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

FERNANDO TRUJILLO, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

AMREP MANUFACTURING COMPANY,
LLC, a limited liability company; and DOES 1
through 10, inclusive,

Defendants

Case No.: CIVSB2221052

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 Jodey Lawrence re: Qualifications and Costs for Settlement Administration, (4) [Proposed] PAGA Approval Order, and (5) [Proposed] Judgment]

PAGA APPROVAL HEARING:

Date: January 12, 2027

Time: 9:00 a.m.

Dept.: S-26

Judge: Hon. Joseph B. Widman

Action filed: September 26, 2022

Trial date: Not set

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

PLEASE TAKE NOTICE that on January 12, 2027, at 9:00 a.m. in Department S-26 of the San Bernardino Justice Center at 247 West Third Street, San Bernardino, California 92415, Plaintiff Fernando 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 Joint Stipulation and Settlement Agreement (“Settlement”) between Plaintiff and Defendant Amrep Manufacturing Company, LLC;
2. Approving the requested Attorney Fee Award of \$333,333.33, representing one-third of the Gross Settlement Amount, subject to potential increase under the Escalator Provision;
3. Approving the requested Attorney Litigation Cost Award of \$58,408.17;
4. Approving a \$7,500.00 PAGA Representative Payment to Plaintiff;
5. Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator and approving \$7,000.00 as the Administration Costs;
6. Approving the scope of the Released PAGA Claims and Released Parties;
7. Approving a non-reversionary, non-claims-made Gross Settlement Amount of at least \$1,000,000.00, subject to potential increase under the Escalator Provision;
8. Approving at least \$593,758.50 as the Net Settlement Amount for settlement of the PAGA claims, subject to potential increase pursuant to the Escalator Provision, to be distributed as 75% (approximately \$445,318.88) to the LWDA and 25% (approximately \$148,439.62) to 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.

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

3 Respectfully submitted,

4 DATED: August 27, 2026

MOON LAW GROUP, PC

5 By: _____

6 Kane Moon
7 Allen Feghali
8 Enzo Nabiev
9 Jason Kwak
10 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Fernando Trujillo (“Plaintiff”) seeks approval of a non-reversionary, non-claims-
4 made \$1,000,000.00 gross settlement of claims for civil penalties alleged pursuant to the California
5 Private Attorneys General Act, Labor Code sections 2698, et seq. (“PAGA”). After participating in
6 two mediations with experienced and neutral wage-and-hour mediators Steve Rottman, Esq. and
7 Tripper Ortman, Esq., and engaging in extensive settlement negotiations, Plaintiff reached a
8 resolution with Defendant Amrep Manufacturing Company, LLC (“Defendant”) (collectively,
9 Plaintiff and Defendant are the “Parties”). The Parties have executed a Joint Stipulation and
10 Settlement Agreement (the “Settlement”), a true and correct copy of which is attached as **Exhibit 1**
11 to the Declaration of Kane Moon in Support of Motion for Approval of PAGA Settlement (“Moon
12 Decl.”) submitted concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiff now
13 files this motion seeking an order approving the proposed Settlement.

14 The Settlement resolves all claims for civil penalties under PAGA that arose during the PAGA
15 Period and that are reasonably related to or arise out of the factual allegations in Plaintiff’s First
16 Amended Complaint and PAGA Letter filed with the LWDA. (Settlement, ¶ III.F.) For purposes of
17 settlement, the “PAGA Period” is September 26, 2021, to June 13, 2026. (*Id.* at ¶ I.V.) This Settlement
18 is on behalf of the State of California, Plaintiff, and all hourly, non-exempt employees who were
19 employed by Defendant in California at any time during the PAGA Period (“Aggrieved Employees”).
20 (*Id.* at ¶ I.C.) Plaintiff is unaware of any other pending litigation involving similar claims against
21 Defendant that may be impacted by approval of the Settlement, nor has Defendant pointed to any.
22 (Moon Decl., ¶ 25.) Plaintiff came to this conclusion after a reasonable inquiry and review of the
23 LWDA’s PAGA Case Search website, this Court’s case search website, and other information
24 reasonably available online. (*Id.*)

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 **504** Aggrieved Employees will, cumulatively, receive no less than **\$593,758.50** 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 the discovery revealed meaningful litigation risks and disputed violation rates, 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 manufactures vehicles for collecting garbage and hauling large cargo. (Moon Decl., ¶ 4.) Plaintiff worked for Defendant for more than 15 years as a vehicle body preparation employee. (Id.) Throughout his employment, Plaintiff was classified as non-exempt and paid on an hourly basis. (Id.) Plaintiff contends he and his former coworkers were subjected to the same or

1 similar labor practices during their employment by Defendant, including failure to pay all wages.
2 (*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 due to Defendant's improper
5 rounding of employees' time records, Defendant's failure to compensate employees for off-the-clock
6 work, and Defendant's failure to incorporate all remunerations into the regular rate of pay. (*Id.* at ¶
7 5.) Plaintiff's meal and rest period claims are based on allegations that employees regularly
8 experienced missed, untimely, or interrupted breaks, and that Defendant failed to provide all
9 premiums for non-compliant meal and rest periods. (*Id.*) Plaintiff also alleges that Defendant failed
10 to reimburse employees for all reasonable and necessary business expenses incurred, including
11 expenses incurred for the use of employees' personal cellphones for work purposes and the purchase
12 of tools and equipment. (*Id.*) Plaintiff further alleges he and other employees did not receive all wages
13 owed at the time of termination nor accurate itemized wage statements due to Defendant's failure to
14 pay all wages and premiums. (*Id.*) Accordingly, Plaintiff alleges Defendant is liable for civil penalties
15 under PAGA. (*Id.*)

16 Because of the foregoing alleged violations of the Labor Code, Plaintiff filed a Class Action
17 Complaint on September 26, 2022, which as amended by the First Amended Complaint, alleges wage
18 and hour violations on behalf of Plaintiff and those similarly situated aggrieved employees under the
19 PAGA for Defendant's alleged failure to pay all straight time wages, failure to pay all overtime wages,
20 failure to provide lawful meal periods, failure to provide lawful rest periods, failure to maintain
21 accurate record of hours worked and meal periods, failure to indemnify necessary business
22 expenditures, failure to pay all accrued vacation wages at termination, failure to pay all wages due at
23 termination, failure to provide compliant wage statements, and failure to pay all earned wages twice
24 per month. (*Id.* at ¶ 6.) On August 14, 2026, Plaintiff filed a Request for Dismissal of the Class Claims
25 without Prejudice. (*Id.*)

26 Pursuant to PAGA, on September 25, 2022, Plaintiff submitted notice of the alleged Labor
27 Code violations to the California Labor and Workforce Development Agency (the "LWDA"), with
28 certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 7, Ex. 2.) The

1 administrative exhaustion period under PAGA expired without the LWDA indicating any intent to
2 investigate the allegations. (*Id.* at ¶ 7.) Accordingly, Plaintiff is duly authorized to act as a private
3 attorney general with respect to the PAGA claims involved in this action. (*Id.*) In compliance with
4 Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy
5 of the First Amended Complaint containing the Court-assigned case number. (*Id.* at ¶ 8.) To date, the
6 LWDA has not sought to intervene in this action. (*Id.*)

7 After this action was filed, Defendant produced a signed arbitration agreement containing a
8 class action waiver, and Plaintiff's class claims were dismissed without prejudice. (*Id.* at ¶ 9.)
9 Thereafter, the Parties attended mediation with wage and hour mediator Steve Rottman, Esq. on
10 August 12, 2025. (*Id.* at ¶ 13.) The Parties were unable to reach an agreement at that time. (*Id.*) The
11 Parties then attended a second mediation with wage and hour mediator Tripper Ortman, Esq. on April
12 14, 2026. (*Id.*) The mediation concluded with a mediator's proposal that was accepted by the Parties.
13 (*Id.*)

14 Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations.
15 (*Id.* at ¶ 10.) Defendant argues all employees were properly paid for all hours worked, that off-the-
16 clock work was not permitted, and that its rounding practice was in place for a limited period and
17 was neutral and in conformity with California law. (*Id.*) As for the regular rate claim, Defendant
18 maintains that it properly accounted for certain additional remuneration and that certain bonus
19 payments were discretionary and thus not required to be incorporated into the regular rate of pay.
20 (*Id.*) Defendant also maintains that employees were provided with the opportunity to take code-
21 compliant meal and rest breaks, including that production stopped during scheduled meal periods and
22 rest breaks, and that certain meal periods were subject to valid waivers. (*Id.*) As for the unreimbursed
23 business expenses, Defendant disputes that employees were required to incur unreimbursed expenses
24 for work purposes. (*Id.*) To the extent employees received wage statements that were allegedly
25 inaccurate, Defendant argues penalties are not warranted because any alleged violation was not
26 knowing or intentional. (*Id.*) Moreover employees suffered no actual damage or harm as a result.
27 (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB, 2013
28 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure

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

10 **B. Discovery and Investigation**

11 The Parties attended two mediations. (*Id.* at ¶ 11.) Before both mediations, the Parties engaged
12 in informal discovery exchange. (*Id.*) Defendant provided information and documents, which enabled
13 Plaintiff’s Counsel to meaningfully investigate Plaintiff’s allegations and assess the value of the
14 PAGA claims. (*Id.*) Specifically, Defendant produced Plaintiff’s time and payroll records, documents
15 regarding Defendant’s written policies and practices in effect during the relevant period, information
16 concerning the size and scope of the Aggrieved Employees, and time and corresponding payroll
17 records for approximately 20% of the Aggrieved Employees. (*Id.*)

18 Prior to both mediations, Plaintiff’s Counsel reviewed and analyzed all the information that
19 Defendant produced, including the time/pay records and Defendant’s written policies, in conjunction
20 with information provided by Plaintiff. (*Id.* at ¶ 12.) Plaintiff’s Counsel retained an expert to analyze
21 the time/pay records and prepare a damage analysis prior to mediation. (*Id.*) At the second mediation,
22 Plaintiff’s expert analyzed 52,369 shifts (approximately 22.6% of all shifts worked by Aggrieved
23 Employees), which allowed the expert to prepare an analysis of Defendant’s potential exposure. (*Id.*)
24 Further, Plaintiff’s Counsel investigated the applicable law regarding the claims and defenses
25 asserted in this action. (*Id.*) Accordingly, Plaintiff’s Counsel were able to evaluate the probability of
26 success on the merits and Defendant’s monetary exposure. (*Id.*) In sum, Plaintiff and his Counsel’s
27 familiarity with the facts of the case and the legal issues involved allowed them to act intelligently in
28 negotiating the Settlement. (*Id.*)

1 **C. Settlement Negotiations**

2 On August 12, 2025, the Parties participated in private mediation facilitated by Steve
3 Rottman, Esq., an experienced wage and hour mediator. (*Id.* at ¶ 13.) The Parties were unable to reach
4 an agreement at that time. (*Id.*) Thereafter, on April 14, 2026, the Parties participated in a second
5 private mediation facilitated by Tripper Ortman, Esq., an experienced wage and hour mediator. (*Id.*)
6 Both sides went into the mediations willing to explore the potential for a settlement of the dispute,
7 but they were also prepared to litigate their positions through trial and appeal if a settlement had not
8 been reached. (*Id.*) Following extensive settlement negotiations and consideration of the strengths
9 and weaknesses of the claims and defenses, the second mediation concluded with a mediator's
10 proposal that was accepted by the Parties, the material terms of which are encompassed within the
11 Settlement at issue. (*Id.*)

12 In reaching a resolution, the Parties recognized that continued litigation would require lengthy
13 and costly proceedings through trial and any possible appeals. (*Id.* at ¶ 14.) Plaintiff and his Counsel
14 also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties
15 and delays inherent in such litigation when determining whether this Settlement was the correct
16 option. (*Id.*) In sum, Plaintiff and his Counsel believe the proposed Settlement is fair, adequate, and
17 reasonable and is in the best interests of the Aggrieved Employees and the LWDA. (*Id.*) In
18 compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed
19 Settlement has been submitted to the LWDA along with a copy of Plaintiff's motion and the hearing
20 date. (*Id.* at ¶ 15, Ex. 3.) To date, the LWDA has not indicated any objection to the Settlement. (*Id.*
21 at ¶ 15.)

22 **D. Key Terms of the Proposed Settlement**

23 The Settlement's key financial and other terms include:

24 1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross
25 Settlement Amount ("GSA") is a non-reversionary, non-claims-made \$1,000,000.00. (Settlement, ¶¶
26 I.N, III.A.) Defendant's settlement funding contribution will be wired by Defendant to the Settlement
27 Administrator within fourteen (14) days of the Effective Date. (*Id.* at ¶¶ I.L, III.E.2.b.) Disbursement
28 will occur within fourteen (14) days after Defendant fully funds the GSA. (*Id.* at ¶ III.E.2.d.)

1 Aggrieved Employees must cash or deposit their Individual Settlement Share checks within 180
2 calendar days after the checks are mailed. Any checks remaining uncashed or not deposited after
3 expiration of the 180-day period will be canceled within 200 calendar days after mailing, and the
4 associated funds will be transmitted to the California Controller's Unclaimed Property Fund in the
5 name of each Aggrieved Employee. (*Id.* at ¶¶ III.E.6, III.E.6.b.)

6 2. Escalator Clause: The GSA was negotiated based on an estimate of 52,148 weekly
7 PAGA Pay Periods or their equivalent worked by Aggrieved Employees during the PAGA Period.
8 (*Id.* at ¶ III.A.1.) The Settlement includes an Escalator Provision whereby, should the actual number
9 of PAGA Pay Periods increase by more than ten percent (10%) of the estimated count, or exceed
10 57,363 weekly PAGA Pay Periods or their equivalent, the GSA will increase by the percentage
11 increase in PAGA Pay Periods above 57,363, or Defendant may elect to cut off the PAGA Period at
12 57,363 PAGA Pay Periods. (*Id.*) Defendant must inform Plaintiff and Plaintiff's Counsel which
13 option it elects before the hearing on approval of the PAGA Settlement. (*Id.*)

14 3. PAGA Representative Payment. The Settlement includes a PAGA Representative
15 Payment to Plaintiff in an amount up to \$7,500.00, payable from the GSA. (*Id.* at ¶ III.C.2.) This
16 payment is in consideration for Plaintiff's efforts in litigating the Action and risks of incurring
17 financial obligations to Defendant in the event Plaintiff was not successful in the Action and held to
18 pay for Defendant's costs and/or attorney's fees. (*Id.* at ¶ I.X.) If the Court awards less than the
19 amount requested, any amount not awarded will become part of the Net Settlement Amount for
20 distribution to Aggrieved Employees. (*Id.*)

21 4. Attorneys' Fees and Costs. The Settlement includes attorneys' fees in an amount not to
22 exceed one-third of the GSA (i.e., \$333,333.33 based on the current GSA), subject to increase based
23 on the Escalator Provision, plus reimbursement for actual out-of-pocket litigation costs not to exceed
24 \$70,000.00, payable to Plaintiff's Counsel from the GSA. (*Id.* at ¶¶ I.E, I.F, III.C.1.) In the event the
25 amount of fees and costs approved by the Court is less than the amounts requested, the difference
26 will be allocated to the Net Settlement Amount. (*Id.*) PAGA Counsel has incurred \$58,408.17 in
27 litigation costs. (*Id.*, Ex. 4)

1 5. Administration Costs. The Settlement provides for Administration Costs to the
2 Settlement Administrator, payable from the GSA, in an amount up to \$7,000.00, for its fees and
3 expenses in administering this Settlement. (*Id.* at ¶¶ I.B, III.C.3.) In the event the amount of actual
4 Administration Costs is less and/or the amount approved by the Court is less than requested, the
5 difference will be allocated to the Net Settlement Amount. (*Id.*) The Parties jointly selected Phoenix
6 Class Action Administration Solutions (“Phoenix”) as the neutral entity to administer this Settlement
7 with a bid for \$7,000.00. (*Id.* at ¶ I.FF; Moon Decl., ¶ 20, Ex. 5; Declaration of Jodey Lawrence, ¶
8 22, Ex. B.)

9 6. Net Settlement Amount. After deducting the PAGA Representative Payment, Attorney
10 Fee Award, Attorney Litigation Cost Award, and Administration Costs from the GSA, in the amounts
11 specifically approved by the Court, any difference in the amounts requested and the amounts awarded
12 will be allocated to the Net Settlement Amount. (*Id.* at ¶ I.R.) Accordingly, the Net Settlement
13 Amount is estimated to be no less than **\$593,758.50**,¹ which will be distributed 75% (i.e., no less than
14 $75\% \times \$593,758.50 = \$445,318.88$) to the LWDA and 25% (i.e., no less than $25\% \times \$593,758.50 =$
15 **\$148,439.62**) to Aggrieved Employees. (*Id.* at ¶¶ I.Q, I.R.). (Moon Decl., ¶ 21.)

16 7. Individual PAGA Payments. Each Aggrieved Employee will be entitled to his or her
17 Individual Settlement Share from the 25% share of the Net Settlement Amount that is directly
18 proportional to the number of PAGA Pay Periods worked during the PAGA Period without having
19 to submit any claim form. (*Id.* at ¶¶ III.B.1, III.B.1.a.1.) This results in an average Individual
20 Settlement Share of roughly **\$294.52** for each of the estimated 504 Aggrieved Employees
21 ($\$148,439.62 / 504$), and a PAGA Pay Period value of **\$2.85** for each of the estimated 52,148 PAGA
22 Pay Periods ($\$148,439.62 / 52,148$). Individual Settlement Shares will be allocated as 100% penalties
23 for tax purposes and reported on IRS Form 1099. (*See id.* at ¶ III.B.2.)

24
25
26
27 ¹ The estimated Net Settlement Amount was calculated by deducting the following amounts from the
28 GSA (\$1,000,000.00): \$7,500.00 for the PAGA Representative Payment, \$58,408.17 for the Attorney
Litigation Cost Award, \$333,333.33 for the Attorney Fee Award, and \$7,000.00 for the Administration
Costs. (*See Settlement*, ¶ I.R.)

1 8. Releases of Claims by PAGA Members. Upon the Effective Date, subject to Court
2 approval and Defendant's payment of the GSA to the Settlement Administrator, the State of
3 California, the LWDA, and all Aggrieved Employees will release, on behalf of themselves and their
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors, and
5 assigns, and the LWDA and the State of California, the Released Parties from all claims for PAGA
6 penalties that are reasonably related to or arising out of the factual allegations in Plaintiff's First
7 Amended Complaint and PAGA Letter filed with the LWDA for the duration of the PAGA Period.
8 (*Id.* at ¶ III.F.) The "Released Parties" are "Defendant, and its former, present, and future owners,
9 parents, and subsidiaries, and all of their current, former, and future officers, directors, members,
10 managers, investors, employees, consultants, partners, shareholders, joint venturers, agents,
11 predecessors, or successors, assigns, accountants, insurers, reinsurers, legal representatives, and/or
12 any employer or other person acting on behalf of Defendant within the scope of Labor Code sections
13 558(a), 558.1, and/or 1197.1 or similar statutory authority." (*Id.* at ¶ I.DD.)

14 9. General Release of Claims by Plaintiff. Upon court approval of the PAGA Settlement
15 and payment made by Defendant of the Gross Settlement Amount to the Third Party Administrator
16 chosen by the Parties, Plaintiff will release, on behalf of himself and his former and present
17 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties
18 from any and all claims Plaintiff has or may have against them at this time and will waive any and
19 all rights he has or may have under California Civil Code section 1542. (*Id.* at ¶ III.G.) Plaintiff agrees
20 that he is aware of and familiar with the provisions of California Civil Code section 1542, which
21 provides as follows: A general release does not extend to claims that the creditor or releasing party
22 does not know or suspect to exist in his or her favor at the time of executing the release, and that, if
23 known by him or her, would have materially affected his or her settlement with the debtor or released
24 party. (*Id.*) With full awareness and understanding of the above provision, Plaintiff waives and
25 relinquishes any and all rights and benefits that he may have under California Civil Code section
26 1542, or the law of any other state of jurisdiction, or common law principle, to the same or similar
27 effect. (*Id.*) Plaintiff understands that the facts with respect to which this Agreement is entered into
28 may be materially different from those the Parties now believe to be true. (*Id.*) Plaintiff accepts and

1 assumes this risk and agrees that the release in this Agreement shall remain in full force and effect,
2 and legally binding, notwithstanding the discovery or existence of any additional or different facts,
3 or any claims with respect to those facts. (*Id.*)

4 10. No Related Cases. To the best of the Plaintiff's knowledge, there is no other pending
5 litigation involving similar claims against Defendant that may be impacted by approval of the
6 Settlement at issue, nor has Defendant pointed to any. (Moon Decl., ¶ 25.) Plaintiff's Counsel came
7 to this conclusion after a reasonable inquiry and review of the LWDA's PAGA Case Search website,
8 this Court's case search website, and other information reasonably available online. (*Id.*)

9 **III. DISCUSSION**

10 **A. Availability of Civil Penalties**

11 The LWDA and its constituent departments and divisions are authorized to assess and collect
12 civil penalties for specified violations of the Labor Code committed by an employer. With a stated
13 goal of improving enforcement of existing Labor Code obligations, the California Legislature
14 adopted the Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved
15 employee to initiate a private civil action on behalf of him- or herself and other current or former
16 employees." (Lab. Code § 2699(a).) Before an employee may file an action seeking to recover civil
17 penalties for violations of any of the Labor Code provisions enumerated in Labor Code section
18 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code
19 section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of
20 the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA
21 to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at §§ 2699.3,
22 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap*
23 *v. Superior Court* (2006) 142 Cal.App.4th 330.)

24 Here, in compliance with Labor Code section 2699.3, Plaintiff submitted notice of the Labor
25 Code violations at issue to the LWDA, and he exhausted administrative remedies without the LWDA
26 noticing any intent to investigate the claims. (Moon Decl., ¶ 7, Ex. 2.) Accordingly, Plaintiff is duly
27 authorized to act as a private attorney general pursuant to PAGA. (*Id.* at ¶ 7.)
28

1 **B. The Settlement Merits Approval**

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

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

6 The \$1,000,000.00 GSA amounts to “genuine and meaningful” relief “consistent with the
7 underlying purpose of the statute to benefit the public.” (Moon Decl., ¶ 35; *see O’Connor*, 201
8 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of
9 the estimated full worth].) This is an excellent result, particularly because, under the Settlement,
10 Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk
11 of not being able to recover anything at all. (Moon Decl., ¶ 35.)

12 The Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory
13 purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with
14 genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation,
15 Defendant has had to hire legal counsel, engage in employee-wide discovery, and participate in two
16 mediations. Assuming approval is granted, Defendant will also have to pay civil penalties pursuant
17 to PAGA. Not including its own attorneys’ fees and costs, Defendant will pay at least \$1,000,000.00
18 to resolve this matter, of which at least \$593,758.50 is allocated toward PAGA penalties and will be
19 distributed as 75% to the LWDA and 25% to Aggrieved Employees, in accordance with the PAGA
20 law governing the claims in this Action. (See Settlement, ¶¶ I.Q, I.R, III.C.4, III.C.5.) This amount
21 represents roughly **46%** of the realistic exposure for the claims (\$593,758.50 / \$1,303,700.00), as
22 discussed above. Additionally, the release obtained under the Settlement does not preclude Aggrieved
23 Employees from pursuing any individual, non-PAGA claims they may have against Defendant or the
24 other Released Parties, as the representative release is limited to claims for PAGA penalties that are
25 reasonably related to or arise out of the factual allegations in Plaintiff’s First Amended Complaint
26 and PAGA Letter during the PAGA Period. (*See id.* at ¶ III.F.)

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

3 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive,
4 and arm’s-length negotiations between the Parties. (Moon Decl., ¶¶ 13, 26.) Plaintiff’s Counsel
5 performed an extensive investigation into the facts, claims, and defenses at issue and Defendant’s
6 potential liability, including a review of governing law and analysis of informal discovery, including
7 Defendant’s written policies and time/pay data for approximately 20% of the Aggrieved Employees.
8 (*Id.* at ¶¶ 11–12.) Plaintiff’s Counsel used the foregoing discovery and investigation to prepare for
9 mediation and, with the assistance of a statistics expert, assessed the probability of success on the
10 merits and Defendant’s monetary exposure, discussed the strengths and weaknesses of the claims and
11 defenses in depth at mediation and months of continued negotiations, and ultimately negotiated the
12 resulting Settlement. (*Id.* at ¶¶ 11–14.)

13 Based on Plaintiff’s Counsel’s analysis of the arguments and information provided by
14 Defendant, on an expert analysis of the time and pay records, and on information from Plaintiff,
15 Plaintiff’s Counsel evaluated Defendant’s maximum potential exposure and the risks affecting that
16 exposure in preparation for mediation. (*Id.* at ¶ 26.) Although the expert’s analysis revealed that the
17 time and pay records supported several of Plaintiff’s theories, including the rounding, regular rate,
18 and meal period claims, the precise frequency and number of violations for the off-the-clock work,
19 rest period, and expense reimbursement claims depended more heavily on testimony and assumptions
20 than on the time and pay records alone. (*Id.*) In other words, although Plaintiff continues to maintain
21 that these claims are meritorious, proving the full amount of the potential exposure calculated for
22 mediation presented substantial evidentiary risks. (*Id.*)

23 Because rest periods were not recorded in the timekeeping data, the records cannot, standing
24 alone, establish whether a rest period was actually authorized and taken on a particular shift. (*Id.* at ¶
25 27.) Plaintiff’s rest period claim would therefore require Plaintiff to rely on Defendant’s written
26 policies and practices, testimony from Plaintiff and Aggrieved Employees, and representative or other
27 evidence regarding whether compliant rest periods were actually authorized and permitted. (*Id.*)
28 Similarly, the records cannot themselves establish the amount of time, if any, Aggrieved Employees

1 spent performing work before clocking in or after clocking out. (*Id.*) Proof of the off-the-clock claim
2 would therefore depend on testimony regarding time spent waiting to clock in, obtaining and
3 preparing tools and equipment before clocking in, and cleaning, returning, and securing tools and
4 equipment after clocking out. (*Id.*)

5 Indeed, the maximum exposure figures that were calculated for mediation were based on
6 assumed high violation rates that would not likely be demonstrated at trial, as they assume either the
7 participation of all Aggrieved Employees (which would be difficult given the size of this group), or
8 alternatively, the use of surveys or statistical data as a surrogate (which would still require the
9 participation of a majority of Aggrieved Employees to establish a sound representation of all non-
10 exempt employees). (*Id.* at ¶ 28.) The reality is that many, if not all, employees would be unwilling
11 to participate due to fear of retaliation. (*Id.*) However, even assuming those employees would be
12 willing to participate, obtaining such declarations would potentially reveal that each Aggrieved
13 Employee had a different experience. (*Id.*) The individualized nature of their employment experience
14 and the numerosity of employees affected present significant risk with manageability and proof on
15 the merits. (*Id.*)

16 Even as to the claims supported by the time and pay records, Plaintiff's maximum exposure
17 remains subject to meaningful defenses. (*Id.* at ¶ 29.) As to meal periods, Plaintiff's expert identified
18 unique meal period violations that represented an 85.4% violation rate. (*Id.*) The analysis also
19 accounted for meal premium payments reflected in Defendant's payroll data. (*Id.*) After accounting
20 for meal period waivers, the violation rate was reduced to 80.1%. (*Id.*) However, Defendant maintains
21 that production stopped during scheduled meal periods and argues that Aggrieved Employees were
22 provided with compliant meal periods. (*Id.*) To the extent there were any missed breaks, Defendant
23 contends it was a result of the Aggrieved Employee voluntarily choosing to forego a meal period, to
24 take it after the end of the fifth hour, or to stop his or her break early to return to work. (*Id.*) As to the
25 regular rate issue, Plaintiff's expert determined that 86.9% of overtime pay periods involving
26 additional remuneration were affected, resulting in an underpayment, and that 8.4% of pay periods
27 involving sick pay and additional remuneration were affected, resulting in an underpayment. (*Id.*)
28 Defendant, argues that it properly incorporated all additional remuneration into the regular rate of pay

1 and that all Aggrieved Employees were properly compensated. (*Id.*) The violation rates also assume
2 that the bonuses were non-discretionary, which Defendant disputes. (*Id.*) As to the rounding claim,
3 Plaintiff's expert estimated that Defendant underpaid Aggrieved Employees approximately 3.5
4 minutes per shift, resulting in a total of 4,257 underpaid hours. (*Id.*) However, Defendant argues that
5 its rounding policy was in place for a limited period of time and was neutral on its face as Aggrieved
6 Employees were also overpaid as a result of Defendant's rounding practice. (*Id.*) Plaintiff's expert
7 calculated that approximately 14.1% of Aggrieved Employees were underpaid by rounding and that
8 approximately 27.7% of pay periods were affected. (*Id.*)

9 The likelihood that Defendant could assert viable legal defenses would likely further reduce
10 its overall exposure. (*Id.* at ¶ 30.) For example, the individualized and testimony-intensive nature of
11 the claims could bar manageability of this representative action or otherwise significantly reduce
12 Defendant's overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic
13 as it presumes Plaintiff would be able to stack the penalties, although penalty stacking is not expressly
14 permitted by PAGA. (*Id.* at ¶ 31.) Rather, without either (i) a prior finding by the LWDA or a court
15 within the past five years that the employer violated PAGA or (ii) evidence that the employer's
16 conduct was malicious, fraudulent, or oppressive, PAGA only provides for a maximum \$100.00
17 penalty for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) Moreover, Plaintiff's Counsel believe
18 it would be unrealistic to expect the Court to award the full (penalty-stacked) exposure given the
19 discretionary nature of awarding penalties and given Defendant's defenses, including that any failure
20 to pay premiums, regular rate wages, or for off-the-clock work was not knowingly or willfully done,
21 and additionally, to the extent employees received wage statements that were allegedly inaccurate,
22 employees suffered no actual resulting damage or harm. (Moon Decl., ¶ 31.) Moreover, awarding the
23 full penalties amount would likely raise Due Process concerns. (*Id.*) For the foregoing reasons, the
24 *realistic* exposure is thus far below the *optimistic* maximum estimate. (*Id.* at ¶ 32.)

25 Based on the foregoing, Plaintiff's Counsel believe it is more reasonable to assess penalties
26 on a \$100.00 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of
27 the estimated 52,148 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 33.)
28 Accordingly, Plaintiff's Counsel estimate Defendant's maximum PAGA exposure to be

1 **\$5,214,800.00** (\$100.00 x 52,148). (*Id.*) However, based on the discovery, Defendant’s arguments
2 at mediations and continued settlement discussions, an understanding that the claims are heavily
3 dependent on the unlikely participation by Aggrieved Employees and their varying employment
4 experience, and other important considerations discussed above, it is reasonable to assume a violation
5 occurred in at most one-fourth of all pay periods, which results in a realistic (*risk-adjusted*) exposure
6 of **\$1,303,700.00** (\$5,214,800.00 / 4). (*Id.*) As a result, the GSA of \$1,000,000.00 represents
7 approximately **77%** of the realistic exposure (\$1,000,000.00 / \$1,303,700.00). (*Id.*)

8 The proposed Settlement therefore represents a substantial recovery when compared to the
9 reasonably forecasted recovery. (*Id.* at ¶ 34.) When considering the risks of litigation, the
10 uncertainties involved in continued litigation, the burdens of proof necessary to establish liability,
11 and the probability of appeal, it is clear the GSA of \$1,000,000.00 is within the “ballpark” of
12 reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.*
13 (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
14 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum
15 amount the plaintiff class could recover if it prevailed on all its claims,” but instead, only an
16 “understanding of the amount that is in controversy and the realistic range of outcomes of the
17 litigation”].)

18 **3. The Settlement Is a Fair and Reasonable Result Following a Thorough** 19 **Investigation and Accounting of Various Litigation Risks**

20 Plaintiff’s Counsel have conducted a thorough investigation into the facts of the allegations.
21 (Moon Decl., ¶ 37.) Based on the foregoing discovery and on their own independent investigation
22 and evaluation, Plaintiff’s Counsel are of the opinion that the proposed Settlement is fair, reasonable,
23 and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of
24 significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the
25 merits, the Settlement is in the best interests of the Aggrieved Employees and the State of California.
26 (*Id.*)

27 Although Plaintiff’s Counsel believe there is merit to Plaintiff’s allegations, they also
28 acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 38.) Plaintiff’s Counsel

1 also recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an
2 expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiff's Counsel are also
3 of the opinion that because the issues here are fairly contested, there is a possibility of the Court not
4 awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary
5 nature of awarding PAGA penalties. (*Id.* at ¶ 39.) Indeed, a Court may reduce PAGA penalties "if,
6 based on the facts and circumstances of the particular case, to do otherwise would result in an award
7 that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words,
8 were this matter to go to trial, any award granted would be at the discretion of the Court and subject
9 to a substantial reduction. (Moon Decl., ¶ 39.) While Plaintiff's Counsel believe there would be no
10 persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and
11 significantly reduce any award of penalties. (*Id.* at ¶ 40.) This wide range of potential recovery and
12 additional delays and risks of trial provide justification to settle for a reasonable amount of recovery
13 at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in
14 preparation for mediation, the maximum exposure did not comport with the realistic exposure that
15 Defendant faced, as discussed above. (*Id.*)

16 Plaintiff's Counsel took into account the risk of not being able to proceed on a representative
17 basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk
18 that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary
19 nature of awarding PAGA penalties. (*Id.* at ¶ 41.) The provisions of the Labor Code triggering PAGA
20 penalties in this case include Labor Code sections 203, 210, 226, 1197.1, and 2802. (*Id.*) However,
21 PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).) Accordingly,
22 it is entirely possible that even if Plaintiff would be successful at trial, assuming he is first able to win
23 on the merits regarding his individual claims at arbitration and then defeat the manageability issues
24 presented at litigation by the large number of Aggrieved Employees in this action, Plaintiff may still
25 be awarded substantially less than what was obtained through the Settlement. (Moon Decl., ¶ 41.)

26 The Settlement avoids the significant risks, burdens, and the accompanying expense of further
27 litigation. (*Id.* at ¶ 42.) Though the Parties have engaged in a significant amount of investigation,
28 informal discovery, and employee data analysis, they have not participated in formal discovery

1 procedures, including depositions and expert discovery. (*Id.*) Moreover, Plaintiff would have to
2 proceed with arbitration of his 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 Representative Payment 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 a
18 Representative Payment of \$7,500.00. (Settlement, ¶¶ I.X, III.C.2; Declaration of Plaintiff Fernando
19 Trujillo in Support of Motion for Approval of PAGA Settlement [“Plaintiff Decl.”], ¶ 13.) Plaintiff
20 and his Counsel respectfully submit that the requested payment is reasonable in recognition of
21 Plaintiff's role as the named Plaintiff and PAGA Representative, for the risks to future employment
22 inherent in undertaking this role, and for his service and participation in litigation that resulted in a
23 fair settlement under PAGA. (Moon Decl., ¶¶ 43–46; Plaintiff Decl., ¶¶ 14–17.)

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

25 In line with the Settlement, my firm requests an award of attorneys' fees in an amount of one-
26 third of the GSA (i.e., no less than \$333,333.33, subject to potential increase under the Escalator
27 Provision), plus reimbursement for actual litigation costs in the amount of \$58,408.17. (Moon Decl.,
28 ¶ 69; see Settlement, ¶ III.C.1.)

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

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

8 Here, Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of
9 recovery/common fund” theory. (Moon Decl., ¶ 70.) The purpose of this approach is to “spread
10 litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear
11 the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In
12 *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends
13 attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require
14 those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in
15 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court
16 recognized that the common fund doctrine has been applied “consistently in California when an
17 action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp.
18 110–11 [pincite omitted].) The reasons for applying this doctrine include:

19 fairness to the successful litigant, who might otherwise receive no benefit because
20 his recovery might be consumed by the expenses; correlative prevention of an
21 unfair advantage to the others who are entitled to share in the fund and who should
22 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.

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

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

28 **This court is compelled to ask, “Is this process necessary?” Under a cost-benefit**

1 **analysis, the answer would be a resounding, “No!”** Not only do the *Lindy* and *Kerr–*
2 *Johnson* analyses consume an undue amount of court time with little resulting
3 advantage to anyone, but, in fact, it may be to the detriment of the class members.

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

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

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

20 The Settlement at issue is beneficial in that it limits the risk of continued expenses and
21 consumption of time, energy, and resources facing Defendant while at the same time rewarding
22 Plaintiff’s Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of
23 this action involved significant financial risk for Plaintiff’s Counsel who undertook this matter on a
24 contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 65–78.) Once Plaintiff’s Counsel
25 undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its
26 conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could
27 have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 76.)
28

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, Plaintiff’s Counsel possess considerable expertise in litigating class action and
4 representative matters. (*Id.* at ¶¶ 47–64.) Plaintiff’s Counsel have been involved as lead counsel or
5 co-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 Plaintiff’s Counsel’s experience in wage-and-hour class and representative actions was
10 integral in evaluating the strengths and weaknesses of the case against Defendant and the
11 reasonableness of this Settlement. (*Id.* at ¶ 65.) Practice in the narrow field of wage-and-hour
12 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
13 federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 65.) Based on these
14 and other factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the
15 gross recovery for aggrieved employees. (*See id.* at ¶¶ 51, 56, 60.) Thus, the requested fee award is
16 reasonable 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, Plaintiff’s Counsel current lodestar is *no less than* **\$133,000.00**, which is based on *no*
27 *less than* **170.7 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 multiplier of approximately

1 **2.51.** (*Id.* at ¶ 74(c).) Further, the foregoing lodestar does not reflect additional works that will be
2 devoted to this litigation, including to obtain and monitor approval of the Settlement and requested
3 awards, oversee the settlement administration process and distribution of funds, respond to inquiries,
4 and communicate with Plaintiff regarding the case. (*Id.* at ¶ 72.) The fee request under the Settlement
5 is warranted based on the contingent risk that Plaintiff's Counsel incurred, the difficulty of the
6 questions involved, the substantial benefit conferred on the Aggrieved Employees and State of
7 California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel. (*Id.* at ¶ 74.)
8 Plaintiff's Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to
9 pay. (*Id.* at ¶ 72.) Thus, the request for attorneys' fees is reasonable under a lodestar check.

10 **5. Plaintiff's Counsel's Costs Were Actually and Reasonably Incurred**

11 Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably
12 incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327
13 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff's Counsel seek reimbursement in the total
14 amount of \$58,408.17 for expenses incurred litigating this action without any reimbursement. These
15 expenses were reasonably necessary to the litigation and were actually incurred by Plaintiff's
16 Counsel. (Moon Decl., ¶ 79, Ex. 4.) Moreover, this amount is below the maximum allocation under
17 the Settlement and thus, the difference (\$11,591.83) will become part of the Net Settlement Amount.
18 (*Id.* at ¶ 80; Settlement, ¶ III.C.1.) Thus, costs should be reimbursed in full.

19 **IV. CONCLUSION**

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

22 Respectfully submitted,

23 DATED: August 27, 2026

MOON LAW GROUP, PC

24 By: _____

25 Kane Moon
26 Allen Feghali
27 Enzo Nabiev
28 Jason Kwak

Attorneys for Plaintiff