurate,
21 employees suffered no actual resulting damage or harm. (Moon Decl., ¶ 30.) Moreover, awarding the
22 full penalties amount would likely raise Due Process concerns. (*Id.*) For the foregoing reasons, the
23 *realistic* exposure is thus far below the *optimistic* maximum estimate. (*Id.* at ¶ 31.)

24 Based on the foregoing, PAGA Counsel believe it is more reasonable to assess penalties on a
25 \$100.00 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the
26 estimated 49,886 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 32.)
27 Accordingly, PAGA Counsel estimate Defendant's maximum PAGA exposure to be **\$4,988,600.00**
28 (\$100.00 x 49,886). (*Id.*) However, based on the discovery, Defendant's arguments at mediation and

1 continued settlement discussions, an understanding that the claims are heavily dependent on the
2 unlikely participation by Aggrieved Employees and their varying employment experience, and other
3 important considerations discussed above, it is reasonable to assume a violation occurred in at most
4 one-fifth of all pay periods, which results in a realistic (*risk-adjusted*) exposure of **\$997,720.00**
5 (\$4,988,600.00 / 5). (*Id.*) As a result, the GSA of \$750,000.00 represents approximately **75%** of the
6 realistic exposure (\$750,000.00 / \$997,720.00). (*Id.*)

7 The proposed Settlement therefore represents a substantial recovery when compared to the
8 reasonably forecasted recovery. (*Id.* at ¶ 33.) When considering the risks of litigation, the
9 uncertainties involved in continued litigation, the burdens of proof necessary to establish liability,
10 and the probability of appeal, it is clear the GSA of \$750,000.00 is within the “ballpark” of
11 reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.*
12 (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
13 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum
14 amount the plaintiff class could recover if it prevailed on all its claims,” but instead, only an
15 “understanding of the amount that is in controversy and the realistic range of outcomes of the
16 litigation”].)

17 **3. The Settlement Is a Fair and Reasonable Result Following a Thorough** 18 **Investigation and Accounting of Various Litigation Risks**

19 PAGA Counsel have conducted a thorough investigation into the facts of the allegations.
20 (Moon Decl., ¶ 36.) Based on the foregoing discovery and on their own independent investigation
21 and evaluation, PAGA Counsel are of the opinion that the proposed Settlement is fair, reasonable,
22 and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of
23 significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the
24 merits, the Settlement is in the best interests of the Aggrieved Employees and the State of California.
25 (*Id.*)

26 Although PAGA Counsel believe there is merit to Plaintiff’s allegations, they also
27 acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 37.) PAGA Counsel also
28 recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an

1 expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, PAGA Counsel are also of
2 the opinion that because the issues here are fairly contested, there is a possibility of the Court not
3 awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary
4 nature of awarding PAGA penalties. (*Id.* at ¶ 38.) Indeed, a Court may reduce PAGA penalties “if,
5 based on the facts and circumstances of the particular case, to do otherwise would result in an award
6 that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).) In other words,
7 were this matter to go to trial, any award granted would be at the discretion of the Court and subject
8 to a substantial reduction. (Moon Decl., ¶ 38.) While PAGA Counsel believe there would be no
9 persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and
10 significantly reduce any award of penalties. (*Id.* at ¶ 39.) This wide range of potential recovery and
11 additional delays and risks of trial provide justification to settle for a reasonable amount of recovery
12 at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in
13 preparation for mediation, the maximum exposure did not comport with the realistic exposure that
14 Defendant faced, as discussed above. (*Id.*)

15 PAGA Counsel took into account the risk of not being able to proceed on a representative
16 basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk
17 that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary
18 nature of awarding PAGA penalties. (*Id.* at ¶ 40.) The provisions of the Labor Code triggering PAGA
19 penalties in this case include Labor Code sections 203, 210, 226, 1197.1, and 2802. (*Id.*) However,
20 PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).) Accordingly,
21 it is entirely possible that even if Plaintiff would be successful at trial, assuming she is first able to
22 win on the merits regarding her individual claims at arbitration and then defeat the manageability
23 issues presented at litigation by the large number of Aggrieved Employees in this action, Plaintiff
24 may still be awarded substantially less than what was obtained through the Settlement. (Moon Decl.,
25 ¶ 40.)

26 The Settlement avoids the significant risks, burdens, and the accompanying expense of further
27 litigation. (*Id.* at ¶ 41.) Though the Parties have engaged in a significant amount of investigation,
28 informal discovery, and employee data analysis, they have not completed formal discovery

1 procedures, including depositions and expert discovery. (*Id.*) Moreover, Plaintiff would have to
2 proceed with arbitration of her individual claims and win on the merits before proceeding with
3 litigation of the representative PAGA claims. (*Id.*) Preparation for trial and the prospect of appeals in
4 the wake of any summary judgment ruling would remain for the Parties. (*Id.*) As a result, the Parties
5 would incur considerably more attorneys' fees and costs through trial, a lengthy and uncertain process
6 that could result in recovering less than was settled for. (*Id.*)

7 **C. The Enhancement Award to Plaintiff is Reasonable and Should Be Approved**

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

17 Here, in line with the Settlement and subject to the Court's approval, Plaintiff requests an
18 Enhancement Award of \$10,000.00. (Settlement, ¶¶ 1.12, 3.2.1; Declaration of Plaintiff Jacqueline
19 Trujillo in Support of Motion for Approval of PAGA Settlement [“Plaintiff Decl.”], ¶ 13.) Plaintiff
20 and her Counsel respectfully submit that the requested enhancement is reasonable in recognition of
21 Plaintiff's role as the named Plaintiff and PAGA Representative, in exchange for her individual
22 general release of claims, for the risks to future employment inherent in undertaking this role, and
23 for her service and participation in the litigation that resulted in a fair settlement under PAGA. (Moon
24 Decl., ¶¶ 42–45; Plaintiff Decl., ¶¶ 12-17.)

25 **D. The Requested Attorneys' Fees/Costs Are Reasonable and Should Be Approved**

26 In line with the Settlement, my firm requests an award of attorneys' fees equal to one-third of
27 the GSA (i.e., \$250,000.00, subject to a potential increase under the escalator clause), plus
28 reimbursement of actual litigation costs in the amount of \$21,583.94. (Moon Decl., ¶ 69; see

Settlement, ¶ 3.2.2.)

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

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

Here, PAGA Counsel seek an award of attorneys’ fees on the “percentage of recovery/common fund” theory. (Moon Decl., ¶ 70.) The purpose of this approach is to “spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

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

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

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

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

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

21 The Settlement at issue is beneficial in that it limits the risk of continued expenses and
22 consumption of time, energy, and resources facing Defendant while at the same time rewarding
23 Plaintiff’s Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of
24 this action involved significant financial risk for Plaintiff’s Counsel who undertook this matter on a
25 contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 75-78.) Once PAGA Counsel
26 undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its
27 conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could
28 have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 76.)

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

2 As demonstrated by their prior experience in pursuing class and representative actions on
3 behalf of employees, PAGA Counsel possess considerable expertise in litigating class action and
4 representative matters. (*Id.* at ¶¶ 46–64.) PAGA Counsel have been involved as lead counsel or co-
5 counsel in a multitude of class and representative actions resulting in beneficial results to class
6 members and aggrieved employees in California. (*Id.*) Because it is reasonable to compensate
7 Plaintiff’s Counsel commensurate with their skill, reputation, and experience, the requested fee award
8 is supported here.

9 PAGA Counsel’s experience in wage-and-hour class and representative actions was integral
10 in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of
11 this Settlement. (*Id.* at ¶ 66.) Practice in the narrow field of wage-and-hour litigation requires skill
12 and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the
13 procedural law of representative action litigation. (*Id.* at ¶ 65.) Based on these and other factors,
14 Plaintiff’s Counsel have frequently received fee awards of this percentage from the gross recovery
15 for aggrieved employees. (*See id.* at ¶¶ 50, 55, 59, 64.) Thus, the requested fee award is reasonable
16 and fair.

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

19 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.”
20 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar
21 method as a drain on the judicial system and a disincentive on attorneys to take on high-risk,
22 challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload of an
23 already overtaxed judicial system,’ (2) is ‘insufficiently objective and produce[s] results that are far
24 from homogenous,’ (3) ‘creates a sense of mathematical precision that is unwarranted in terms of the
25 realities of the practice of law,’ (4) ‘is subject to manipulation by judges who prefer to calibrate fees
26 in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an
27 overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and . . . engage in
28 duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7)

1 deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as
2 early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest bar,’
3 and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third Circuit Task Force, *Court*
4 *Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

19 Further, “California case law permits fee awards in the absence of detailed time sheets.”
20 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) The Court “should defer to the
21 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
22 (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Generally, hours are reasonable
23 if they were “reasonably expended in pursuit of the ultimate result achieved in the same manner that
24 an attorney traditionally is compensated by a fee-paying client.” (*Hensley v. Eckerhart* (1983) 461
25 U.S. 424, 431.)

26 Here, PAGA Counsel’s current lodestar is *no less than* **\$100,355.00**, which is based on *no*
27 *less than* **127.1 hours** of attorney time spent to-date at their customary hourly rates. (Moon Decl., ¶
28 71.) Thus, in comparison to this lodestar, the fee request represents a **2.49 multiplier**. (*Id.* at ¶ 74(c).)

Further, the foregoing lodestar does not reflect additional work 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. (*Id.* at ¶ 72.) The amount of fees requested under the Settlement is warranted based on the contingent risk that PAGA Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by PAGA Counsel. (*Id.* at ¶ 74.) PAGA Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.* at ¶ 72.) 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, PAGA Counsel seek reimbursement in the total amount of \$21,583.94 for expenses that were actually and reasonably incurred in this litigation. (Moon Decl., ¶ 79, Ex. 4.) Moreover, this amount is below the \$30,000.00 maximum allocation under the Settlement; therefore, the remaining \$8,416.06 will remain in the Net Settlement Amount for distribution as PAGA Penalties. (*Id.* at ¶ 80; Settlement, ¶¶ 1.18, 3.2.2.) Thus, the requested costs should be reimbursed in full.

IV. CONCLUSION

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

Respectfully submitted,

DATED: August 26, 2026

MOON LAW GROUP, PC

By: _____

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