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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By V. Sino-Cruz, Deputy Clerk

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

CAIN GARCIA, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

CRUNCH, LLC, a limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22STCV30481

[Honorable Bradley S. Phillips, Department 26]

**PLAINTIFF CAIN GARCIA'S NOTICE OF
MOTION AND MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed with the Declaration of Kane Moon,
Declaration of Plaintiff Cain Garcia, Declaration of
Sean Hartranft, [Proposed] Order, and [Proposed]
Judgment]

PAGA APPROVAL HEARING:

Date: March 20, 2025

Time: 8:30 a.m.

Dept.: 26

Reserved by Court.

Complaint Filed: September 19, 2022

Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on March 20, 2025, at 8:30 a.m., in Department 26 of the
3 Superior Court of California, County of Los Angeles, located at 111 North Hill Street, Los Angeles,
4 California 90012, pursuant to California Labor Code sections 2698, et seq., Plaintiff Cain Garcia
5 (“Plaintiff”) will move the Court for an Order:

- 6 1. Approving the Private Attorneys General Act Settlement Agreement (“Settlement”) entered into by Plaintiff and Defendant Crunch, LLC;
- 7
- 8 2. Appointing Moon Law Group, P.C. as PAGA Counsel and approving the PAGA
9 Counsel Fees Payment and PAGA Counsel Expenses Payment;
- 10 3. Appointing Plaintiff as PAGA Representative and approving the PAGA Representative
11 Enhancement Payment;
- 12 4. Appointing APEX Class Action Administration as Administrator and approving the
13 Administration Expenses Payment;
- 14 5. Approving the Release of Claims by Plaintiff, the Aggrieved Employees, and PAGA
15 Counsel;
- 16 6. Directing consummation of the Settlement pursuant to its terms and provisions;
- 17 7. Dismissing the Action with prejudice;
- 18 8. Entering Judgment approving the Settlement; and
- 19 9. Reserving continued jurisdiction over the Parties, Action, and Settlement solely for
20 purposes of (i) enforcing the Settlement and/or Judgment, (ii) addressing settlement
21 administration matters, and (iii) addressing such post-Judgment matters as are
22 permitted by law.

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1 The Motion will be based on this Notice, the attached Memorandum of Points and Authorities,
2 the Declaration of Kane Moon and Exhibits therein, the Declaration of Plaintiff Cain Garcia, the
3 Declaration of Sean Hartranft, the records and files in the Action, and any further evidence or
4 argument the Court may properly receive before or at the Hearing.

5
6 Dated: October 28, 2024

Respectfully submitted,

7 MOON LAW GROUP, P.C.

8
9 By: /s/ Kane Moon

Kane Moon, Esq.

10 Allen Feghali, Esq.

Jacquelyne VanEmmerik, Esq.

11 *Attorneys for Plaintiff, Cain Garcia*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Cain Garcia (“Plaintiff”) moves the Court for approval of the Private Attorneys
4 General Act Settlement Agreement (“Settlement”) entered into by Plaintiff and Crunch, LLC
5 (“Defendant”) (Plaintiff and Defendant, the “Parties”) in full resolution of the Private Attorneys
6 General Act (“PAGA”) claims alleged in the above-captioned representative action (the “Action”) on
7 behalf of Plaintiff, all alleged Aggrieved Employees, and the State of California.

8 **II. LEGAL STANDARD**

9 The PAGA claims alleged in the Action on behalf of Plaintiff, all alleged Aggrieved
10 Employees, and the State of California were alleged pursuant to PAGA, which states: “[T]he...court
11 shall review and approve any settlement of any civil action filed pursuant to this part.” California
12 Labor Code (“Labor Code”) section 2699(1)(e)(2). The California Supreme Court has interpreted this
13 provision as ensuring “any negotiated resolution [of a PAGA claim] is fair to those affected.” *Williams*
14 *v. Superior Court* (2017) 3 Cal.5th 531, 549. However, the California Supreme Court has not defined
15 specific criteria by which trial courts are to review and approve proposed PAGA settlements. *Id.*
16 Nonetheless, California courts largely consider whether a proposed PAGA settlement provides
17 “genuine and meaningful [relief] consistent with the underlying purpose of the statute” and is
18 reasonable in light of the potential verdict value of all claims released. *See O’Connor v. Uber*
19 *Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135; *see also* Labor Code section
20 2699(1)(e)(2). For the reasons set out below, the Settlement provides genuine and meaningful relief to
21 Plaintiff, all alleged Aggrieved Employees, and the California Labor and Workforce Development
22 Agency (“LWDA”) consistent with the underlying purpose of PAGA and is reasonable in light of the
23 potential verdict value of all claims released. *See Iskanian v. CLS Transportation Los Angeles, LLC*
24 (2014) 59 Cal.4th 348, 383; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86,
25 quoting *Williams, supra*, 3 Cal.5th at 546 (“[C]ivil penalties recovered on the state’s behalf are
26 intended to ‘remediate present violations and deter future ones,’ not to redress employee’s injuries.”)
27 Plaintiff therefore respectfully requests the Court to enter the Proposed Order and Judgment submitted
28 herewith, approving the Settlement pursuant to Labor Code sections 2698, et seq.

1 **III. SUMMARY OF THE LITIGATION AND SETTLEMENT**

2 **A. Relevant Facts and Procedural History**

3 Defendant is a chain of over 300 franchised fitness clubs located in the United States, Canada,
4 and Australia. *Declaration of Kane Moon* (“*Moon Decl.*”), ¶ 3. Plaintiff worked for Defendant as a
5 non-exempt Front Desk Worker from October 2021 to April 2022. *Id.* Plaintiff contends he and his
6 former coworkers were subjected to the same unlawful labor practices. *Id.*

7 On September 17, 2022, Plaintiff filed with the LWDA, and sent via certified mail to
8 Defendant, a Notice of Labor Code Violations and PAGA Penalties, pursuant to Labor Code section
9 2699.3, subdivision (a) (“PAGA Notice”). *Id.*, ¶ 4. A true and correct copy of his PAGA Notice is
10 attached to the Declaration of Kane Moon as **Exhibit 1**.

11 On September 19, 2022, Plaintiff filed a Class Action Complaint against Defendant, which
12 alleged, on behalf of all non-exempt employees of Defendant who worked in California from the date
13 four years before the filing of the complaint to the date the Class Notice is sent: Failure to Pay
14 Minimum Wages [Labor Code §§ 204, 1194, 1194.2 and 1197]; Failure to Pay Overtime
15 Compensation [Labor Code §§ 1194 and 1198]; Failure to Provide Meal Periods [Labor Code §§
16 226.7 and 512]; Failure to Authorize and Permit Rest Breaks [Labor Code § 226.7]; Failure to
17 Indemnify Necessary Business Expenses [Labor Code § 2802]; Failure to Timely Pay Final Wages at
18 Termination [Labor Code §§ 201-203]; Failure to Provide Accurate Itemized Wage Statements
19 [Labor Code § 226]; and Unfair Business Practices [Business & Professions Code §§ 17200, *et seq.*];
20 and on January 3, 2023, Plaintiff filed a First Amended Class Action and Representative Action
21 Complaint (“operative Complaint”), which alleged an additional cause of action for Civil Penalties
22 under the Private Attorneys General Act [Labor Code §§ 2699, *et. seq.*]. *Id.*, ¶ 5.

23 On January 27, 2023, in light of the arbitration agreement Plaintiff signed at the
24 commencement of his employment with Defendant, including the valid and enforceable class action
25 waiver therein, Plaintiff filed a Request for Dismissal of Class Allegations pursuant to California
26 Rules of Court Rules 3.770, *et seq.*; and on March 23, 2023, the Parties stipulated to stay the matter
27 pending the California Supreme Court decision in *Adolph v. Uber Technologies, Inc.*, Case No.
28 S274671. *Id.*, ¶ 6.

1 On or around May 31, 2023, the Parties met and conferred regarding the feasibility of
2 resolving the Action through private mediation. *Moon Decl.*, ¶ 7. The Parties ultimately agreed to
3 engage in an informal exchange of data and documents, including, but not limited to, a random,
4 statistically significant sample of time and corresponding payroll records of all alleged Aggrieved
5 Employees, and to attempt to settle Plaintiff's individual and non-individual PAGA claims through
6 private mediation. *Id.*

7 On August 12, 2024, the Parties engaged in a successful, private mediation with experienced
8 wage-and-hour class and representative action mediator, Steven Rottman, Esq., in which they agreed
9 to the terms encompassed in the Settlement. *Id.*, ¶ 8. A true and correct copy of the Settlement and
10 LWDA case record confirming submission of the Settlement to the LWDA are attached to the
11 Declaration of Kane Moon as **Exhibit 2** and **Exhibit 3**, respectively.

12 **B. Statement Of The Claims**

13 The operative Complaint alleges a single cause of action for Civil Penalties Under PAGA
14 [Labor Code sections 2698, et seq.]. *Id.*, ¶ 9. This cause of action is based on Defendant's alleged
15 failure to pay Plaintiff and all alleged Aggrieved Employees for all hours worked, including for all
16 regular time and overtime, as a result of not incorporating all non-discretionary remuneration into
17 Aggrieved Employees' respective regular rates of pay and not paying Aggrieved Employees for all
18 off-the-clock hours worked; failure to provide Plaintiff and all alleged Aggrieved Employees with
19 code-compliant meal periods, including timely, full, and uninterrupted meal periods, as a result of not
20 adopting policies and practices which would allow Aggrieved Employees to be timely and fully
21 relieved from their work duties during their meal periods; failure to authorize and permit Plaintiff and
22 all alleged Aggrieved Employees to take code-compliant rest breaks, including timely, full, and
23 uninterrupted rest breaks, as a result of not adopting practices and practices which would allow
24 Aggrieved Employees to be timely and fully relieved from their work duties during their rest breaks;
25 and failure to reimburse Plaintiff and all alleged Aggrieved Employees for all necessary business
26 expenses incurred in direct discharge of their work duties, including expenses for the required use of
27 their personal cellphones. *Id.*

1 **C. Discovery and Investigation**

2 Ahead of mediation, the Parties agreed to engage in an informal exchange of data and
3 documents, including, but not limited to (1) the total number of Aggrieved Employees; (2) the total
4 number of pay periods worked by all Aggrieved Employees from October 2021 to April 2024; (3) all
5 employee handbooks in effect during the PAGA Period; and (4) a random, statistically significant
6 sample of time and corresponding payroll records of all alleged Aggrieved Employees from October
7 2021 to April 2024. *Moon Decl.*, ¶ 10. Following Defendant’s production, PAGA Counsel retained an
8 expert data analyst to analyze and prepare a damage analysis based on the sample records. *Id.* Further,
9 PAGA Counsel personally examined the sample records and contrasted the same with applicable law.
10 *Id.* These actions enabled PAGA Counsel to participate in mediation with an informed understanding
11 of Defendant’s maximum and realistic potential liability. *Id.*

12 **D. Settlement Negotiations**

13 On August 12, 2024, the Parties participated in private mediation with experienced wage-and-
14 hour class and representative action mediator, Steven Rottman, Esq. *Id.*, ¶ 11. The settlement
15 negotiations were at arm’s length and, though conducted in a professional manner, adversarial. *Id.* The
16 Parties went into the mediation willing to settle the dispute but also prepared to litigate their respective
17 positions through trial and appeal if a settlement were not reached. *Id.*

18 At mediation, on the one hand, Defendant asserted that it is not liable for civil penalties based
19 on unpaid minimum and overtime wages as a result of Aggrieved Employees performing required off-
20 the-clock work, as it did not permit Aggrieved Employees to work off the clock and clearly expressed
21 this within its written work policies; that it is not liable for civil penalties based on meal period and/or
22 rest break violations, as a vast majority of meal periods and rest breaks were taken, and where a
23 violation appears in the sample time records, such violation was either the result of an employee
24 voluntarily choosing to forego a meal period or rest break or waived by an applicable meal period or
25 rest break waiver; and that it is not liable for civil penalties based on unreimbursed business expenses,
26 and certainly not for all pay periods within the PAGA Period, as not all Aggrieved Employees utilized
27 their personal cellphones for work-related purposes, and not all Aggrieved Employees who utilized
28 their personal cellphones for work-related purposes did so on a weekly basis. *Id.*, ¶ 12.

1 On the other hand, Plaintiff pushed back on Defendant's defenses utilizing the random,
2 statistically significant sample of time and corresponding of the Aggrieved Employees, including by
3 highlighting the regular rate and meal period violations evident on their face, yet also recognized that,
4 if not through settlement, the issues presented in the Action were likely only to be resolved with
5 extensive and costly pretrial and trial proceedings, and that further litigation would likely lead to
6 inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of
7 litigation. *Moon Decl.*, ¶ 13. In light of this acknowledgment, which was shared by Defendant, the
8 Parties reached a resolution, the material terms of which are encompassed in the Settlement. *Id.*

9 **E. Key Terms of the Settlement**

- 10 1. The Aggrieved Employees include all persons who worked for Defendant in
11 California as an hourly paid or non-exempt employee during the PAGA Period.
12 *Settlement*, ¶ 1.4. The PAGA Period is September 17, 2021, through the earlier
13 of when the PAGA Pay Periods exceed 41,800 or the date on which the Court
14 issues the Approval Order. *Id.* at ¶ 1.22.
- 15 2. Defendant agrees to pay a non-reversionary Gross Settlement Amount of
16 \$750,000.00. *Settlement*, ¶¶ 1.12, 3.1. Aggrieved Employees are not required to
17 submit a claim as a condition of payment. *Id.*
- 18 3. The Settlement provides for a PAGA Counsel Fees Payment of not more than
19 one-third of the Gross Settlement Amount, or \$250,000.00, and a PAGA
20 Counsel Expenses Payment of not more than \$29,000.00. *Id.* at ¶ 3.1.1. If the
21 fees payment approved by the Court is less than the maximum allocation, the
22 difference will be added to the Net Settlement Amount. *Id.* The actual costs are
23 less than the maximum allocation. *Moon Decl.*, Exh. 4. In accordance with the
24 Settlement, the difference will be added to the Net Settlement Amount. *Id.* at ¶
25 3.1.1. At this time, PAGA Counsel's costs are \$24,078.24. A true and correct
26 copy of PAGA Counsel's itemized, current list of actual costs is attached to the
27 Declaration of Kane Moon as **Exhibit 4**.

- 1 4. The Settlement provides for a PAGA Representative Enhancement Payment of
2 not more than \$10,000.00 for Plaintiff's role, service, and risks undertaken as
3 the PAGA Representative of the State of California and for his general release
4 of claims. *Id.* at ¶¶ 3.1.2, 5.1, et seq. If the enhancement payment approved by
5 the Court is less than the maximum allocation, the difference will be added to
6 the Net Settlement Amount. *Id.*
- 7 5. The Settlement provides for an Administration Expenses Payment of not more
8 than \$15,000.00 for the Administrator's fees and expenses in administering this
9 Settlement. *Settlement*, ¶¶ 1.2, 3.1.3. The actual administration expenses
10 approved by the Court are less than the maximum allocation. *Moon Decl.*, Exh.
11 5. In accordance with the Settlement, the difference will be added to the Net
12 Settlement Amount. *Settlement*, ¶ 3.1.3. The Parties jointly appoint APEX
13 Class Action Administration ("APEX") as the neutral entity to administer the
14 Settlement based on its bid of \$13,850.00. *Id.* A true and correct copy of
15 APEX's administration costs estimate is attached to the Declaration of Kane
16 Moon as **Exhibit 5**.
- 17 6. After deducting the PAGA Counsel Fees Payment, PAGA Counsel Expenses
18 Payment, PAGA Representative Enhancement Payment, and Administration
19 Expenses Payment in the amounts approved by the Court, the remainder will be
20 allocated as PAGA Penalties and distributed as 75% to the LWDA and 25% to
21 the Aggrieved Employees. *Id.* at ¶¶ 3.1.4, et seq.
- 22 7. Aggrieved Employees will receive a letter explaining the Settlement in plain
23 English and Spanish. A true and correct copy of the English version of this
24 letter is incorporated as part of the Settlement as **Exhibit A**.
- 25 8. The Effective Date means the date by when each of the following has occurred:
26 (a) the Court enters Judgment on its Approval Order, (b) the Judgment is final,
27 and (c) sixty-five (65) days have passed since the Court entered Judgment. The
28 Judgment is final as of the day the Court enters the Judgment. *Id.* at ¶ 1.11

- 1 9. No later than fourteen (14) calendar days after the Effective Date, Defendant
2 shall fully fund the Gross Settlement Amount by transmitting the funds to the
3 Administrator. *Settlement* at ¶ 4.2.
- 4 10. No later than fourteen (14) calendar days after Defendant fully funds the Gross
5 Settlement Amount, the Administrator shall mail checks for all Individual
6 PAGA Payments, the LWDA PAGA Payment, the PAGA Counsel Fees
7 Payment, the PAGA Counsel Expenses Payment, the PAGA Representative
8 Enhancement Payment, and the Administration Expenses Payment. *Id.* at ¶ 4.3.
- 9 11. *Plaintiff's Release.* Effective on the date Defendant fully funds the Gross
10 Settlement Amount, Plaintiff and his former and/or present spouses,
11 representatives, agents, attorneys, heirs, administrators, successors, and assigns,
12 will be deemed to release the Released Parties from all claims, transactions, or
13 occurrences that occurred during his employment with Defendant, including,
14 but not limited to all claims that were, or reasonably could have been, alleged
15 based on the facts contained in the operative Complaint and PAGA Notice,
16 which shall include, but not be limited to, claims for civil penalties under
17 PAGA for violations of the California Labor Code based on Defendant's
18 alleged failure to pay all wages due (including minimum wages, straight time
19 wages, regular rate wages, sick pay, vacation wages, and overtime wages),
20 failure to provide compliant meal periods, failure to authorize and permit
21 compliant rest periods, failure to provide accurate and itemized wage
22 statements, failure to factor bonus, incentive or other payments into regular rate
23 of pay, failure to timely pay all wages due during employment and at the time
24 of termination, failure to reimburse employees for all business-related
25 expenses, failure to keep adequate records, violation of the Wage Orders, and
26 all damages, interest, penalties, attorneys' fees, costs, and other amounts
27 recoverable under said representative causes of action ("Plaintiff's Release").
28 *Id.* at ¶¶ 5.1, et seq.

12. *Release by Aggrieved Employees.* Effective on the date Defendant fully funds the Gross Settlement Amount, the Aggrieved Employees and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be deemed to release the Released Parties from (i) all PAGA claims asserted in the operative Complaint and PAGA Notice, (ii) all PAGA claims that could have reasonably been asserted in the operative Complaint and PAGA Notice, and (iii) all PAGA claims arising out of the same operative facts, including claims for civil penalties under PAGA for violations of the California Labor Code based on Defendant's failure to pay all wages due (including minimum wages, straight time wages, regular rate wages, sick pay, vacation wages, and overtime wages), failure to provide compliant meal periods, failure to authorize and permit compliant rest periods, failure to provide accurate itemized wage statements, failure to factor bonus, incentive or other payments into regular rate of pay, failure to timely pay all wages due during employment and at the time of termination, failure to reimburse employees for all business-related expenses, failure to keep adequate records, violation of the Wage Orders and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said representative causes of action under California law, to the extent permissible ("Released Claims").
Settlement at ¶ 5.2.

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

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1 **IV. THE SETTLEMENT MERITS APPROVAL**

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

8 **A. The PAGA Penalties Are Reasonable**

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

17 **1. The PAGA Penalties Provide Genuine and Meaningful Relief to the**
18 **LWDA and Aggrieved Employees Consistent with the Dual Purpose of**
19 **PAGA**

20 The PAGA Penalties provide genuine and meaningful relief to the LWDA and Aggrieved
21 Employees consistent with the dual purpose of PAGA: remediation and deterrence. *See Kim, supra*, 9
22 Cal.5th at 86, quoting *Williams, supra*, 3 Cal.5th at 546 (“[C]ivil penalties recovered on the state’s
23 behalf are intended to ‘remediate present violations and deter future ones,’ not to redress employee’s
24 injuries.”) In terms of remediation, the PAGA Penalties will redress approximately 475 Aggrieved
25 Employees for the Labor Code violations they suffered from during the PAGA Period. *Settlement*, ¶
26 7. Each Individual PAGA Payment will be calculated in proportion to the number of pay periods each
27 Aggrieved Employee worked for Defendant during the PAGA Period (“PAGA Pay Periods”),
28 ensuring Aggrieved Employees receive payment in direct correspondence with the number of
violations they suffered from. *Settlement*, ¶ 3.1.4.1.

1 Further, the PAGA Penalties, which are estimated to be \$452,071.76¹, will indirectly redress
2 other California employees, as the LWDA PAGA Payment will contribute substantial funding, i.e.,
3 \$339,053.82, to the LWDA, the state administrative agency dedicated to upholding the very labor laws
4 the payment will help enforce and educating California employees and employers about their rights
5 and responsibilities under the Labor Code. *Moon Decl.*, ¶ 33.

6 In terms of deterrence, the PAGA Penalties will prevent the occurrence of future violations by
7 Defendant, as they are considerable, and the process the Parties underwent to reach the Settlement was
8 costly, time-consuming, and exhaustive, such that the prospect of a similar settlement amount or
9 process is likely to discourage future violative labor policies and practices. Indeed, to litigate, mediate,
10 and ultimately settle this Action, Defendant had to incur significant costs to, among other actions, hire
11 legal counsel, engage in extensive discovery, and hire a mediator.

12 **B. The PAGA Penalties Are Reasonable Pursuant To Labor Code Section 2699(e)**

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

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

26
27 ¹ The PAGA Penalties equal the Gross Settlement Amount (\$750,000.00) less the PAGA
28 Counsel Fees Payment (\$250,000.00), PAGA Counsel Litigation Expenses Payment
(\$24,078.24), PAGA Representative Enhancement Payment (\$10,000.00), and Administration
Expenses Payment (\$13,850.00).

1 For example, the Parties engaged in an exhaustive exchange of data and documents, which
2 included, but was not limited to, a random, statistically significant sample of time and corresponding
3 payroll records of all Aggrieved Employees from October 2021 to April 2024; all documents
4 containing any wage and hour policies in effect during the PAGA Period, including all employee
5 handbooks; all personnel records of Plaintiff; and all documents related to the categories of money
6 paid to Aggrieved Employees by Defendant. *Moon Decl.*, ¶ 10. The comprehensive nature of this
7 exchange demonstrates the diligent, thorough nature of the pre-mediation discovery. Further, PAGA
8 Counsel commissioned an expert to analyze the time and corresponding payroll records of the
9 Aggrieved Employees and to calculate Defendant's violation rates. The use of an expert analyst
10 demonstrates the fact-intensive, reliable nature of PAGA Counsel's findings and exposure
11 calculations. Moreover, Defense and PAGA Counsel utilized an experienced, mutually selected
12 mediator to facilitate their adversarial discussions. The use of a knowledgeable and neutral mediator
13 demonstrates the Parties' genuine goal of reaching a reasoned, duly valued settlement.

14 Second, the facts do not justify a reduction of the PAGA Penalties because they support the
15 value of the underlying claims and justify the reasonable discounts made by PAGA Counsel. For
16 example, one of three main underlying factual allegations of Plaintiff's PAGA claim was that
17 Defendant failed to properly calculate Aggrieved Employees' respective regular rates of pay for
18 purposes of paying overtime and sick pay. The time and corresponding payroll records demonstrated
19 that 18.5% of sampled Aggrieved Employees were paid both *biweekly* overtime and additional non-
20 discretionary remuneration, with the latter not incorporated into the former, resulting in at least
21 \$199,717.00 of extrapolated underpayment; 18.0% of sampled Aggrieved Employees were paid both
22 *monthly* overtime and additional non-discretionary remuneration, with the latter not incorporated into
23 the former, resulting in at least \$27,167.00 of extrapolated underpayment; and 13.4% of sampled
24 Aggrieved Employees were paid both sick pay and additional non-discretionary remuneration, with
25 the latter not incorporated into the former, resulting in at least \$210,308.00 of extrapolated
26 underpayment. *Id.* at ¶ 29. Despite this significant underpayment, regular rate violations were only
27 identified in roughly ten percent (10%) of all pay periods.

1 The second of three main underlying factual allegations of Plaintiff's PAGA claim was that
2 Defendant failed to pay Aggrieved Employees meal period premium wages for all interrupted,
3 missed, short, and/or late meal periods. The time and corresponding payroll records demonstrated
4 that Aggrieved Employees recorded approximately 118,838 meal periods for shifts greater than five
5 hours and that 34.7% were recorded after the end of the fifth hour but were not waived or
6 compensated through attendant meal period premium wages. *Moon Decl.*, ¶ 30. Significantly, meal
7 period violations were identified in roughly forty percent (40%) of all pay periods.

8 The last of three main underlying factual allegations of Plaintiff's PAGA claim was that
9 Defendant failed to reimburse Aggrieved Employees for all necessary business expenses incurred.
10 The time and corresponding payroll records demonstrated that Aggrieved Employees were never
11 reimbursed for any expenses, yet Plaintiff personally experienced, and observed other Aggrieved
12 Employees experience, Defendant's policy and practice of requiring Aggrieved Employees to utilize
13 their personal cellphones to communicate about scheduling and other work-related topics on a
14 weekly basis. *Id.* at ¶ 31. Based on Plaintiff's experience and observations, PAGA Counsel assumed
15 unreimbursed business expenses violations occurred in all pay periods².

16 Though these civil penalties were either demonstrable on the face of the time and
17 corresponding payroll records produced by Defendant and/or based on reasonable assumptions, they
18 were nonetheless reasonably discounted based on applicable mitigating factors. This is also true for
19 the additional civil penalties supported by Plaintiff's off-the-clock and rest break allegations. *Id.* at ¶
20 30. Specifically, PAGA Counsel's data analyst determined that Defendant's maximum potential
21 exposure was \$9,984,932.35, which encompasses the above-indicated civil penalties and all civil
22 penalties resulting from Plaintiff's off-the-clock and rest break allegations. *Id.* at ¶ 32. However,
23 PAGA Counsel discounted such penalties significantly to account for Defendant's defenses and other
24 extenuating, relevant considerations. *Id.* at ¶ 33.

25
26
27 ² PAGA Counsel and their expert determined Defendant's maximum potential exposure
28 was \$9,984,932.35, based on the foregoing and based on Defendant's pre-mediation production
and PAGA Counsel's extrapolation that there were 53,069 total pay periods. *Id.* at ¶ 32.

1 In terms of Defendant's defenses, Defendant argued that the provability and manageability of
2 Plaintiff's underlying off-the-clock and violative rest break allegations were poor given the highly
3 individualized nature of such claims; that any and all off-the-clock work was performed voluntarily,
4 and was never a requirement; that any and all violative rest breaks were on-duty, missed, short,
5 and/or late by choice and not as a result of non-compliant policies or practices; that rest break
6 violations are not demonstrable, to any extent, on the face of the time and corresponding payroll
7 records; that not all Aggrieved Employees utilized their personal cellphones for work-related
8 purposes; and that not all Aggrieved Employees who utilized their personal cellphones for work-
9 related purposes did so on a weekly basis. Based on these arguments, PAGA Counsel discounted
10 Defendant's maximum potential exposure by sixty percent (60%), or \$5,990,959.41, as roughly sixty
11 percent (60%) of Plaintiff's underlying factual allegations were reasonably affected by such defenses.
12 *Moon Decl.*, ¶ 33.

13 In terms of other extenuating, relevant considerations, PAGA Counsel further discounted
14 Defendant's resultant maximum potential exposure of \$3,993,972.94 (\$9,984,932.35 -
15 \$5,990,959.41) by eighty percent (80%), or \$3,195,178.35, to account for the fact that Defendant
16 overestimated the total number of pay periods by thirty percent (30%)³; the critical Due Process
17 concerns attendant with all penalty awards; the risk that *Viking River Cruises* and any ensuing case
18 law could threaten Plaintiff's standing to pursue a representative action in light of the arbitration
19 agreement he signed; the discretionary nature of civil penalties awarded under PAGA; the risk of
20 significant delay, and the trial and appellate risk if PAGA Counsel were to pursue and be awarded an
21 inflated representative action settlement; and with the belief that settlement was in the best interest of
22 the Aggrieved Employees and State of California to avoid such risks and the accompanying expenses
23 of further litigation by way of early resolution. *Id.* Based on these discounts, PAGA Counsel
24 participated in mediation with the understanding that \$798,794.59 (\$3,993,972.94 - \$3,195,178.35)
25 was a reasonable penalties award pursuant to Labor Code section 2699(e). *Id.* The Gross Settlement
26 Amount of \$750,000.00 therefore represents roughly 93.89% of Plaintiff's assumed realistic
27 recovery. *Id.*

28 ³ There are 38,000 total biweekly pay periods. *Settlement* at ¶ 7.

1 This sum is backed by the data produced by Defendant and takes into account Defendant's
2 defenses and all relevant considerations. Thus, the PAGA Penalties are neither unjust nor oppressive,
3 yet remain significant enough to uphold the dual purpose of PAGA. *See Williams, supra*, 3 Cal.5th at
4 546.

5 **C. The PAGA Counsel Fees Payment Is Reasonable And Permissible**

6 The PAGA Counsel Fees Payment is reasonable and permissible because it (1) was calculated
7 using the common fund doctrine and aligns with leading treatises on awards calculated using the
8 common fund doctrine, (2) comports with Labor Code section 2699(g); (3) is commensurate with
9 Class Counsel's significant experience, reputation, and ability in representative action settlements;
10 and (4) is reasonable under the lodestar method.

11 **1. The PAGA Counsel Fees Payment Was Calculated Using The Common**
12 **Fund Doctrine And Aligns With Leading Treatises On Awards**
13 **Calculated Using The Common Fund Doctrine**

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

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

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

26 The common fund doctrine was recognized in *Quinn v. State of California* (1995) 15 Cal.3d
27 162 as favorable in class and representative action settlements. In *Quinn*, the California Supreme
28 Court specified that the common fund doctrine (1) offsets those who "expend attorneys' fees in
winning a suit which creates a fund from which others derive benefits" by requiring "those passive
beneficiaries to bear a fair share of the litigation costs." *Quinn, supra*, 15 Cal.3d at 167.

1 In *Quinn*, the California Supreme Court further specified that the common fund doctrine
2 promotes "...fairness to the successful litigant, who might otherwise receive no benefit because his
3 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
4 others who are entitled to share in the fund and who should bear their share of the burden of its
5 recovery; and encouragement of the attorney for the successful litigant, who will be more willing to
6 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is
7 assured that he will be properly...compensated should his efforts be successful." *Id.*

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

10 The PAGA Counsel Fees Payment aligns with leading treatises on fee awards calculated
11 using the common fund doctrine, which concur that "Usually, [fifty percent] of the fund is the upper
12 limit on a reasonable fee award from a common fund in order to assure that the fees do not consume
13 a disproportionate part of the recovery obtained..." *See* Conte & Newberg, Newberg on Class Actions
14 (3rd Ed.) § 14.03. Here, the PAGA Counsel Fees Payment equals one-third of the Gross Settlement
15 Amount, or \$250,000.00, which aligns with prevailing guidelines established in California case law
16 and academic literature and is consistent with prior awards approved in California. *See Chavez v.*
17 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ("Empirical studies show that, regardless of whether
18 the percentage method or the lodestar method is used, fee awards in class actions average around
19 one-third of the recovery."); *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995)
20 901 F.Supp. 294 (stating that cases where 30-50 percent was awarded involved "smaller" settlement
21 funds of under \$10 million.).

22 2. **The PAGA Counsel Fees Payment Comports With Labor Code Section**
23 **2699(g)**

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

1 Here, the Action arose under Labor Code sections 2698, et seq. Therefore, Labor Code
2 section 2699(g) applies. The prosecution of this Action involved significant financial risk to Class
3 Counsel, as they undertook this matter solely on a contingency basis, with no guarantee of recovery.
4 *Moon Decl.*, ¶ 57(b). This risk was magnified by the fact that, once PAGA Counsel undertook the
5 litigation, they were committed to pursuing the Action to its conclusion and placing the fiduciary
6 duty to the Aggrieved Employees and the State of California ahead of all other concerns. The Class
7 Counsel Fees Payment therefore comports with the fee-shifting provision of Labor Code section
8 2699(g).

9 **3. The PAGA Counsel Fees Payment Is Commensurate With PAGA**
10 **Counsel's Experience, Reputation, and Ability Of PAGA Counsel In**
11 **Representative Actions**

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

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

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

1 Here, the PAGA Counsel Fees Payment is reasonable in light of PAGA Counsel's lodestar of
2 \$250,000.00, which is based on their 135.10 total hours of attorney time at their respective, customary
3 hourly rates and a highly reasonable, positive multiplier of 2.43, which is appropriate based on the
4 contingent risk incurred by PAGA Counsel, the complexity of the issues involved in this Action, the
5 substantial benefit conferred on the Aggrieved Employees and LWDA as a result of the Settlement,
6 and the skill employed by PAGA Counsel throughout the Action. *Moon Decl.*, ¶¶ 37-48, 54, 57.

7 **D. The PAGA Counsel Expenses Payment Is Reasonable And Permissible**

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

13 Here, PAGA Counsel incurred \$24,078.24 to prosecute the Action. *See Moon Decl.*, Ex. 5.
14 This sum reflects the aggregate of all expenses that PAGA Counsel necessarily incurred to initiate,
15 litigate, mediate, and ultimately settle this matter, including, but not limited to, all filing, service, and
16 mediation fees. *Id.* at ¶ 62. Because the sum includes only necessary expenses, it is reasonable.
17 Further, because the Aggrieved Employees have prevailed in the Action, their attorneys are entitled to
18 the awarded costs. Moreover, these expenses are below the maximum amount allowed in the
19 Settlement, and the remainder will revert to the Net Settlement Amount. *Id.*; *Settlement*, ¶ 3.1.1.
20 Therefore, costs should be reimbursed in full, up to the maximum amount allowed in the Settlement.

21 **E. The PAGA Representative Enhancement Payment Is Reasonable**

22 Service awards are particularly important to plaintiffs in wage and hour cases because they
23 promote the important public policies underlying state wage and hour laws, including the policy
24 codified in California Labor Code section 90.5 ("It is the policy of this state to vigorously enforce
25 minimum labor standards in order to ensure employees are not required or permitted to work under
26 substandard unlawful conditions..."). They are also particularly important to plaintiffs in wage and
27 hour cases because, as the California Supreme Court has noted, "retaliation against employees for
28 asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes

1 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
2 PAGA representatives should be rewarded for assuming the risk of retaliation for the sake of
3 aggrieved employees and improvement to state labor practices.

4 In light of these considerations, the substantial benefit Plaintiff generated for all Aggrieved
5 Employees and the State of California, the significant time Plaintiff devoted to this Action, and his
6 General Release of claims under the Settlement, which includes a California Civil Code section 1542
7 waiver, the Parties have agreed to a PAGA Representative Enhancement Payment in an amount of not
8 \$10,000.00, subject to Court approval. *Settlement*, ¶¶ 3.1.2, 5.1, et seq.; *Moon Decl.*, ¶¶ 64-68. PAGA
9 Counsel believe there is justification for this payment being approved in full.

10 **V. CONCLUSION**

11 The PAGA Penalties, PAGA Counsel Fees Payment, PAGA Counsel Expenses Payment, and
12 PAGA Representative Enhancement Payment are meaningful, reasonable, and permissible under
13 Labor Code sections 2698, et seq. For this reason, Plaintiff respectfully requests the Court to grant
14 approval of the Settlement and enter the Proposed Order and Judgment submitted herewith.

15
16 Dated: October 28, 2024

Respectfully submitted,

17 MOON LAW GROUP, P.C.

18
19 By: /s/ Kane Moon

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