Steven I. Azizi (SBN 322719)
Sevada Hakopian (SBN 330602)
MIRACLE MILE LAW GROUP LLP
750 N. San Vicente Blvd., Suite RW1000
West Hollywood, California 90069
Tel: (213) 433-3588
Fax: (888) 224-4132
steven@miraclemilelaw.com
sevada@miraclemilelaw.com

Attorneys for Plaintiff DANA MARIA SEPULVEDA MORALES, on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

DANA MARIA SEPULVEDA MORALES, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

EYE CARE CENTER OF NAPA VALLEY, A MEDICAL CORPORATION, a California Corporation; DAVID S. KIM; an individual; PAUL K. ROW; an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No.: **25CV001559**

[*Assigned to Hon. Joseph J. Solga - Dept. B*]

PLAINTIFF DANA MARIA SEPULVEDA'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS' GENERAL ACT SETTLEMENT

Hearing date: September 4, 2026
Time: 8:30 AM
Dept.: B

[Filed concurrently herewith: Declaration of Sevada Hakopian in Support Thereof; Declaration of Steven I. Azizi in Support Thereof; Declaration of Dana Maria Sepulveda Morales in Support Thereof; and [Proposed] Order]

Complaint Filed: July 29, 2025
Trial Date: None Set

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

PLEASE TAKE NOTICE that on that on September 4, 2026 at 8:30 A.M. in Department B of the Napa County Superior Court, located at 825 Brown St., Napa, California 94559, Plaintiff DANA MARIA SEPULVEDA MORALES ("Plaintiff") will move for an order granting approval of the proposed settlement on the terms and conditions set forth in the JOINT STIPULATION OF SETTLEMENT AND RELEASE OF PAGA ACTION ("Settlement" or "Agreement") between Plaintiff and Defendants Eye Care Center of Napa Valley, A Medical Corporation, David S. Kim, and Paul K. Row (collectively, the "Eye Care Defendants"). A copy of the Settlement Agreement is attached as Exhibit ("Ex.") 1 to the Declaration of Sevada Hakopian in Support of Plaintiff's Motion for Approval of Private Attorneys' General Act Settlement ("Hakopian Decl.").

Notice to the LWDA: On August 13, 2026, Plaintiff's Counsel filed the settlement agreement with the LWDA. (Hakopian Decl. ¶¶ 32, Ex. 2).

The motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support, Hakopian Decl., Declaration of Steven I. Azizi, Esq. ("Azizi Decl."), and Declaration of Dana Maria Sepulveda Morales ("Morales Decl."), In Support of Plaintiff's Motion For Approval Of A Private Attorneys General Act Settlement and Judgment Thereon, exhibits, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

Dated: August 13, 2026

MIRACLE MILE LAW GROUP, LLP

By: _____

Steven I. Azizi, Esq.
Steven Azizi, Esq.

Attorneys for Plaintiff DANA MARIA SEPULVEDA MORALES

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION 1

II. SUMMARY OF LITIGATION 2

A. The Parties 2

B. The Complaint and Allegations 2

C. Production of Directly Relevant Informal Discovery and Legal Analysis by Parties' Counsel 3

III. SUMMARY OF SETTLEMENT 4

A. Terms of Settlement 4

B. Notice and Distribution of PAGA Funds 6

IV. ARGUMENT IN FAVOR OF APPROVAL 7

A. The Proposed PAGA Settlement Should be Approved 7

B. The Proposed Settlement is a Reasonable Compromise of Claims 9

1. Failure to Pay Unpaid Wages pursuant to Labor Code sections 510, 1194, and 1198 9

2. Failure to Provide All Meal Periods pursuant to Labor Code sections 226.7 and 1198 10

3. Failure to Provide All Rest Periods pursuant to Labor Code sections 226.7 and 1198 11

4. Wage Statement Penalties pursuant to Labor Code Section 226 11

5. Failure to Reimburse Work Expenses pursuant to Labor Code Section 2802 12

6. Waiting Time Penalties 13

7. California Private Attorney General Act (PAGA) Penalties 13

V. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED....16

A. Plaintiffs' Attorneys' Fee Request of $26,667.00, One-Third of the Gross Settlement Value, Is Proper Under the Common Fund Doctrine 16

B. Plaintiffs' Fee Request is Reasonable Under the Lodestar Method 18

C. PAGA Counsel's Hourly Rates and Costs are Reasonable 19

1. Counsel's Total Hours Are Reasonable 21

2. Plaintiffs' Costs Request of $14,245.64 is Reasonable 21

VI. THE COURT SHOULD GRANT PLAINTIFF'S REQUEST FOR AN ENHANCEMENT AWARD FOR THE WORK OF REPRESENTING AGGRIEVED EMPLOYEES 22

A. Benefit to the General Public 22

B. Systemic Change 22

C. Enhancement Award 23

VII. CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Adolph v. Uber Technologies, Inc. (2023) 14 Cal. 5th 1104 23

Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430 15

Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157 15

Ambrose v. US Med-Equip, LLC (2024) U.S. Dist. LEXIS 14387 24

Anderson v. Nextel Retail Stores, LLC, Case No. CV 07-4480 (C.D. Cal. June 20, 2010) 20

Arias v. Superior Court (2009) 46 Cal.4th 986 ..... 7, 22

Atempa v. Pedrazzani (2018) 27 Cal.App.5th 809 14

Barrera v. Gamestop Corp., Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) 20

Boeing Co. v. Van Gemert (1980) 444 U.S. 472 ..... 16, 17

Brewer v. Connell Chevrolet, Case No. 30-2016-00852123 (Orange County Superior Court June 15, 2017) 23

Brooke v. Aurora Behavioral Healthcare-Santa Rosa, LLC et. al, No. SCV-261926 (Sonoma County Super. Ct. Aug 25, 2021) 23

Brown v. Ralphs Grocery Co. (2011) 197 Cal.App.4th 489, 128 Cal.Rptr.3d 854 22

Bundley v. Vanderlande Industries, No. 20STCV37685 (L.A. County Super. Ct. Nov. 4, 2021) 23

Cabrera v. Advantage Sale & Marketing, LLC, Case No. BC485259, 2013 WL 1182822 (*Super. Ct. L.A. County*, March 12, 2013) 14

Carrington v. Starbucks Corporation (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) 14, 15

Consumer Advocacy Group v. Kintetsu Enterprises of America (2006)
141 Cal.App.4th 46 15

Diaz v. UPS (2023)
U.S. Dist. LEXIS 221935 24

Dunk v. Ford Motor Co. (1996)
48 Cal.App.4th 1794 7

Ellis v. Naval Air Rework Facility (N.D. Cal. 1980)
87 F.R.D. 15, affd. 661 F.2d 939 (9th Cir. 1981) 8

Fisher Bros. v. Cambridge Lee Industries, Inc. (E.D. Pa. 1985)
630 F.Supp. 482 8

Flannery v. California Highway Patrol (1998)
61 Cal. App. 4th 629 19

Garrett v. Bank of America,
Case No. RG13699027 (Alameda County Superior Court Oct. 28, 2016) 23

Hamilton v. Juul Labs, Inc.
(Cal. N. D. Nov. 16, 2021) (2021) 23

Hanlon v. Chrysler Corp. (9th Cir. 1998)
150 F.3d 1011 8

Horsford v. Board of Trustees California State University (2005)
132 Cal.App.4th 359 19

Huff v. Securitas Services USA, Inc. (2018)
25 Cal.App.5th 745 5

Iskanian v. CLS Transportation L.A., LLC (2014)
59 Cal.4th 348 7

In re Activision Sec. Litig. (N.D. Cal 1989)
723 F. Supp. 1373 18

In re HPL Techs., Inc., Secs. Litig.
(N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365 F.Supp.2d 912 20

Kullar v. Foot Locker Retail, Inc. (2008)
168 Cal.App.4th 116 9

Laffitte v. Robert Half Int'l Inc. (2016)
1 Cal.5th 480 ..... 16, 17, 18, 19

Lealao v. Beneficial Calif., Inc. (2000)
82 Cal.App.4th 19 ..... 16, 18, 19

Linney v. Cellular Alaska Partnership (9th Cir. 1998)
151 F. 3d 1234 9

Moniz v. Adecco USA Inc. (2021)
72 Cal.App.5th 56 23

New York Gaslight Club, Inc. v. Carey (1980)
447 U.S. 54 21

Penaloza v. PPG Industries Inc.,
Case No. BC471369, 2013 WL 2917624 (*Super. Ct. L.A. County,* May 20, 2013) 14

PLCM Group, Inc. v. Drexler (2000)
22 Cal. 4th 1084 19

Ramos v. Countrywide Home Loans, Inc. (2000)
82 Cal.App.4th 615 18

Rebney v. Wells Fargo Bank (1990)
220 Cal.App. 3d 1117 9

Richard v. Ameri-Force Mgmt. Servs., Inc.,
Case No. 37-2008-00096019 (San Diego Super. Ct., August 27, 2010) 20

Robinson v. Southern Counties Oil Co. (2020)
53 Cal. App. 5th 476 22

Rocha v. U-Haul Co. of Cal. (2023)
88 Cal. App. 5th 65, 304 Cal. Rptr.3d 587 22

Rodriguez v. Cal. Payroll Group (2022)
Cal. Super. LEXIS 47539 24

Rodriguez v. West Publishing Corp. (2009)
563 F.3d 948 23

Seifu v. Lyft, Inc. (2023)
89 Cal. App. 5th 1129 22

Serrano v. Priest (1977)
20 Cal.3d 25 ..... 16, 18

Serrano v. Unruh (1982)
32 Cal.3d 621 21

Stanton v. Boeing (9th Cir. 2003)
327 F.3d 938 17

Syers Properties III, Inc. v. Rankin (2014)
226 Cal.App.4th 691 20

Vincent v. Hughes Air West, Inc. (9th Cir. 1977)
577 F.2d 759 16

Vizcaino v. Microsoft Corp. (9th Cir. 2002)
290 F.3d 1043 18

Wininger v. SI Mgmt. L.P. (9th Cir. 2002)
301 F.3d 1115 17

Wershba v. Apple Computer, Inc. (2001)
91 Cal.App.4th 224 ..... 9, 19

Wood v. Kaiser Foundation Hospitals (2023)
88 Cal. App. 5th 742 22

ZB, N.A. v. Superior Court (2019)
8 Cal. 5th 175 22

STATUTES

California Labor Code

§ 200, 201, 202, 203, 204, 226, 226(e), 226.3, 226.7, 210, 510, 512, 558, 558.1, 2802, 2810.5, 1174, 1182.12, 1194, 1194.2, 1197 5

§ 226 ..... 14, 15

§ 226(e) 11, 12

§ 226.3 12

§§ 226.7, 512, and 1198 ..... 10, 11

§ 512 10

§ 2699(f)(2) 12

§ 2699.3, subd.(a) 2

§ 2802 15

§ 1197 5

Private Attorneys General Act of 2004, Labor Code
§ 2698, et seq. 1, 5

Unclaimed Property Law, California Civil Code
§ 1500 et seq. 5, 12

Unfair Competition Law 2

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff, DANA MARIA SEPULVEDA MORALES ("Plaintiff"), respectfully submits this memorandum in support of her motion for approval of the JOINT STIPULATION OF SETTLEMENT AND RELEASE OF PAGA ACTION ("PAGA Settlement," "Settlement" and/or "Settlement Agreement") of this action pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, et seq. (hereinafter "PAGA") with Defendants Eye Care Center of Napa Valley, A Medical Corporation, David S. Kim, and Paul K. Row (collectively, the "Eye Care Defendants") (Plaintiff and the Eye Care Defendants are collectively referred to as the "Parties" and/or "Settling Parties"). Plaintiff seeks entry of a proposed order and judgment granting approval of the PAGA Settlement.

As consideration for this Settlement, the Eye Care Defendants will fund a non-reversionary, common fund settlement of $80,000.00 (the "Gross Settlement Amount") which includes: Attorneys' Fees and Costs, Settlement Administration Fees, Plaintiff's Enhancement Award, the California Labor and Workforce Development Agency ("LWDA") Payment, and Individual Settlement Payments. (Hakopian Decl. ¶ 33, Ex. 1, §1.9-1.13, 1.17). The "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Plaintiff's Counsel Fees Payment ($26,667.00), Plaintiff's Counsel Litigation Expenses Payment ($14,245.64) (costs not to exceed $15,000.00), Plaintiff's Enhancement Award ($4,000.00), and the Administration Expenses Payment ($2,650.00). The remainder is to be paid as Individual Settlement Payment(s) and LWDA Payment. LWDA Payment" means 65% of the PAGA Penalties paid to the LWDA. The Net Settlement Amount is equal to approximately $32,437.36 if all requested amounts are approved. The LWDA Payment is equal to approximately $21,084.28. (Hakopian Decl. ¶ 33, Ex. 1, §1.12). The remainder [$11,353.08] is to be paid to PAGA Members as Individual Settlement Payment(s). (Hakopian Decl. ¶ 33, Ex. 1, §1.11). Plaintiff estimates $11,353.08 ($80,000.00 - $26,667.00 - $14,245.64 - $4,000.00 - $2,650.00 = $32,437.36 x 0.65 = $21,084.28; $32,437.36 - $21,084.28 = $11,353.08) will be distributed pro rata based on the number of pay periods worked by each PAGA Member (as defined in the

Settlement Agreement) during the PAGA Period. (Hakopian Decl. ¶ 33, Ex. 1, §1.9-1.13, 1.17). As set forth below, Plaintiff believes this is a fair result for the PAGA litigation.

II. SUMMARY OF LITIGATION

A. The Parties

Plaintiff was employed as non-exempt employee by the Eye Care Defendants during the PAGA Period. Based on a review of its records to date, the Eye Care Defendants estimate there are 1,112 pay periods to the December 1, 2025 mediation. (Hakopian Decl. ¶ 3).

B. The Complaint and Allegations

On or about May 22, 2025, Plaintiff submitted a letter to the LWDA to notify the LWDA pursuant to PAGA of Plaintiff's intent to seek civil penalties under PAGA for violations of Labor Code in accordance with Labor Code section 2699.3, subd.(a). (Hakopian Decl. ¶ 4).

On or about July 29, 2025, Plaintiff filed a putative class and representative action lawsuit in the Napa County Superior Court, Case No.: 25CV001559, alleging the following causes of action: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) failure to pay timely wages; (7) failure to indemnify; (9) penalties pursuant to [PAGA]; and (10) violation of the Unfair Competition Law (the "Operative Complaint") (hereinafter the "Action"). (Hakopian Decl. ¶ 5).

On or about December 1, 2025, the Parties attended a full-day mediation with respected mediator Gayle L. Eskridge of Eskridge Law & Mediation. (*Id. at* ¶ 6). Although the Action did not settle at mediation, the Parties were able to resolve the Action shortly thereafter by the assistance of the mediator and continued discussions among counsel for the Parties. (*Id.*)

In preparation for mediation, the Parties exchanged various documents and information including wage and hour policies used by the Eye Care Defendants during the Class and the PAGA Period, time keeping and payroll information for Plaintiff, time keeping and payroll information for Class and PAGA Members for the entire Class and PAGA Period, and mediation information (i.e., pay period information for the Class and PAGA Period, group size, total number of current and former employees). (*Id. at* ¶ 7). During the process Plaintiff's Counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of Class and PAGA

damages, interviews of the named Plaintiff and other Class and PAGA Members, potential trial management issues, and appellate issues and risks. (*Id*.)

After a full-day mediation with respected mediator Gayle L. Eskridge and months of additional discussion, Plaintiff and Plaintiff's Counsel concluded—after considering the sharply disputed factual and legal issues involved on the Class and PAGA claims, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the Action as set forth in the agreement—that settlement was in the best interest of the representative Plaintiff, the LWDA, and the PAGA Members and is fair and reasonable and furthers the purpose of the PAGA to enforce the Labor Code. (*Id.* at ¶ 8-9).

Thereafter, on or around March 4, 2026, the Court granted the Parties "Joint Stipulation to Dismiss Class Claims (With Prejudice As To Plaintiff Only)". Plaintiff's causes of action 1 through 8, and 10, were dismissed, while Plaintiff's representative claim under PAGA remains pending and subject to Court Approval. (*Id*.)

At all times, the Eye Care Defendants denied the allegations and contended that employees were properly and timely compensated for all hours worked, were provided all required meal and rest breaks, were provided itemized statements, were reimbursed for any necessary business expenses, and were timely provided all wages due and owed in compliance with the Labor Code. The Eye Care Defendants also disputed that this Action was appropriate for representative treatment.

C. Production Of Directly Relevant Informal Discovery and Legal Analysis By Parties' Counsel

In preparation for mediation, the Parties exchanged various documents and information that allowed both sides to evaluate the potential exposure and potential risk, such as a review of Defendants' relevant policies and procedures related to the claims alleged in Plaintiff's Complaint (including multiple meal and rest break policies and acknowledgements), and a sampling of time and pay records, and Defendants' arbitration agreement; during this process Plaintiff's Counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of PAGA damages, interviews of the named Plaintiff and other PAGA Members,

potential trial management issues, and appellate issues and risks. (Hakopian Decl. ¶¶ 7-8.)

The Parties have undertaken reasonable investigation of the facts and law during the pendency of this Litigation. Plaintiff's Counsel diligently conducted and pursued an investigation of the PAGA claims against Defendants, including research of the applicable law and the potential defenses and review of relevant documents. Plaintiff obtained directly relevant data including Defendants' written policies related to the claims at issue in Plaintiff' Complaint. Plaintiff also received the number of PAGA Members, and sampling of time punch data for Defendants' potentially PAGA Members during the PAGA period. (*Id*. *at* ¶¶ 3-9)

The Parties agreed to participate in private mediation with respected mediator Gayle L. Eskridge on December 1, 2025. (*Id.*) Although the Action did not settle at mediation, the Parties were able to resolve the Action shortly thereafter by the assistance of the mediator and continued discussions among counsel for the Parties. (*Id*.) The Parties reached an agreement in principle to resolve the claims and Plaintiff and Plaintiff's Counsel concluded—after considering the disputed factual and legal issues involved on the PAGA claims, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Agreement—that settlement was in the best interest of the representative Plaintiff, the LWDA, and the PAGA Members and is fair and reasonable and furthers the purpose of the PAGA to enforce the Labor Code. (Hakopian Decl. ¶¶ 6-9.)

III. SUMMARY OF SETTLEMENT

A. Terms of Settlement

The Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the concurrently filed Hakopian Decl. as Exhibit 1.

A summary of the key terms of the Settlement are as follows:

1. PAGA Member(s) and/or Settlement Group Members and/or Settlement Group: means all current and former non-exempt employees of the Eye Care Defendants in California during the PAGA Period. (Hakopian Decl. ¶ 10, 33, Ex. 1, §1.18 attached thereto).

2. Gross Settlement Amount or ("GSA"): means the agreed upon settlement amount totaling Eighty Thousand Dollars and Zero Cents ($80,000.00), to be paid by the Eye Care Defendants in full settlement of the Released Claims asserted in this Action, which

includes the Attorneys' Fees and Costs, Settlement Administration Fees, the Enhancement Award, the LWDA Payment, and Individual Settlement Payments. (*Id*. at ¶ 33, Ex. 1, § 1.10).

3. Net Settlement Amount or NSA: means Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys' Fees and Costs, Settlement Administration Fees, Plaintiff's Enhancement Award, and the LWDA Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Settlement Group Members. (*Id*. at ¶ 33, Ex. 1, § 1.13).

4. LWDA Payment: means sixty-five percent (65%) of the Net Settlement Amount that will be distributed to the LWDA pursuant to PAGA. (*Id*. at ¶ 33, Ex. 1, §1.12).

5. Individual Settlement Payment: means the proportionate share of the Net Settlement Amount to be distributed to each PAGA Member based on the number of his/her/their Pay Periods worked in the PAGA Period in relation to the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period. Pursuant to PAGA, thirty-five percent (35%) of the Net Settlement Amount shall be paid to PAGA Members as Individual Settlement Payments. (*Id*. at ¶ 33, 34; Exs. 1-2, §1.11.)

6. PAGA Counsel's Attorneys' Fees and Expenses: means the PAGA Counsel's attorneys' fees and expenses to be requested and subject to approval by the Court at the time of the Approval Hearing in an amount not to exceed Twenty-Six Thousand Six Hundred Sixty-Seven Dollars and Zero Cents ($26,667.00) (one-third of the Gross Settlement Amount) and costs not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000). (*Id*. at ¶ 33, Ex. 1, § 1.17)

7. Settlement Administration [Costs]: Settling Parties have agreed to appoint ILYM Group, Inc. as the third party "Administrator" for this Settlement. An Administration Expense ILYM has provided a quote for administration with an estimate of $2,650.00 for administration of the settlement. To the extent the Administration Expenses are less or the Court approves payment less than $2,650, the remainder shall be included in the Net Settlement Amount. (*Id*. at ¶33, Ex. 1, § 1.26; and ¶ 36, Ex. 4).

8. Release of Claims Seeking Civil Penalties under PAGA Based on the Facts Alleged in the Complaint. The settlement releases the following claims against all released parties: "all the claims and theories for penalties pursuant to PAGA that were set forth, or that could have been set forth on the facts alleged in the Action during the PAGA Period, pursuant to *Huff v. Securitas Services USA, Inc.* (2018) 25 Cal.App.5th 745, including, but not limited to, under California Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 2802, 2810.5, 2698 *et seq*., and related IWC Wage Orders, based on the various theories of liability, including but not limited to, failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to pay waiting time penalties, failure to pay timely wages, failure to furnish accurate wage statements, failure to indemnify employees for necessary expenditures. No claims other than those for PAGA penalties are being released. The Released Claims are for the PAGA Period." (*Id*. at ¶ 33, Ex. 1, § 1.23)

B. Notice and Distribution of PAGA Funds

The Agreement provides that the "Effective Date" shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment approving this Agreement and Plaintiff providing notice of the settlement/Judgment to the LWDA. (*Id*. at ¶ 32, Ex. 1 §1.9.)

Not later than twenty-one (21) days after the Eye Care Defendants receive written confirmation that the Court granted Approval of the Settlement, the Eye Care Defendants will deliver the PAGA Member Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (*Id*. at ¶ 32, Ex. 1 §1.14)

Within thirty (30) days of the Effective Date, the Eye Care Defendants shall transmit the Gross Settlement Amount to the Settlement Administrator. (*Id*. at ¶ 32, Ex. 1 §§ 7.1.)

Within thirty (30) calendar days of the Effective Date, the Administrator will pay to Settlement Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded Attorneys' Fees and Litigation Expenses Payment; to the LWDA, the Court-approved LWDA Payment; and to the Administrator, the Court-awarded Administration Fees and Expenses. Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. (*Id*. at ¶32, Ex. 1 §7.2.)

The Administrator will issue checks for the Individual Settlement Payment(s) and send them to the PAGA Members via First Class U.S. Mail, postage prepaid. Settlement Group Members shall

have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Group Members whose checks were voided. (*Id*. at ¶ 32, Ex. 1 §4.4.1.)

The Administrator must conduct an PAGA Member Address Search for all other PAGA Members whose checks are retuned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the PAGA Member Address Search. The Administrator need not take further steps to deliver checks to PAGA Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any PAGA Member whose original check was lost or misplaced, requested by the PAGA Member prior to the void date. (*Id*. at ¶ 32, Ex. 1 §7.3.)

IV. ARGUMENT IN FAVOR OF APPROVAL

A. The Proposed PAGA Settlement Should be Approved

It is well established that PAGA serves to augment the limited enforcement capability of the LWDA by empowering employees to bring actions to enforce California's labor standards. (*Iskanian v. CLS Transportation L.A., LLC* (2014) 59 Cal.4th 348, 383; accord *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 986 ["The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring such actions themselves."].) In the similar context of wage and hour class actions, the Courts review settlements to determine whether the proposed settlement is within the range of reasonableness considering the strength of the claims against the proposed settlement, the risk, expense, complexity and likely duration of further litigation, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating

parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

In this case, the Settlement was reached through arm's length bargaining and sufficient investigation was performed to allow counsel to act intelligently. As described above, the Parties thoroughly investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed Settlement and engaged in sufficient investigation and discovery, to support the Settlement. Accordingly, the Settlement came only after the case was fully investigated by counsel. (Hakopian Decl. ¶¶ 6-9, Ex. 1 attached thereto.) This Litigation, therefore, had reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. (Boyd v. Bechtel Corp. (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

The settlement negotiations have been at all times adversarial and non-collusive in nature. Indeed, continued good faith but occasionally contentious negotiations were required to ultimately reach an agreement following continued negotiations and with significant assistance from an experienced employment law mediator. (Hakopian Decl. ¶¶ 6-9.) While Plaintiff believes in the merits of the case, she also recognizes the inherent risks of litigation and understands the benefit of settlement and providing funds immediately as opposed to delaying payment or risking an unfavorable decision on summary adjudication/judgment, at trial and/or the damages awarded, and/or appeal all of which have potential to eliminate any relief.

Further, experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, affd. 661 F.2d 939 (9th Cir. 1981); *Boyd*, 485 F.Supp. at 617). Counsel is experienced in similar litigation and approves the Settlement. (Hakopian Decl. ¶ 19-26; Declaration of Steven I. Azizi In Support of Plaintiff's Notice of Motion and motion for Approval of [PAGA] Settlement ("Azizi Decl." ¶ 3-14.)

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had Plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139). Instead, "[c]ompromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation" (*Wershba*, 91 Cal.App.4th at 250).

B. The Proposed Settlement is a Reasonable Compromise of Claims

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133). To assist the Court with determining if the proposed settlement is within a range that is fair, reasonable, and adequate, Plaintiff's counsel analyzed the value of pleaded class and PAGA allegations. As stated above, the settlement was reached only after exchanging discovery prior and conducting legal analyses of both Plaintiff's and the Eye Care Defendants' theories. Plaintiff's Counsel reviewed all time and pay records for PAGA Members. The data showed that the time there were approximately 1,112 pay periods. (Hakopian Decl. ¶¶ 3-10, and 17). Plaintiff's analysis is as follows:

1. **Failure to Pay Unpaid Wages** Plaintiff alleged that the Eye Care Defendants instituted and maintained a policy whereby employees continuously worked off-the-clock and were not compensated for all the time that Plaintiff and PAGA Members were "suffered to or permitted to work," or otherwise under the Eye Care Defendants' control. (Hakopian Decl. ¶ 11). Plaintiff alleged that the Eye Care Defendants routinely understaffed their locations during periods of heavy workload which caused employees to assist patients off-the-clock approximately one to ten minutes

per week. (*Id.*) Furthermore, Plaintiff alleged that the Eye Care Defendants required employees to travel to the St. Helena and/or American Canyon offices during their meal periods while off-the-clock, which deprived employees of compensation for travel time but also resulted in non-compliant meal periods for those workdays. (*Id.*) Lastly, Plaintiff alleged that the Eye Care Defendants instructed Plaintiff and PAGA Members at least once or twice a month to clock out for their meal periods and then attend office or sales meetings without compensation or the required meal-period premium. (*Id.*) The Eye Care Defendants argued that they had compliant policies and paid Plaintiff and PAGA Members for all time worked, and that no off-the-clock work occurred or was permitted. (*Id.*) They further provided policies which informed Plaintiff and PAGA Members that no off-the-clock work was permitted and if instructed by anyone to work off-the-clock, to report the directive immediately to the Executive Director. (*Id.*) For these reasons, the Eye Care Defendants argued there were significant defenses to the unpaid wages claims which warranted a significant discount. (*Id.*)

2. **Failure to Provide All Meal Periods pursuant to Labor Code sections 226.7, 512, and 1198**: Plaintiff alleged that the Eye Care Defendants' service demands prevented Plaintiff and PAGA Members from taking compliant meal periods. (Hakopian Decl. ¶ 12). Notably, Plaintiff alleged that the Eye Care Defendants did not schedule meal periods as stated in the employee handbook and deprived employees of their compliant, off-duty, meal periods. (*Id.*) Plaintiff further alleged that employees would clock-out for their meal periods and continued to work to complete their assignments in violation of California law. (*Id.*) Plaintiff argued that the time records analyzed showed facial violations and Plaintiff did not believe that the Eye Care Defendants had evidence to rebut this presumption, name. (*Id.*)

Notwithstanding the above, the Eye Care Defendants contended that they provided employees with handbooks with legally compliant meal periods providing for the timing and number of meal periods employees were to receive, and that in practice, employees did in fact receive compliant meal periods and/or meal period premiums. (*Id.*) Accordingly, Plaintiff had to account for the Eye Care Defendants' evidence that it had a written policies in place (including a meal break waiver form) and paid meal period premiums during the PAGA Period, as well as the

practical policies, that complied with California law, and whether Defendants could establish that employees were aware of the policy and when a meal wasn't shown in the time records as being taken or was taken untimely, it was the employees' choice rather than pursuant to the Eye Care Defendants' policies. (*Id.*)

3. **Failure to Provide All Rest Periods pursuant to Labor Code sections 226.7 and 1198**:

Similar to the meal period violations, Plaintiff alleged that the Eye Care Defendants failed to provide rest periods at legally compliant intervals of every four hours worked or "major fraction" thereof and/or failed to provide rest periods that were at a net 10-minutes or duty-free. (Hakopian Decl. ¶ 13). Plaintiff alleged that employees rarely received both full 10-minute rest breaks on any given day while employed by the Eye Care Defendants because of their policy of understaffing their locations that prevented employees from taking compliant rest breaks. (*Id.*) Further, Plaintiff argued that the Eye Care Defendants informed employees that "drinking water or refilling your water bottle," constituted a rest period, even though employees were not relieved of all duty during that time, and no rest break premiums were paid during the PAGA Period. (*Id.*)

However, since PAGA Members did not clock in or out for rest breaks, any potential violation is difficult to track; especially where, as here, the Eye Care Defendants had a legally compliant rest period policy during the PAGA Period. (*Id.*) The Eye Care Defendants also provided Plaintiff and PAGA Members with a policy acknowledgement informing them of their rights to take compliant rest periods. (*Id.*) Further, the Eye Care Defendants contended that if an employee did not receive a rest period, it was the employee's choice rather than pursuant to the Eye Care Defendants' practices or policies. (*Id.*) The Eye Care Defendants also raised the fact that California law did not require recording of rest breaks and that the Eye Care Defendants' time records could not be used as evidence of rest break violations or to calculate damages. (*Id.*) Thus, the maximum value should be adjusted to reflect the Eye Care Defendants' defenses and the risks involved in proving the rest period claim in light of the fact that there are no records. (*Id.*)

4. **Wage Statement Penalties pursuant to Labor Code Section 226:** Plaintiff further alleged that due to the Eye Care Defendants' policies, failure to pay minimum wages, overtime wages, and meal and rest premiums, the Eye Care Defendants failed to provide Plaintiff and PAGA

Members accurate wage statements in accordance with the California Labor Code. (Hakopian Decl. ¶ 14). The penalty for a violation of section 226 is a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation. (Labor Code § 226.3). In addition, an employee "suffering injury as a result of a knowing and intentional failure by an employer" can seek damages of $100 per pay period, up to a maximum of $4,000. (Labor Code § 226(e).) The employee's attorney is also "entitled to an award of costs and reasonable attorney's fees." (Labor Code § 226(e).)

However, this violation was subject to the defenses for the unpaid wages and meal period and rest period violations because it was derivative, and as explained above, the Eye Care Defendants contend that no such violations occurred. (Hakopian Decl. ¶ 14). The Eye Care Defendants also argued that they did not willfully fail to pay wages due at termination and therefore it did not violate Labor Code §203.

5. **Failure to Reimburse Work Expenses pursuant to Labor Code Section 2802:** Plaintiff alleged that the Eye Care Defendants failed to indemnify Plaintiff and PAGA Members for all necessary expenditures and losses incurred in direct consequence of the discharge of their duties. (Hakopian Decl. ¶ 15). Specifically, Plaintiff alleged that the Eye Care Defendants required non-exempt employees to use their personal cell phones for work-related purposes – Plaintiff alleged that the Eye Care Defendants mandated all employees to install "Paychex" application on their personal phones to clock-in and out while traveling to other offices, to request time off from work, to review wage statements, and so forth. (*Id*.) Based on pay records of PAGA Members, Plaintiff theorized that the Eye Care Defendants failed to provide adequate reimbursement for PAGA Members cell phone use. (*Id.*)

As such, one calculation performed at mediation by Plaintiff resulted in the Eye Care Defendants' maximum exposure for failure to reimburse phone bills to be $11,120 (1,112 pay periods x $10 per bill per pay period). (*Id.*) Additionally, Plaintiff also argued that section 2802 does not carry its own civil penalty, any recovery on this claim is limited to the default penalty under Labor Code section 2699(f)(2) assessed at $100 per aggrieved employee per pay period – which resulted in $111,200 (1,112 pay periods x $100 penalty). (*Id.*)

Notwithstanding the above, the Eye Care Defendants disputed this claim in its entirety. (*Id.*) The Eye Care Defendants argued that they did not require PAGA Members to install any applications on their personal phones and that electronic devices like computers were available for employees to use in lieu of using their personal phones. (*Id.*) The Eye Care Defendants characterized the allegation that PAGA Members used personal cell phones for work purposes as speculative and unsupported by any documentary evidence and noted that neither the time records nor the pay records reflect any such use. (*Id.*)

Once again, Plaintiff had to, and did, factor in the Eye Care Defendants' defenses, when considering whether the settlement reached was fair, reasonable and adequate. (*Id.*)

6. **Waiting Time Penalties:** Plaintiff and PAGA Members alleged that due to the Eye Care Defendants' failure to timely pay final wages, and failure to pay break premiums, PAGA Members are entitled to recover 30 days' wages as a waiting time penalty. (Hakopian Decl. ¶ 16). The Eye Care Defendants argued that this claim was derivative and lacked merit because there were no underlying violations as explained above, and that, to the extent any wages were not timely paid upon separation, the failure to do so was not willful. (*Id.*)

7. **California Private Attorney General Act (PAGA) Penalties:** Plaintiff alleged that the Eye Care Defendants had committed a myriad of California Labor Code violations, subjecting them to penalties under PAGA. (Hakopian Decl. ¶ 17). The status of limitations for PAGA claims is one year, and 65% of any amount recovered under PAGA is to be paid to the State of California. At the time of settlement Plaintiff estimated, based on the information provided by the Eye Care Defendants, that there were a total of One Thousand One Hundred and Twelve (1,112) pay periods to the December 1, 2025 mediation, thereby accounting for $610,800 in PAGA penalties assuming there is such a violation in a respective pay period and that the violations are stackable. Plaintiff alleged that there was at least one compensable penalty per unique pay period, totaling $610,800 in PAGA penalties. (*Id.*) Plaintiff maintained that the Eye Care Defendants' nonpayment of wages, nonpayment of break premiums, and failure to accurately record-keep were all clear violations of the California Labor Code that subjected them to PAGA penalties. The Eye Care Defendants disputed Plaintiff's contentions (as explained above).

Based on the violations above, Plaintiff calculated that the total potential exposure without interest, attorney fees and costs was $610,800. However, applying further significant discounts for the risks associated with the action (including but not limited to, the Court finding the action is unmanageable, the risk that the Court exercises its discretion to lower the penalties awarded, the risk of losing at trial) and applying further discounts for the Eye Care Defendants' evidenced compliance with the California Labor Code this gross settlement amount of Eighty Thousand Dollars and Zero Cents ($80,000.00) is within a reasonable range, especially considering the defenses the Eye Care Defendants raised. (*Id.*)

Moreover, the proposed Settlement, even with deductions, provides a substantial sum to the PAGA Members. The Settlement secured by Plaintiff here amounting to Eighty Thousand Dollars and Zero Cents ($80,000.00) is greater than other PAGA penalty awards approved by California state courts, which often range between $7,500.00 and $10,750.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. (*See, e.g.*, *Penaloza v. PPG Industries Inc*., Case No. BC471369, 2013 WL 2917624 at *2 (*Super. Ct. L.A. County,* May 20, 2013) (approving PAGA penalties of $7,500.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (*Super. Ct. L.A. County*, March 12, 2013) (approving PAGA penalties of $10,000.00 for class of approximately 3,000 members).

The Eye Care Defendants also argued that PAGA penalties would be limited. The Eye Care Defendants argued that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts to consider the issue have refused to "stack" PAGA penalties. See *Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5.00 per pay period); accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, the Eye Care Defendants argued that Plaintiff and the PAGA Members are not entitled to recover PAGA penalties at the subsequent violation rate of $200.00 per pay period. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and

therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100.00 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp*. No. 2 (2008) 163 Cal.App.4th 1157, 1209; accord *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, the Eye Care Defendants argued that even if the Plaintiff and the PAGA Members were able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $100.00 rate (at the most), as opposed to the $200.00 per pay period rate at maximum, and there is a likelihood that a further reduction of the penalty to $5.00 per pay period as approved in Carrington would apply given the Eye Care Defendants' compliance with the Labor Code as discussed above.

Plaintiff understood the Eye Care Defendants' position to be, using the most recent court of appeal decision on the topic of evaluating the value of a PAGA claim (*Carrington v. Starbuck*s, supra) (i.e. at $5.00 per pay period X 1,112 pay periods at issue), that it is likely the Eye Care Defendants' maximum exposure is actually only $5,560. (Hakopian Decl. ¶ 17). The Eye Care Defendants argued that the Carrington valuation could be used as a ceiling for assessing PAGA penalties and that this amount was its true "worst case scenario" exposure). Further, in analyzing all of the claims and the action as a whole, Plaintiff was forced to consider the risks of proceeding with litigating the action. These risks included the Court finding the action potentially unmanageable. There are even further risks if the case proceeded to trial such that the Court could award significantly less penalties than are statutorily prescribed due to the Eye Care Defendants' good faith conduct and compliant employment policies. Finally, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63. Because the proposed Settlement is neither unjust nor ignores the public interest, it should be approved.

Accordingly, the gross PAGA penalty payment is highly reasonable in light of the risks and uncertainties associated with the PAGA claims in this case. The Settlement commits the Eye Care

Defendants to pay a sum large enough to punish the Eye Care Defendants for alleged violations and to deter such alleged conduct in the future. At the same time, in light of the alleged violations and defenses thereto, it is not so large as to be unjust, oppressive or confiscatory. Based upon the foregoing, the proposed Settlement is fair, reasonable, and in the best interest of the state of California and the PAGA Members.

Counsel for Plaintiff and the Eye Care Defendants are convinced that the proposed Settlement is fair based on the negotiations and a detailed knowledge of the issues present in this action. (Hakopian Decl. ¶ 17). The length and risks associated with a motion for summary adjudication, trial, and other normal perils of litigation have impacted the value of the claims and were all weighed in reaching the proposed settlement. In light of the above, the proposed Settlement is well within the range of reasonableness and should be granted approval. Plaintiff believes that in providing employees with relief and obtaining penalties for the LWDA, this Settlement furthers the purpose of PAGA to enforce compliance with the Labor Code and should be approved.

V. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED

Counsel seeks $26,667.00, one-third of the Gross Settlement Amount, in fees for the time spent litigating this matter and reimbursement of expenses of $14,245.64 (costs not to exceed $15,000.00) incurred in the prosecution of this action. The request is for fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis.

A. Plaintiff's Attorneys' Fee Request of $26,667.00, One-Third Of The Gross Settlement Amount, Is Proper Under The Common Fund Doctrine

California state and federal courts have recognized that in actions creating a common fund benefiting others as well as Plaintiff, an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits provided by the litigation. (*Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 577 F.2d 759, 769.) Such "fee spreading" assures that all those benefited by the litigation pay their fair share of obtaining the recovery. (*Lealao v. Beneficial Calif., Inc*. (2000) 82

Cal.App.4th 19, 26.)

In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein Counsel obtained a $19 million non-reversionary settlement on behalf of the class, the California Supreme Court approved the use of the percentage of fund or common fund method to award one-third of the settlement amount or $6,333,333.33 to Counsel for attorneys' fees. The Court stated:

> Whatever doubts may have been created by Serrano III, supra, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method - including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [] convince us the percentage method is a valuable tool that should not be denied our trial courts.

(*Laffitte,* 1 Cal.5th at 503). Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." (*Boeing,* 444 U.S. at 478). The Supreme Court explained: "The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants' expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." (*Id*.) Thus, the common fund doctrine ensures that each beneficiary of the settlement contributes proportionately to the payment of the attorneys' fees recovered from monetary payments that the prevailing party recovered in the lawsuit. (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt. L.P*. (9th Cir. 2002) 301 F.3d 1115.)

In common fund cases, the percentage approach is preferable to the lodestar because: (1) it

aligns the interests of Counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Laffitte,* 1 Cal.5th at 486-487; see *Lealao,* 82 Cal.App.4th at 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375, 1378-79.)

A fee of $26,667.00 which constitutes one-third of the gross settlement is within the range of reasonableness. (See *Laffitte,* 1 Cal.5th at 503-504 [approving common fund method used for attorneys' request of one-third of settlement].) Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378.) Because Counsel's requested fee is reasonable and falls well within the historical range of attorney's fee awards under the common fund theory, the Court should approve the requested fees as reasonable pursuant to the common fund approach.

B. Plaintiff's Fee Request Is Reasonable Under The Lodestar Method with a Multiplier

In a common fund settlement "[t]he lodestar method is merely a cross-check on the reasonableness of a percentage figure." (*Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1050, n.5). In this case, consideration of Counsel's lodestar as a cross-check to the percentage figure also strongly supports the reasonableness of the requested fee award. The base amount is then adjusted in light of various factors. (*Serrano v. Priest*, 20 Cal.3d at 48).

Plaintiff's fee request is also reasonable based on a cross-check of Plaintiff's Counsel's lodestar without the application of a multiplier. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 622. The hours spent and the reasonable hourly rate are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. Id. at 622 (citing *Serrano*, 20 Cal.3d at 48-49). The California Supreme Court has noted that "courts conducting lodestar crosschecks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to 'focus on the general question of whether the fee award appropriately reflects

the degree of time and effort expended by the attorneys.'" *Laffitte*, 1 Cal.5th at 505 (citations omitted) (finding trial court properly exercised its discretion to perform the cross-check "using counsel declarations summarizing overall time spent, rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task"); see also *Wershba*, 91 Cal.App.4th at 254- 255 (declarations from attorneys "evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" sufficient for fee award).

Lealao holds that, if a court sets fees under the lodestar method, the multiplier should consider what counsel would have earned on the free market, which is determined by a percentage of the common fund. *Lealao*, 82 Cal.App.4th at 49-50. Thus, even if the court awards fees under the lodestar method, the fees should be adjusted by a multiplier to reflect the percentage of the fund. *Horsford v. Board of Trustees California State University* (2005) 132 Cal.App.4th 359, 394-395 ("It has long been recognized, however, that the contingent and deferred nature of the fee award in a civil rights or other case with statutory attorney fees requires that the fee be adjusted in some manner to reflect the fact that the fair market value of legal services provided on that basis is greater than the equivalent noncontingent hourly rate.").

Here, Plaintiff's Counsel's total lodestar is $53,287.50 for Miracle Mile Law Group, LLP, which is based upon 101.5 hours of attorney time at customary hourly rates. (Hakopian Decl. ¶¶ 19-29). Thus, Plaintiff's request for $26,667.00 in attorney's fees is reasonable under the lodestar method.

C. PAGA Counsel's Hourly Rates and Costs are Reasonable

The hourly rates of the attorneys are in line with rates approved for attorneys in this region with similar experience. (Hakopian Decl., ¶¶ 19-29, 35, Ex. 3 attached thereto] [printout Laffey Matrix]). A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095). When determining a reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App.

4th 629, 632.) Class/PAGA Counsel's skill and experience support their hourly rates. (Hakopian Decl. ¶¶19-29; Azizi Decl. ¶¶6-14) [describing experience in employment law and class actions since 2019].) Other attorneys working in California courts charge comparable if not higher rates as indicated in the printouts of California firms' billing rates from the 2014 National Law Journal Survey showing partner rates up to $1,195 and associate rates up to $750. (*See e.g.,* Hakopian Decl. ¶ 35, Ex. 3 attached thereto; *see*, *e.g., Richard v. Ameri-Force Mgmt. Servs., Inc.*, Case No. 37-2008-00096019 (San Diego Super. Ct., August 27, 2010) [$695 to $750 an hour for partners]; *Barrera v. Gamestop Corp.*, Case No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) [$700 an hour for partners]; and *Anderson v. Nextel Retail Stores, LLC*, Case No. CV 07-4480 (C.D. Cal. June 20, 2010) [$655 to $750 an hour for partners].)

Plaintiff's Counsel's rates are also in line with the Laffey Matrix which states a rate of $625 per hour for attorneys out of law school 4-7 years and $1,227 per hour for attorneys out of law school over 20 years. (Hakopian Decl. ¶ 35, Ex. 3 available at http://www.laffeymatrix.com/see.html). California Courts have applied the Laffey Matrix with adjustments to the specific California locality where the Counsel's office is located based on "Locality Pay Tables." (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695-696 [affirming fee award based on Laffey Matrix with upward 9 percent rate adjustment from D.C. area compared to San Francisco Bay Area based on Locality Pay Tables]; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365 F.Supp.2d 912, 921-922 [using Laffey Matrix with upward adjustment of 9 percent for San Francisco based on difference between D.C. Area 's +15.98 locality pay compared to San Francisco's +26.39 percent locality pay differential from the federal courts' "Judiciary Salary Plan Pay Tables."].) Here, Plaintiff's Counsels' offices are located in Los Angeles County. For 2018, the Locality Pay Tables (and Judiciary Salary Plan Pay Tables referred to in *In re HPL Techs., Inc.*), state a 2.35 percent increase for the Los Angeles-Long Beach, CA area which includes the following counties: Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino County, Santa Barbara County, and Ventura County. In applying the 2.35 locality increase for attorneys working in Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino County, Santa Barbara County, and

Ventura County over the Washington-Baltimore area stated in the Laffey Matrix, the Laffey Matrix states the following relevant rates: $625 for attorneys 4 to 7 years out of law school. (Hakopian Decl. ¶ 35, Ex. 3 attached thereto).

1. **Counsel's Total Hours are Reasonable**

In determining a lodestar, reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. (See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639).

Counsel has spent 101.5 hours in the last one and one half years on this case. (Hakopian Decl., generally). In summary form, counsel's many tasks included the following: pre-filing investigation, legal research, and research of the Eye Care Defendants and their operations; communicating with Plaintiff regarding her responsibility in bringing the action, the facts of his case, her employment, her work environment, her documents and the Eye Care Defendant's policies and procedures; drafting pleadings and notices; drafting communications with the LWDA; reviewing Plaintiff and other PAGA Members files and determining liability and evaluating claim and defense strengths and weaknesses; communicating with PAGA Members; legal research of case law and wage orders regarding applicable claims and defenses; meeting and conferring over directly relevant informal discovery; evaluating the Eye Care Defendant's policies; determining case strategy; communicating with the Eye Care Defendants' Counsel; evaluating data provided in informal discovery; calculating PAGA damages; negotiating settlement and settlement documents; preparing for and attending a full-day mediation, communicating with the administrator and responding to administrator's inquiries; engaging in post-mediation negotiations; preparing the motion for approval of PAGA settlement and supporting documents. All of the tasks and work performed were reasonable and necessary to the prosecution of this case and justified, particularly in light of the result achieved. (Hakopian Decl., generally, and Azizi Decl., generally).

2. **Plaintiff's Costs Request Of $14,245.64 Is Reasonable**

Plaintiff's Counsel requests $14,245.64 in costs (costs not to exceed $15,000.00) in this

matter. This amount is reasonable and incurred in the litigation of this matter. (See Hakopian Decl. ¶¶ 30-31). All costs were reasonably incurred in prosecution of the lawsuit and are well under the cap for costs on the PAGA Settlement. The majority of the costs were associated with mediation, expert services and filing of the case, and the remainder was reasonably incurred in prosecution of the lawsuit. (Id.)

VI. THE COURT SHOULD GRANT PLAINTIFF'S REQUEST FOR AN ENHANCEMENT AWARD FOR THE WORK OF REPRESENTING AGGRIEVED EMPLOYEES

PAGA allows private individuals to act as representatives of the state of California in bringing a legal action to enforce PAGA claims. Furthermore, relief under PAGA is designed primarily to benefit the public. (*Arias v. Superior Court* (2009) 46 Cal.4th 986; *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501, 128 Cal.Rptr.3d 854). To not grant a PAGA enhancement award would discourage future plaintiffs from righting a defendants' unlawful actions against aggrieved employees. Accordingly, pursuing PAGA claims is crucial for the following public policy reasons, which should entitle Plaintiff to an enhancement award:

A. Benefit to the General Public: PAGA claims are designed to benefit the general public by enforcing California labor laws and holding employers accountable for violations. (*Rocha v. U-Haul Co. of Cal.,* (2023) 88 Cal. App. 5th 65, 304 Cal. Rptr.3d 587). By pursuing PAGA claims, a plaintiff is not only seeking justice for themselves but also helping to ensure that other employees are protected from similar violations in the future. (*Id*.) As such, PAGA allows aggrieved employees to act as private attorneys general to recover civil penalties on behalf of the state, supplementing the enforcement actions by the state. The awarding of PAGA penalties to plaintiffs furthers this purpose by providing additional resources to the state's labor law enforcement agencies. (*Seifu v. Lyft, Inc*., (2023) 89 Cal. App. 5th 1129, *Robinson v. Southern Counties Oil Co.,* (2020) 53 Cal. App. 5th 476, *ZB, N.A. v. Superior Court*, (2019) 8 Cal. 5th 175, *Wood v. Kaiser Foundation Hospitals*, (2023) 88 Cal. App. 5th 742)).

B. Systemic Change: By pursuing PAGA claims, plaintiffs are contributing to systemic change in the workplace. Holding employers accountable for widespread violations can lead to

improved working conditions and practices for all employees, not just those directly involved in the lawsuit. Accordingly, PAGA has created a systematic change in enforcing labor laws in California by allowing aggrieved employees to act as private attorneys general, thereby enhancing the enforcement of labor laws and benefiting the general public. (*Adolph v. Uber Technologies, Inc.,* (2023) 14 Cal. 5th 1104).

C. Enhancement Award: A PAGA enhancement award is seen to compensate the plaintiff for the risk and effort he/she/they incurred in bringing the suit. It is also considered appropriate given the risk of bringing the lawsuit, which is a matter of public record, and the potential for future employers to be less likely to hire an employee who has previously filed an action against an employer. While relief under PAGA is designed primarily to benefit the general public, not the party bringing the action, courts have routinely approved enhancement payments consistent with the approach in class action cases. The Ninth Circuit has recognized that a named plaintiff's "willingness to act as a private attorney general" may justify the award of an incentive payment. (*Rodriguez v. West Publishing Corp.* (2009) 563 F.3d 948, 959). As such, Plaintiff's enhancement award is appropriate given the risk of bringing the lawsuit, which was a matter of public record because future employers may be less likely to hire an Plaintiff who has previously filed an action against an employer.

Furthermore, trial courts in California have consistently provided PAGA enhancement awards. (*See, e.g., Moniz v. Adecco USA Inc.* (2021) 72 Cal.App.5th 56 [the court approved a $12,000 additional fee to the plaintiff]; *Brooke v. Aurora Behavioral Healthcare-Santa Rosa, LLC et. al*, No. SCV-261926 (Sonoma County Super. Ct. Aug 25, 2021) [Court awarded an incentive award of $10,000]; *Hamilton v. Juul Labs, Inc.* (Cal. N. D. Nov. 16, 2021) (2021) WL 5331451, at **8, 13-14 [incentive award for both PAGA representatives $10,000.00]; *Garrett v. Bank of America*, Case No. RG13699027 (Alameda County Superior Court Oct. 28, 2016) [three PAGA plaintiffs $25,000 each as incentive awards]; *Brewer v. Connell Chevrolet,* Case No. 30-2016-00852123 (Orange County Superior Court June 15, 2017) [PAGA representative Brandon Brewer was awarded incentive award payment of $15,000]; *Bundley v. Vanderlande Industries*, No. 20STCV37685 (L.A. County Super. Ct. Nov. 4, 2021) [The Court awards Plaintiff Tia Bundley a

$5,000 incentive award]; *Diaz v. UPS*, (2023) U.S. Dist. LEXIS 221935 [The Court finds and determines that the payment of civil penalties pursuant to PAGA as specified in the Settlement Agreement is fair and reasonable. The court also granted incentive awards to the named Plaintiffs]; 12. *Rodriguez v. Cal. Payroll Group*, (2022) Cal. Super. LEXIS 47539 [Service awards were granted to plaintiffs in recognition of their efforts in prosecuting the action for the benefit of the State of California and PAGA Employees]; *Ambrose v. US Med-Equip, LLC*, (2024) U.S. Dist. LEXIS 14387 [Enhancement awards are also meant to compensate for the financial and reputational risks that plaintiffs undertake in bringing the action, especially in wage-and-hour actions where plaintiffs undertake a significant 'reputational risk' by bringing suit against their former employers).

Here, Plaintiff should be awarded the enhancement award for bringing this Action to compensate her for her time, effort, financial and reputational risk, and any additional sacrifices she made in pursuit of this litigation that was for a public benefit that produced systemic policy changes for all employed with the Eye Care Defendants.

VII. CONCLUSION

The PAGA Settlement is fair, adequate, and reasonable. It will result in fair payment considering the risks and defenses; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective Parties who are experienced in wage and hour representative litigation. For the foregoing reasons, the Parties respectfully request that the Court grant approval of the proposed PAGA Settlement.

Dated: August 13, 2026

MIRACLE MILE LAW GROUP, LLP

By: _____

Steven I. Azizi, Esq.
Sevada Hakopian, Esq.

Attorneys for Plaintiff
DANA MARIA SEPULVEDA MORALES

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 750 N. San Vicente Blvd, Ste. RW 1000, West Hollywood, California 90069.

On August 13, 2026, I served the foregoing documents on the interested parties in this case:

- **PLAINTIFF DANA MARIA SEPULVEDA'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT**

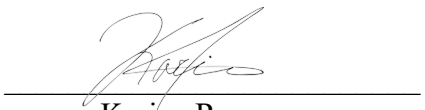
Jack Jimenez, Esq. **O'HAGAN MEYER** Address: 550 South Hope Street Suite 2400 Los Angeles, CA 90071 Emails: jjimenez@ohaganmeyer.com	**Attorneys for Defendants**

[ ] **BY MAIL:** I am "readily familiar" with the practices of MIRACLE MILE LAW GROUP, in collecting and processing correspondence and documents for mailing. Under that practice, documents for mailing would be deposited with the US Postal Service on that same day this affidavit is signed with postage fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date is more than 1-day after the day of deposit for mailing the affidavit. [CCP § 1013]

[X] **BY EMAIL:** I served the above-mentioned document electronically on the parties listed at the e-mail addresses on the next page and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2026, at West Hollywood, California.



Karine Reganyan
Declarant