

Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Enzo Nabiev (SBN 332118)
E-mail: enabiev@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Kia Janae Brown

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

KIA JANAЕ BROWN, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

ASTON CARTER, INC., a Maryland
corporation; GUIDANT GLOBAL, INC., a
Michigan corporation; and DOES 1 through
10, inclusive,

Defendants

Case No.: 34-2022-00329962-CU-OE-GDS

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

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

PAGA APPROVAL HEARING:

Date: October 2, 2026

Time: 9:00 a.m.

Dept: 8A

Judge: Hon. Jill Talley

Reservation ID: A-0329962-00

Complaint filed: November 17, 2022

Trial date: Not set

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

PLEASE TAKE NOTICE that on October 2, 2026, at 9:00 a.m. in Department 8A of the Sacramento County Superior Court, Tani Cantil-Sakauye Sacramento County Courthouse, 500 G Street, Sacramento, California 95814, Plaintiff Kia Janae Brown (“Plaintiff”) will, and hereby does, move the Court for an Order and Judgment, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

1. Approving the PAGA Settlement Agreement and Release (“Settlement”) between Plaintiff and Defendants Aston Carter, Inc., Maximus, Inc. and Guidant Global, Inc;
2. Appointing Moon Law Group, PC as PAGA Counsel;
3. Approving the requested Attorney’s Fees of \$330,000.00;
4. Approving the requested Attorney’s Costs of \$21,878.07;
5. Appointing Plaintiff as the PAGA Representative and approving a \$10,000.00 incentive award to Plaintiff;
6. Appointing Phoenix Class Action Administration Solutions as the Settlement Administrator and approving \$10,500.00 as the Settlement Administration Costs;
7. Approving the scope of the Released PAGA Claims and Released Parties;
8. Approving a non-reversionary Gross Settlement Amount of \$990,000.00;
9. Approving \$617,621.93 for PAGA Penalties as settlement of the Released PAGA Claims, to be distributed as 75% (\$463,216.45 to the LWDA) and 25% (\$154,405.48 to PAGA Employees);
10. Directing consummation of the Settlement pursuant to its terms and provisions;
11. Entering Judgment; and
12. Retaining jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing the Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

As this Motion is unopposed, the Parties respectfully request relief from the page limit

1 requirement set by California Rules of Court, Rule 3.1113(d).

2 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter
3 by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be
4 downloaded off the court's website. If the party does not have online access, they may call the dedicated
5 phone number for the department as referenced in the local telephone directory between the hours of 2:00
6 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call
7 the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

8 Respectfully submitted,

9 DATED: September 9, 2026

MOON LAW GROUP, PC

10 By: _____
11 Kane Moon
12 Enzo Nabiev

13 *Attorneys for Plaintiff Kia Janae Brown*
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT	2
A. Plaintiffs' Claims and Procedural Background	2
B. Discovery and Investigation	4
C. Settlement Negotiations and Notice to the LWDA	5
D. Key Terms of the Proposed Settlement	6
III. DISCUSSION	9
A. Availability of Civil Penalties	9
B. The Settlement Merits Approval.....	10
1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes of Deterrence and Punishment under PAGA	10
2. The Settlement Amount Provides a Realistic Value for the Claims that is within the "Ballpark" of Reasonableness	11
3. The Settlement Is a Fair and Reasonable Result Following a Thorough Investigation and Accounting of Various Litigation Risks	14
C. The Incentive Award to Plaintiffs Is Reasonable and Should Be Approved.....	16
D. The Requested Attorneys' Fees/Costs Are Reasonable and Should Be Approved	16
1. Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method.....	17
2. The Matter Involves a Fee and Cost Shifting Provision under PAGA.....	18
3. Counsel's Experience, Reputation, and Ability Support the Requested Fee Award	19
4. While the Lodestar Method Is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees	19
5. Plaintiffs' Counsel's Costs Were Actually and Reasonably Incurred	21
IV. CONCLUSION	21

TABLE OF AUTHORITIES

FEDERAL CASES

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

No. C 12–05860 CRB, 2013 WL 622032..... 4

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

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Hensley v. Eckerhart (1983) 461 U.S. 424 20

Moreno v. City of Sacramento (9th Cir. 2008) 534 F.3d 1106 20

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No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073 4

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

Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759 17

STATE CASES

Caliber Bodyworks, Inc. v. Superior Court (2005) 134 Cal.App.4th 36 10

City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105 17

Dunlap v. Superior Court (2006) 142 Cal.App.4th 330 10

Gentry v. Super. Ct. (2007) 42 Cal.4th 443 16

In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545 20

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116..... 14

Munoz v. BCI Coca-Cola Bottling Co. of L.A. (2010) 186 Cal.App.4th 399 14

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

Quinn v. State of California (1975) 15 Cal.3d 162..... 17

Serrano v. Priest (1977) 20 Cal.3d 25 17

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224..... 20

STATUTES

California Private Attorneys General Act, Labor Code §§ 2698, <i>et seq.</i>	1, 10
Labor Code § 90.5	16
Labor Code § 2699(a)	9
Labor Code § 2699(e)(2)	15
Labor Code § 2699(f)(2)(A)	13
Labor Code § 2699(f)(2)(B)	13
Labor Code § 2699(k)(1)	18, 21
Labor Code § 2699(m)	8
Labor Code § 2699(s)(1)	6
Labor Code § 2699(s)(2)	1, 6, 10
Labor Code § 2699(v)(1)	8
Labor Code § 2699.3	10
Labor Code § 2699.5	10

OTHER AUTHORITIES

Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024)	8
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kia Janae Brown (“Plaintiff”) seeks approval of a non-reversionary \$990,000.00
4 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys
5 General Act, Labor Code sections 2698, *et seq.* (“PAGA”). After two mediations with experienced
6 and neutral mediator Jason Marsili, Esq., and extended settlement negotiations, Plaintiff reached a
7 resolution with Defendants Aston Carter, Inc., Maximus, Inc. and Guidant Global, Inc. (collectively
8 “Defendants”) (Plaintiff and Defendants are the “Parties”). The Parties have executed a PAGA
9 Settlement Agreement (the “Settlement”), a true and correct copy of which is attached as **Exhibit 1**
10 to the Declaration of Kane Moon in Support of Motion for Approval of PAGA Settlement (“Moon
11 Decl.”) submitted concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiff now
12 files this motion seeking an order approving the proposed Settlement.

13 The proposed Settlement seeks to resolve all alleged claims for civil penalties pursuant to
14 PAGA for approximately 1,670 PAGA Employees who worked approximately 62,354 Pay Periods
15 and are defined as individuals who were employed by Defendant Aston Carter, Inc., and assigned to
16 work on the UI Deferred Workload Project for Maximus, Inc., as hourly, non-exempt employees in
17 California at any time during the PAGA Period (the “PAGA Employees”). (Moon Decl., ¶ 5;
18 Settlement, ¶¶ II.A.10; II.B.2.f.) For purposes of settlement, the “PAGA Period” shall be the period
19 commencing November 17, 2021, and ending February 21, 2026. (Settlement, ¶ II.A.19.) This
20 Settlement is on behalf of the California Labor and Workforce Development Agency (the “LWDA”),
21 Plaintiff, and PAGA Employees. (Moon Decl., ¶ 5.)

22 Settlement of a PAGA claim requires court approval. Pursuant to the operative PAGA statute,
23 the “court shall review and approve any penalties sought as part of a proposed settlement agreement
24 pursuant to this part.” (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed
25 settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable.
26 Specifically, the issue is whether the PAGA penalties to which the parties have agreed provide
27 “genuine and meaningful” relief that is “consistent with the underlying purpose of the statute to
28 benefit the public,” and whether the penalties are reasonable in light of the potential verdict value in

1 this case. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG
2 (JEMx), 2015 WL 12732709, at *5; *see also O'Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201
3 F.Supp.3d 1110, 1135.)

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

10 The meaningful value achieved by the Settlement at issue may be gleaned from the fact that
11 the LWDA and the estimated **1,670** PAGA Employees will, cumulatively, receive approximately
12 **\$617,621.93** as PAGA Penalties. (Moon Decl., ¶ 25.) This is a significant recovery, not only because
13 further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses
14 asserted by Defendants, but also because an investigation by experienced Plaintiff's Counsel and
15 analysis of discovery revealed minimal identifiable violations, the discretionary nature of awarding
16 PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the
17 potential manageability issues and current state of the law. For these reasons, as set forth more fully
18 below, Plaintiff respectfully requests the Court enter the proposed order and proposed judgment
19 submitted concurrently herewith.

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

21 **A. Plaintiffs' Claims and Procedural Background**

22 Defendant Aston Carter is a staffing agency, while Defendant Guidant Global self-describes
23 itself as an industry-leading workforce solutions company, and Maximus provides administration
24 and other services for Medicaid, Medicare, health care reform, welfare-to-work, and student loan
25 servicing, among other government programs. (Moon Decl., ¶ 6.) Plaintiff was hired by Aston Carter
26 and assigned to work as a customer service representative at Maximus from approximately February
27 2022, until March 2022. (*Id.*) Throughout her employment, Plaintiff was classified as non-exempt
28 and paid hourly. (*Id.*) Plaintiff contends she and her former coworkers were subjected to the same or

1 similar unlawful labor practices during their employment by Defendants, including failure to pay all
2 wages. (*Id.*)

3 On or around November 5, 2022, Plaintiff, through her counsel, filed a “Notice of Labor
4 Code Violations and PAGA Penalties” with the California State Labor Workforce Development
5 Agency and served a copy of same on Defendants (the “LWDA Notice”). (*Id.* at ¶ 7, Ex. 2.)

6 On November 17, 2022, Plaintiff filed a class action complaint in Sacramento County
7 Superior Court entitled *Kia Janae Brown v. Aston Carter, Inc. et al.*, Case No. 34-2022- 00329962-
8 CU-OE-GDS against Defendants alleging violations of California law for: (1) failure to pay
9 minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4)
10 failure to authorize and permit rest periods; (5) failure to indemnify necessary business expenses; (6)
11 failure to timely pay final wages at termination; (7) failure to provide accurate itemized wage
12 statements; and (8) unfair business practices (“Court Action”). (*Id.* at ¶ 8.)

13 On February 23, 2023, Plaintiff filed a First Amended Complaint in the Court Action (the
14 “First Amended Complaint” or “operative Complaint”) that reasserted all the same eight causes of
15 action in the Complaint for individual and putative class claims set forth above and added a ninth
16 cause of action for civil penalties under PAGA. (*Id.* at ¶ 9.)

17 On April 21, 2023, the Court granted Plaintiff’s Request for Dismissal of Class Action
18 Allegations Without Prejudice Pursuant To California Rule Of Court 3.770 from the operative
19 Complaint. (*Id.* at ¶ 10.) On May 26, 2023, Plaintiff filed an Amendment to Complaint to identify
20 Doe 1 as Defendant Maximus, Inc. (*Id.*)

21 On October 20, 2023, Defendants moved to compel Plaintiff’s individual claims to arbitration
22 and to stay the representative portion of the PAGA claim in the Court Action pending completion of
23 arbitration, which the court granted. (*Id.* at ¶ 11.) On December 19, 2023, Plaintiff submitted her
24 individual claims to arbitration with JAMS, entitled *Kia Janae Brown v. Aston Carter, Inc., et al.*,
25 JAMS Arbitration Ref. No. 5220004910 (“Arbitration”) (the Court Action and the Arbitration are
26 collectively referred to as the “Action”). (*Id.*)

27 Defendants ardently oppose the merits of this case and denies Plaintiff’s factual allegations.
28 (*Id.* at ¶ 12.) Defendants argue all employees were properly paid for all hours worked and that it did

not require or permit employees to work off-the-clock. (*Id.*) As for the regular rate claim, Defendants argue there was no issue with paying employees the proper regular rate of pay because any additional remuneration was discretionary and thus, not required to be incorporated into the regular rate of pay. (*Id.*) Defendants maintain all employees were provided with the opportunity to take all their code-compliant meal and rest breaks and that missed breaks, if any, were solely the result of employees' voluntary choice. (*Id.*) As for the unreimbursed business expenses, Defendant maintains it did not require employees to incur any business-related expenses. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendants argue penalties are not warranted because employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL 622032, at *10 [“A plaintiff must adequately plead an injury arising from an employer’s failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient.”].) Additionally, Defendants allege their good-faith belief that their payment of all wages precludes the imposition of waiting time penalties because Plaintiff would be unable to show Defendants’ alleged conduct was done willfully or knowingly. (Moon Decl., ¶ 10; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendants claim they did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 12.) Defendants also maintain the claims are not susceptible to proof on a representative basis because of the individualized and varying nature of each employee’s experience, making this matter unmanageable. (*Id.*)

B. Discovery and Investigation

The Parties agreed to mediate the representative PAGA claims and engaged in formal and informal discovery exchange prior to mediation. (*Id.* at ¶ 13.) Defendants provided information and documents, which enabled Plaintiff’s Counsel to meaningfully investigate Plaintiff’s allegations and assess the value of the PAGA claims. (*Id.*) Specifically, Defendants produced Plaintiff’s personnel file and her time and payroll records, including her signed prospective meal period waiver, documents regarding Defendants’ written policies and practices in effect during the relevant period, and time and corresponding payroll records during the PAGA Period. (*Id.*)

1 Prior to both mediation sessions, Plaintiff's Counsel reviewed and analyzed all the
2 information that Defendants produced, including the time/pay records and Defendants' written
3 policies, in conjunction with information provided by Plaintiff. (*Id.* at ¶ 14.) Plaintiff was also
4 deposed by Defendants' Counsel. (*Id.*) Plaintiff's Counsel retained an expert to analyze the time/pay
5 records and prepare a damage analysis prior to mediation. (*Id.*) The expert was able to prepare an
6 analysis with a reasonable degree of certainty. (*Id.*) Further, Plaintiff's Counsel investigated the
7 applicable law regarding the claims and defenses asserted in this action. (*Id.*) Accordingly, Plaintiff's
8 Counsel were able to evaluate the probability of success on the merits and Defendants' monetary
9 exposure. (*Id.*) In sum, Plaintiff and her Counsel's familiarity with the facts of the case and the legal
10 issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

11 **C. Settlement Negotiations and Notice to the LWDA**

12 On April 16, 2025 and again on November 21, 2025, the Parties participated in private
13 mediation facilitated by Jason Marsili, Esq. an experienced PAGA action mediator. (*Id.* at ¶ 15.) The
14 negotiations were at arm's length and although conducted in a professional manner, were adversarial.
15 (*Id.*) Both sides went into the mediations willing to explore the potential for a settlement of the
16 dispute, but they were also prepared to litigate their position through trial and appeal if a settlement
17 had not been reached. (*Id.*) Negotiations were protracted, with extended discussions and instances in
18 which it appeared the Parties would not reach a resolution. (*Id.*) Following a full discussion of the
19 strengths and weaknesses of the claims and defenses, the Parties ultimately reached a resolution
20 following a mediator's proposal after the November 21, 2025 mediation, the material terms of which
21 are encompassed within the Settlement at issue. (*Id.*)

22 In reaching a resolution, the Parties recognized that the issues presented in this action are
23 likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further
24 litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to
25 the potential benefits of litigation. (*Id.* at ¶ 16.) Plaintiff and her Counsel also considered the risk and
26 uncertainty of the outcome inherent in any litigation when determining whether this Settlement was
27 the correct option. (*Id.*) In sum, Plaintiff and her Counsel believe the proposed Settlement is in the
28 best interests of PAGA Employees and the LWDA. (*Id.*)

1 Pursuant to PAGA, on or around November 5, 2022, Plaintiff submitted notice of the alleged
2 Labor Code violations to the LWDA, with certified mail service on Defendant, and paid the required
3 filing fee. (*Id.* at ¶¶ 7, 17, Ex. 2.) The administrative exhaustion period under PAGA expired without
4 the LWDA indicating any intent to investigate the allegations. (*Id.*) Accordingly, Plaintiff is duly
5 authorized to act as a private attorney general with respect to the PAGA claims involved in this
6 action. (*Id.*)

7 Pursuant to Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a
8 file-stamped copy of the First Amended Complaint containing the Court-assigned case number. To
9 date, the LWDA has not sought to intervene in this action. (*Id.* at ¶ 17.)

10 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the
11 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff's motion and
12 the hearing date. (*Id.* at ¶ 19, Ex. 3.) To date, the LWDA has not indicated any objection to the
13 Settlement. (*Id.* at ¶ 19.)

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

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

16 1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross
17 Settlement Amount ("GSA") is \$990,000.00, subject to potential increase under an Escalator Clause
18 and entry of the Court's Approval Order and is non-reversionary. (Settlement, ¶¶ II.B.2, II.B.2.f.)
19 Defendants shall fund the Gross Settlement within fifteen (15) days of the Effective Date, as that
20 term is defined in the PAGA Settlement Agreement. (*Id.* at ¶ II.C.7.) Within ten (10) calendar days
21 following the Funding of the Settlement, the Settlement Administrator shall pay from the Settlement
22 Fund Account the Court-approved payment to the LWDA, Individual Settlement Payments to PAGA
23 Members, Incentive Award to Plaintiff, Settlement Administration Costs to the Settlement
24 Administrator, and Attorney's Fees and Attorney's Costs to Plaintiff's Counsel. (*Id.* at ¶¶ II.C.8-
25 C.12.) Any funds remaining uncashed after 180 days from issuance will be transmitted to the
26 California State Controller's Office, to be held pursuant to the Unclaimed Property Law in the name
27 of each individual who failed to cash his or her check prior to the void date. (*Id.* at ¶ II.C.12.)
28

1 2. Escalator Clause: The Settlement is based on Defendants’ belief that there are
2 approximately 62,354 PAGA Pay Periods at issue during the PAGA Period. (*Id.* at ¶ II.B.2.f.) If the
3 number of PAGA pay periods worked during the PAGA Period exceeds 68,590, which is ten percent
4 (10%) above 62,354, then the Gross Settlement Amount shall be increased on a pro-rata basis equal
5 only to the percentage increase in PAGA pay periods above 68,590 (i.e., if the total pay periods
6 increase by 12%, then there would be a 2% increase to the Gross Settlement Amount). (*Id.*)

7 3. Plaintiff’s Incentive Award. The Settlement includes a \$10,000.00 incentive award to
8 Plaintiff, payable from the GSA, subject to Court approval. (*Id.* at ¶ II.B.2.c.) This payment is in
9 recognition of Plaintiff’s service as the PAGA representative and in addition to any settlement
10 payment Plaintiff may receive as a PAGA Employee. (*Id.*)

11 4. Attorneys’ Fees and Costs. The Settlement includes attorneys’ fees in an amount up to
12 a total of 1/3 of the GSA (i.e., \$330,000.00), plus reimbursement for out-of-pocket litigation costs
13 not to exceed \$40,000.00, payable to Plaintiff’s Counsel from the GSA. (*Id.* at ¶¶ II.B.2.a, II.B.2.c.)
14 Any portion of the Attorney’s Fees and Costs not awarded to Plaintiff’s Counsel will be added to the
15 PAGA Payment. (*Id.*) My firm’s final litigation costs are \$21,878.07. (Moon Decl., ¶ 22.)

16 5. Settlement Administration Costs. The Settlement provides a Settlement Administration
17 Costs to the Settlement Administrator, payable from the GSA, up to a maximum payment
18 \$10,500.00, for its fees and expenses in administering this Settlement. (*Id.* at ¶ II.B.2.d.) Any portion
19 of the Settlement Administration Costs not awarded by the Court will be added to the Net Settlement
20 Amount. (*Id.*) The Parties jointly selected Phoenix Class Action Administration Solutions
21 (“Phoenix”) as the neutral entity to administer this Settlement. (*Id.* at ¶ II.A.16.; Moon Decl., Ex. 5.)

22 6. PAGA Payment. “PAGA Payment” means the Gross Settlement Amount *minus* the sum
23 of: (1) Attorney’s Fees; (2) Attorney’s Costs; (3) Plaintiff’s Incentive Award; and (4) Settlement
24 Administration Costs. (*Id.* at ¶ II.A.12.) The LWDA will be paid 75% of the PAGA Payment. (*Id.*)
25 The PAGA Employees will be paid the remaining 25% of the PAGA Payment. (*Id.*) Accordingly,
26 the PAGA Payment is estimated to be **\$617,621.93**,¹ which will be distributed 75% (i.e., 75% *

27
28 ¹ The estimated PAGA Payment was calculated by deducting the following amounts from the GSA (\$990,000.00): \$10,000.00 for Plaintiff’s Incentive Award, \$21,878.07 for Attorney’s Costs,

1 \$617,621.93= **\$463,216.45**) to the LWDA and 25% (i.e., 25% * \$617,621.93= **\$154,405.48**) to
2 PAGA Employees pursuant to PAGA law governing Plaintiff's claims.² (Moon Decl., ¶ 24.)

3 7. Individual Settlement Payment to PAGA Employees. Each PAGA Employee will be
4 entitled to his or her pro rata amount from the 25% share of PAGA Penalties that is directly
5 proportional to the number of pay periods worked in the PAGA Period without having to submit any
6 claim form. (Settlement, ¶¶ II.B.2.e, II.C.12.) This results in an average Individual PAGA Payment
7 of roughly **\$92.46** for each of the estimated 1,670 PAGA Employees (\$154,405.48 / 1,670), and a
8 PAGA Pay Period value of **\$2.48** for each of the 62,354 estimated PAGA Pay Periods (\$154,405.48
9 / 62,354). (Moon Decl., ¶ 25.) The Parties agree that one hundred percent (100%) of the Individual
10 Settlement Payments made to PAGA Employees shall be considered penalties, for which a Form
11 1099 will be issued to reflect these payments. (See Settlement, ¶¶ II.A.8, II.C.14.).

12 8. Limited Release of PAGA Claims by PAGA Members. Upon court approval of the
13 settlement and payment made by Defendant Aston Carter of the Gross Settlement Amount to the
14 Third Party Administrator chosen by the Parties, all PAGA Members will be deemed to have released
15 on behalf of themselves and their respective former, present and future representatives, agents,
16 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
17 PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated
18 in Plaintiff's operative Complaint in the Action, and PAGA Notice filed with the LWDA on
19 November 5, 2022, for the duration of the PAGA Period, which include, but are not limited to,
20 California Labor Code §§ 201-204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174,
21 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, et seq., 2802, Bus. and Prof. Code § 17200, et seq.,
22 and the applicable IWC Wage Orders. (*Id.* at ¶ II.B.3.) "Released Parties" means each of the

23 _____
24 \$330,000.00 for Attorney's Fees, and \$10,500.00 for the Settlement Administration Costs. (See
Settlement, ¶ II.A.12.)

25 ² On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as
26 to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1,
27 2024.) As amended, PAGA now provides for a 65%-LWDA/35%-aggrieved employee split. (Lab. Code
28 § 2699(m).) However, this provision does not apply retroactively prior to June 19, 2024. (*Id.* at §
2699(v)(1).) In other words, because Plaintiff's PAGA Notices were submitted prior to June 19, 2024,
any civil penalties recovered in this action will be split according to prior PAGA law (i.e., 75% to the
LWDA and 25% to PAGA Employees).

Defendants, and each of their respective former, present, and future parents, subsidiaries, affiliates, predecessors, successors, holding companies, joint venturers, agents, and assigns, and all of their current, former, and future owners, officers, directors, members, managers, employees, consultants, partners, shareholders, accountants, attorneys, insurers, reinsurers, and/or legal representatives. (*Id.* at ¶ II.A.15.)

9. Plaintiff's Release. In addition to the Released PAGA Claims, Plaintiff also agrees to concurrently execute a separate general release of all claims, known or unknown, in favor of Defendants and the Released Parties, in consideration for a payment to settle her additional, non-PAGA individual claims (the "Individual Settlement Payment to Plaintiff"), which will be memorialized under a separate Individual Settlement Agreement. (*Id.* at ¶ II.B.4.) Plaintiff's general release of claims, known or unknown, will only take effect once Plaintiff receives her Individual Settlement Payment to Plaintiff. (*Id.*) The Parties agree to disclose the amount of the Individual Settlement Payment to Plaintiff to the Court to the extent necessary to obtain approval of the settlement as to the PAGA Employees. (*Id.*) Should it be required, the Parties will request permission to lodge with the Court the terms of the Individual Settlement Agreement under seal. (*Id.*) Plaintiff will receive the Individual Settlement Payment to Plaintiff within fifteen (15) calendar days of the Effective Date of the PAGA Settlement. (*Id.*)

III. DISCUSSION

A. Availability of Civil Penalties

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action on behalf of him- or herself and other current or former employees." (Lab. Code § 2699(a).) Before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of

1 the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA
2 to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at §§ 2699.3,
3 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also*
4 *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

5 Here, in compliance with Labor Code section 2699.3, Plaintiff submitted notice of the Labor
6 Code violations at issue to the LWDA, and they have exhausted administrative remedies without the
7 LWDA noticing any intent to investigate the claims. (Moon Decl., ¶ 7, Ex. 2.) Accordingly, Plaintiff
8 is duly authorized to act as a private attorney general with respect to the PAGA claims involved in
9 this action. (*Id.* at ¶ 17.)

10 **B. The Settlement Merits Approval**

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

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

15 The \$990,000.00 GSA amounts to “genuine and meaningful” relief “consistent with the
16 underlying purpose of the statute to benefit the public.” (Moon Decl., ¶ 38; *see O’Connor*, 201
17 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of
18 the estimated full worth].) This is an excellent result, particularly because, under the Settlement,
19 PAGA Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk of
20 not being able to recover anything at all. (Moon Decl., ¶ 38.)

21 The Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory
22 purposes of deterrence and punishment, on the one hand, and providing PAGA Employees with
23 genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation,
24 Defendants have had to hire legal counsel, engage in employee-wide discovery, and participate in
25 mediation. (Moon Decl., ¶ 39.) Assuming approval is granted, Defendants will also have to pay civil
26 penalties pursuant to PAGA. (*Id.*) Not including its own attorneys’ fees and costs, Defendants will
27 pay \$990,000.00 to resolve this matter—of which at least \$617,621.93 is allocated toward PAGA
28 Penalties and will be distributed as 75% to the LWDA and 25% to PAGA Employees, in compliance

1 with PAGA law governing the claims in this Action. (*See* Settlement, ¶ II.B.2.e.) This amount
2 represents roughly **50%** of the realistic exposure for the claims (\$617,621.93 / \$1,247,080.00), as
3 discussed below. (Moon Decl., ¶ 39.) Additionally, the release obtained under the Settlement does
4 not preclude PAGA Employees from pursuing any individual (non-PAGA) claims they may have
5 against Defendants or the other Released Parties. (*See id.* at ¶ II.B.3.)

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

8 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive,
9 and arm’s-length negotiations between the Parties. (Moon Decl., ¶ 15.) Plaintiff’s Counsel performed
10 an extensive investigation into the facts, claims, and defenses at issue and Defendants’ potential
11 liability, including a review of governing law and analysis of formal and informal discovery,
12 including Defendant’s written policies and time/pay data for a majority of PAGA Employees. (*Id.* at
13 ¶¶ 13–14.) Plaintiff’s Counsel used the foregoing discovery and investigation to prepare for
14 mediation and, with the assistance of a statistics expert, assessed the probability of success on the
15 merits and Defendants’ monetary exposure, discussed the strengths and weaknesses of the claims
16 and defenses in depth at mediation and months of continued negotiations, and ultimately negotiated
17 the resulting Settlement. (*Id.* at ¶¶ 13–16.)

18 Based on Plaintiff’s Counsel’s analysis of the arguments and information provided by
19 Defendants, on an expert analysis of the time/pay records, and on information from Plaintiff,
20 Plaintiff’s Counsel evaluated Defendants’ both maximum and risk-adjusted potential exposure in
21 preparation for mediation. (*Id.* at ¶ 29.) Although the expert’s analysis revealed that the time and pay
22 records supported several violations by Defendant, those identifiable violations were primarily limited
23 to the regular rate and meal period claims. (*Id.*) The records themselves did not provide strong
24 support for the off-the-clock work, rest period, and expense reimbursement claims, and derivative
25 penalties for those claims, as these claims are predominantly testimony based. (*Id.*) In other words,
26 Plaintiff’s analysis revealed that certain claims were not as strong as originally believed. (*Id.*)

27 Because Defendants did not require employees to record rest periods, there are no records to
28 establish the rest period claim on the merits. (*Id.* at ¶ 30.) Additionally, there are no records to

1 establish the off-the-clock work claim and reimbursement claim on the merits. (*Id.*) Rather, proof of
2 these claims would need to be supported by declarations from PAGA Employees regarding missed
3 rest periods and off-the-clock work as the records themselves cannot demonstrate what breaks were
4 missed, when, and why, what expenses were incurred, and they cannot demonstrate the time, if any,
5 PAGA Employees spent working off the clock. (*Id.*)

6 Indeed, the exposure figures that were calculated for mediation were based on assumed high
7 violation rates that would not likely be demonstrated at trial, as they assume either the participation
8 of all PAGA Employees (which would be difficult given the particularly large size of this group), or
9 alternatively, the use of surveys or statistical data as a surrogate (which would still require the
10 participation of a majority of PAGA Employees to establish a sound representation of all non-exempt
11 employees). (*Id.* at ¶ 31.) The reality is that many, if not all, employees would be unwilling to
12 participate due to fear of retaliation. (*Id.*) However, even assuming those employees would be willing
13 to participate, obtaining such declarations would potentially reveal that each PAGA Employee had a
14 different experience. (*Id.*) The individualized nature of their employment experience and the
15 numerosity of employees affected present significant risk with manageability and proof on the merits.
16 (*Id.*)

17 Even as to the rounding, regular rate and meal period claims, our analysis found that
18 Defendants' exposure is less than initially believed. (*Id.* at ¶ 32.) Although Plaintiff alleged that
19 Defendants' rounding practices may have resulted in unpaid compensable time, Plaintiff's Counsel
20 reviewed the time and payroll records, with the assistance of an expert, and did not find Labor Code
21 violations on a representative basis. (*Id.*) Accordingly, the rounding claim was determined to have
22 negligible, if any, value. (*Id.*) As to the meal period claim, Defendants' payroll records show that
23 100% of meal periods were recorded as 30 minutes. (*Id.*) Based on information from Plaintiff,
24 Plaintiff's Counsel believe that Defendants' payroll records are inaccurate as Plaintiff alleges that
25 meal periods were consistently short of 30 minutes or interrupted. (*Id.*) However, Defendants argue
26 that the payroll records accurately reflect the meal periods taken by PAGA Employees. (*Id.*) With
27 regard to the regular rate claim, Plaintiff's expert found that there were approximately 127 additional
28 payments, with pay codes such as "BILLABLE BONUS ND (121)," "DDX – BONUS BILLABLE

D (6),” that were not incorporated into the regular rate of pay for purposes of paying overtime and additional compensation. (*Id.*) However, Defendants argue that these additional payments were discretionary bonuses and that Defendants did not fail to incorporate any payments into the regular rate of pay. (*Id.*) Defendants also argue that to the extent they failed to do so, which they deny, Defendants’ alleged failure resulted in nominal exposure. (*Id.*) Defendants’ time and payroll records show that only 0.3% of pay periods included both overtime and additional compensation, and 0.1% of pay periods included both sick pay and additional compensation. Additionally, the violation rates assume that the bonuses were non-discretionary, which Defendant disputes. (*Id.*)

The likelihood that Defendants could assert viable legal defenses would likely further reduce its overall exposure. (*Id.* at ¶ 33.) For example, the individualized and testimony-intensive nature of the claims could bar manageability of this representative action or otherwise significantly reduce Defendants’ overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic as it presumes Plaintiffs would be able to stack the penalties, although penalty stacking is not expressly permitted by PAGA. (*Id.* at ¶ 34.) Rather, without either (i) a prior finding by the LWDA or a court within the past five years that the employer violated PAGA or (ii) evidence that the employer’s conduct was malicious, fraudulent, or oppressive, PAGA only provides for a maximum \$100 penalty for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) Moreover, Plaintiff’s Counsel believe it would be unrealistic to expect the Court would award the full (penalty-stacked) exposure given the discretionary nature of awarding penalties and given Defendant’s defenses, including that any failure to pay premiums, regular rate wages, or for off-the-clock work was not knowingly or willfully done, and additionally, to the extent employees received wage statements that were allegedly inaccurate, employees suffered no actual resulting damage or harm. (Moon Decl., ¶ 34.) Moreover, awarding the full penalties amount would likely raise Due Process concerns. (*Id.*) For the foregoing reasons, the *realistic* exposure is thus far below the estimate premised on penalty stacking. (*Id.* at ¶ 35.)

Based on the foregoing, Plaintiff’s Counsel believe it is more reasonable to assess penalties on a \$100.00 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the estimated 62,354 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 36.)

1 Accordingly, Plaintiff's Counsel estimate Defendants' maximum PAGA exposure to be
2 **\$6,235,400.00** (\$100.00 x 62,354). (*Id.*) However, based on the discovery, Defendants' arguments at
3 mediation and continued settlement discussions, an understanding that the claims are heavily
4 dependent on the unlikely participation by PAGA Employees and their varying employment
5 experience, and other important considerations discussed above, it is reasonable to assume a violation
6 occurred in at most 20% of all pay periods, which results in a realistic (*risk-adjusted*) exposure of
7 **\$1,247,080.00** (\$6,235,400.00 x 20%). (*Id.*) As a result, the GSA of \$990,000.00 represents about
8 **79%** of the realistic exposure (\$990,000.00 / \$1,247,080.00) and 16% of the maximum exposure
9 (\$990,000.00 / \$6,235,400.00). (*Id.*)

10 The proposed Settlement therefore represents a substantial recovery when compared to the
11 reasonably forecasted recovery. (*Id.* at ¶ 37.) When considering the risks of litigation, the
12 uncertainties involved in continued litigation, the burdens of proof necessary to establish liability,
13 and the probability of appeal, it is clear the GSA of \$990,000.00 is within the "ballpark" of
14 reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.*
15 (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
16 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require "an explicit statement of the
17 maximum amount the plaintiff class could recover if it prevailed on all its claims," but instead, only
18 an "understanding of the amount that is in controversy and the realistic range of outcomes of the
19 litigation"].)

20 **3. The Settlement Is a Fair and Reasonable Result Following a Thorough** 21 **Investigation and Accounting of Various Litigation Risks**

22 Plaintiff's Counsel have conducted a thorough investigation into the facts of the allegations.
23 (Moon Decl., ¶ 40.) Based on the foregoing discovery and on their own independent investigation
24 and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable,
25 and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of
26 significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendants on the
27 merits, the Settlement is in the best interests of the PAGA Employees and the State of California.
28 (*Id.*)

1 Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, they also
2 acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 41.) Plaintiff's Counsel
3 also recognize that proving the amounts of penalties owed to each PAGA Employee would be an
4 expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiff's Counsel are also
5 of the opinion that because the issues here are fairly contested, there is a possibility of the Court not
6 awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary
7 nature of awarding PAGA penalties. (*Id.* at ¶ 42.) Indeed, a Court may reduce PAGA penalties "if,
8 based on the facts and circumstances of the particular case, to do otherwise would result in an award
9 that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words,
10 were this matter to go to trial, any award granted would be at the discretion of the Court and subject
11 to a substantial reduction. (Moon Decl., ¶ 42.) While Plaintiff's Counsel believe there would be no
12 persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and
13 significantly reduce any award of penalties. (*Id.* at ¶ 43.) This wide range of potential recovery and
14 additional delays and risks of trial provide justification to settle for a reasonable amount of recovery
15 at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in
16 preparation for mediation, the maximum exposure did not comport with the realistic exposure that
17 Defendant faced, as discussed above. (*Id.*)

18 Plaintiff's Counsel took into account the risk of not being able to proceed on a representative
19 basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk
20 that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary
21 nature of awarding PAGA penalties. (*Id.* at ¶ 44.) The provisions of the Labor Code triggering PAGA
22 penalties in this case include Labor Code sections 203, 210, 226, 1197.1, and 2802. (*Id.*) However,
23 PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).) Accordingly,
24 it is entirely possible that even if Plaintiff would be successful at trial, assuming she is first able to
25 win on the merits regarding their individual claims at arbitration and then defeat the manageability
26 issues presented at litigation by the large number of PAGA Employees in this action, Plaintiff may
27 still be awarded substantially less than what was obtained through the Settlement. (Moon Decl., ¶
28 44.)

1 The Settlement avoids the significant risks, burdens, and the accompanying expense of
2 further litigation. (*Id.* at ¶ 45.) Though the Parties have engaged in a significant amount of
3 investigation, informal discovery, and employee data analysis, they have not participated in
4 extensive formal discovery procedures, including depositions and expert discovery. (*Id.*) Moreover,
5 Plaintiff would have to proceed with arbitration of their individual claims and win on the merits
6 before proceeding with litigation of the representative PAGA claims. (*Id.*) Preparation for trial and
7 the prospect of appeals in the wake of any summary judgment ruling would remain for the Parties.
8 (*Id.*) As a result, the Parties would incur considerably more attorneys’ fees and costs through trial, a
9 lengthy and uncertain process that could result in recovering less than was settled for. (*Id.*)

10 **C. The Incentive Award to Plaintiffs Is Reasonable and Should Be Approved**

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

20 Here, in light with the Settlement and subject to the Court’s approval, Plaintiff requests an
21 enhancement payment of \$10,000.00. (Settlement, ¶ II.B.2.c.) Plaintiff and her Counsel respectfully
22 submit that the requested enhancement is reasonable in recognition of Plaintiff’s role as the PAGA
23 Representative, for the risks to future employment inherent in undertaking this role and for her
24 service and participation in litigation that resulted in a fair settlement under PAGA. (Moon Decl., ¶¶
25 46–49; Declaration of Plaintiff Kia Janae Brown in Support of Motion for Approval of PAGA
26 Settlement, ¶¶ 6–22.)

27 **D. The Requested Attorneys’ Fees/Costs Are Reasonable and Should Be Approved**

28 In line with the Settlement, Plaintiff’s Counsel requests an award of attorneys’ fees in an

amount of up to 1/3 of the GSA (i.e., \$330,000.00), plus reimbursement for actual litigation costs in the amount of \$21,878.07. (Moon Decl., ¶ 70; *see* Settlement, ¶ II.B.2.a.)

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

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

Here, Plaintiff’s Counsel seek an award of attorneys’ fees on the “percentage of recovery/common fund” theory. (Moon Decl., ¶ 71.) The purpose of this approach is to “spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

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

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re*

1 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

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

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

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

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

21 The Settlement at issue is beneficial in that it limits the risk of continued expenses and
22 consumption of time, energy, and resources facing Defendant while at the same time rewarding
23 Plaintiff’s Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of
24 this action involved significant financial risk for Plaintiff’s Counsel who undertook this matter on a
25 contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 76–79.) Once Plaintiff’s Counsel
26 undertook this litigation on behalf of the PAGA Employees, they committed to pursue it to its
27 conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could
28 have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 77.)

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

2 As demonstrated by their prior experience in pursuing class and representative actions on
3 behalf of employees, Plaintiff’s Counsel possess considerable expertise in litigating class action and
4 representative matters. (*Id.* at ¶¶ 50–67.) Plaintiff’s Counsel have been involved as lead counsel or
5 co-counsel in a multitude of class and representative actions resulting in beneficial results to class
6 members and aggrieved employees in California. (Moon Decl., ¶¶ 50-67.) Because it is reasonable
7 to compensate Plaintiff’s Counsel commensurate with their skill, reputation, and experience, the
8 requested fee award is supported here.

9 Plaintiff’s Counsel’s experience in wage-and-hour class and representative actions was
10 integral in evaluating the strengths and weaknesses of the case against Defendant and the
11 reasonableness of this Settlement. (Moon Decl., ¶ 68.) Practice in the narrow field of wage-and-hour
12 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
13 federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 65.) Based on these
14 and other factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from
15 the gross recovery for aggrieved employees. (*See id.* at ¶¶ 54, 59.) Thus, the requested fee award is
16 reasonable and fair.

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

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

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

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

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

Here, Plaintiffs’ Counsel combined lodestar is *no less than* **\$140,650.00**, which is based on *no less than* **189.8 hours** of attorney time spent to-date at their customary hourly rates. (Moon Decl., ¶ 72.) Thus, in comparison to this lodestar, the fee request represents a multiplier of **2.35**. (*Id.* at ¶

75(c).) Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation, including to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiffs regarding the case. (*Id.* at ¶ 73.) The amount of fees requested under the Settlement is warranted based on the contingent risk that Plaintiff’s Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the PAGA Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff’s Counsel. (*Id.* at ¶ 75.) Plaintiff’s Counsel also bear the risk of taking whatever actions are necessary if Defendants fails to pay. (*Id.* at ¶ 73.) Thus, the request for attorneys’ fees is more than reasonable under a lodestar check.

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

Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff’s Counsel seek reimbursement in the total amount of \$21,878.07, for expenses that were actually and reasonably incurred in this litigation. (Moon Decl., ¶ 80, Ex. 4.) Moreover, this amount is below the maximum allocation under the Settlement and thus, the remainder (\$18,121.93) will revert to the PAGA Penalties. (Moon Decl., ¶ 81; Settlement, ¶ II.B.2.b.) Thus, costs should be reimbursed in full.

IV. CONCLUSION

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

Respectfully submitted,

DATED: September 9, 2026

MOON LAW GROUP, PC

By: _____

Kane Moon
Enzo Nabiev
Attorneys for Plaintiff
Kia Janae Brown