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

JACQUELINE MARTINEZ TAPIA,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

TRAFFIX DEVICES, INC.; and DOES 1
through 10, inclusive,

Defendants

Case No.: 30-2025-01506267-CU-OE-CXC

REPRESENTATIVE ACTION

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

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

PAGA APPROVAL HEARING:

Date: January 28, 2027

Time: 2:00 p.m.

Dept.: CX102

Judge: Hon. Layne H. Melzer

Reservation Number: 74969319

Action filed: August 26, 2025

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on January 28, 2027, at 2:00 p.m. in Department CX102 of the
3 Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701,
4 Plaintiff Jacqueline Martinez Tapia (“Plaintiff”) will, and hereby does, move the Court for an Order and
5 Judgment, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

- 6 1. Approving the PAGA Settlement Agreement (“Settlement”) between Plaintiff and
7 Defendant Traffix Devices, Inc.;
- 8 2. Approving the requested PAGA Counsel Fees Payment of \$33,750.00;
- 9 3. Approving the requested PAGA Counsel Litigation Expenses Payment of \$1,920.84;
- 10 4. Appointing Phoenix Class Action Administration Solutions as the Administrator and
11 approving \$4,000.00 as the Administration Expenses Payment;
- 12 5. Approving the scope of the Released PAGA Claims and Released Parties;
- 13 6. Approving a non-reversionary Gross Settlement Amount of \$112,500.00;
- 14 7. Approving \$72,829.16 for PAGA Penalties as settlement of the Released PAGA Claims, to
15 be distributed as 65% (\$47,338.95) to the LWDA and 35% (\$25,490.21) to Aggrieved
16 Employees;
- 17 8. Directing consummation of the Settlement pursuant to its terms and provisions;
- 18 9. Entering Judgment and dismissing the above-captioned action with prejudice; and
- 19 10. Retaining continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
20 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii)
21 such post-Judgment matters as may be appropriate under court rules or as set forth in the
22 Settlement.

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

26 ///

27 ///

28 ///

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

Respectfully submitted,

DATED: September 29, 2026

MOON LAW GROUP, PC

By: _____

Kane Moon

Allen Feghali

S. Phillip Song

Micaela de Guzman

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jacqueline Martinez Tapia (“Plaintiff”) seeks approval of a non-reversionary
4 \$112,500.00 gross settlement of claims for civil penalties alleged pursuant to the California Private
5 Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). After a full day of negotiations,
6 Plaintiff reached a resolution with Defendant Traffix Devices, Inc. (“Defendant”) (collectively,
7 Plaintiff and Defendant are the “Parties”). The Parties have executed a PAGA Settlement Agreement
8 (the “Settlement”), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of
9 Kane Moon in Support of Motion for Approval of PAGA Settlement (“Moon Decl.”) submitted
10 concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiff now files this motion
11 seeking an order approving the proposed Settlement.

12 The Settlement resolves all claims for civil penalties under PAGA that arose during the PAGA
13 Period and that were alleged in the above-captioned matter (“Action”). (Settlement, ¶ 1.1.) For
14 purposes of settlement, the “PAGA Period” is August 23, 2024, to February 1, 2026, or to the
15 modified end date pursuant to Paragraph 8 of the Settlement. (*Id.* at ¶ 1.25.) This Settlement is on
16 behalf of the California Labor and Workforce Development Agency (the “LWDA”), Plaintiff, and all
17 persons employed by Defendant in California and classified as a non-exempt employee who worked
18 for Defendant during the PAGA Period (“Aggrieved Employees”). (*Id.* at ¶ 1.4.) Plaintiff is unaware
19 of any other pending litigation involving similar claims against Defendant that may be impacted by
20 approval of the Settlement, nor has Defendant pointed to any. (Moon Decl., ¶ 24.)

21 Settlement of a PAGA claim requires court approval. Pursuant to the operative PAGA statute,
22 the “court shall review and approve any penalties sought as part of a proposed settlement agreement
23 pursuant to this part.” (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed
24 settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable.
25 Specifically, the issue is whether the PAGA penalties to which the parties have agreed provide
26 “genuine and meaningful” relief that is “consistent with the underlying purpose of the statute to
27 benefit the public,” and whether the penalties are reasonable in light of the potential verdict value in
28 this case. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG

(JEMx), 2015 WL 12732709, at *5; *see also O'Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the LWDA and the estimated 156 Aggrieved Employees will, cumulatively, receive no less than \$72,829.16 as PAGA Penalties. (Moon Decl., ¶ 21.) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant, but also because an investigation by experienced PAGA counsel and analysis of discovery revealed minimal identifiable violations, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and current state of the law. For these reasons, as set forth more fully below, Plaintiff respectfully requests the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Defendant is a manufacturer of traffic control devices and crash attenuation products. (Moon Decl., ¶ 4.) Plaintiff worked for Defendant as a light assembly worker from approximately July 2024 and within the statutory period. (*Id.*) Throughout her employment, Plaintiff was classified as non-exempt and paid on an hourly basis. (*Id.*) Plaintiff contends she and her former coworkers were subjected to the same or similar unlawful labor practices during their employment by Defendant, including failure to pay all wages. (*Id.*)

Plaintiff's claims for unpaid wages stems from allegations of Defendant's failure to pay employees all minimum, overtime, sick pay, meal premium pay, and regular rate wages owed,

1 including due to Defendant's failure to compensate employees for off-the-clock work, such as for
2 arriving early and performing work duties such as walking the worksite and preparing for work,
3 donning and doffing into PPE equipment, and waiting in line to clock in for shifts, and Defendant's
4 failure to incorporate all remunerations into the regular rate of pay. (*Id.* at ¶ 5.) Plaintiff's meal and
5 rest period claims are based on allegations that due to the nature of their work and Defendant's
6 employment practices, employees regularly experienced missed, untimely, or interrupted breaks, and
7 that Defendant failed to provide any premiums for non-compliant rest breaks or all premiums for
8 non-compliant meals. (*Id.*) Plaintiff also alleges that Defendant failed to reimburse employees for all
9 reasonable and necessary business expenses incurred, including the occasional use of personal cell
10 phones for work purposes. (*Id.*) Plaintiff further alleges she and other employees did not receive all
11 wages owed at the time of termination nor accurate itemized wage statements due to Defendant's
12 failure to pay all wages and premiums. (*Id.*) Accordingly, Plaintiff alleges Defendant is liable for
13 civil penalties under PAGA. (*Id.*)

14 Because of the foregoing alleged violations of the Labor Code, Plaintiff filed a Class Action
15 Complaint on August 26, 2025, alleging Defendant systematically: (1) failed to pay minimum wages,
16 (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize
17 and permit rest breaks, (5) failed to indemnify necessary business expenses, (6) failed to timely pay
18 final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged
19 in unfair business practices. (*Id.* at ¶ 6.)

20 Pursuant to PAGA, on August 23, 2025, Plaintiff submitted notice of the alleged Labor Code
21 violations to the LWDA, with certified mail service on Defendant, and paid the required filing fee.
22 (*Id.* at ¶ 7, Ex. 2.) The administrative exhaustion period under PAGA expired without the LWDA
23 indicating any intent to investigate the allegations. (*Id.* at ¶ 7.) On October 28, 2025, Plaintiff filed a
24 First Amended Class and Representative Action Complaint to allege a ninth cause of action for civil
25 penalties under PAGA. (*Id.*)

26 The Parties stipulated to submit Plaintiff's individual claims to binding arbitration based on
27 an arbitration agreement, which had a class action waiver, to dismiss the class allegations, and to stay
28 the PAGA representative action. (*Id.* at ¶ 8.)

1 The First Amended Complaint, with the remaining representative claims under PAGA, is the
2 operative complaint in the Action (the "Operative Complaint."). (*Id.* at ¶ 9.) Accordingly, Plaintiff is
3 duly authorized to act as a private attorney general with respect to the PAGA claims involved in this
4 action. (*Id.*) In compliance with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to
5 the LWDA a file-stamped copy of the Operative Complaint containing the Court-assigned case
6 number. (*Id.* at ¶ 10.) To date, the LWDA has not sought to intervene in this action. (*Id.*)

7 Defendant denies the allegations in the Operative Complaint, denies any failure to comply
8 with the laws identified in the Operative Complaint, and denies any and all liability for the causes of
9 action alleged. (*Id.* at ¶ 11.)

10 **B. Discovery and Investigation**

11 The Parties agreed to resolve the representative PAGA claims without a mediator to preserve
12 costs and time. (*Id.* at ¶ 12.) In preparation for negotiations, the Parties engaged in informal discovery
13 exchange prior to negotiations. (*Id.*) Defendant provided information and documents, which enabled
14 Plaintiff's Counsel to meaningfully investigate Plaintiff's allegations and assess the value of the
15 PAGA claims. (*Id.*) Specifically, Defendant produced Plaintiff's personnel file and her time and
16 payroll records, documents regarding Defendant's written policies and practices in effect during the
17 relevant period, and a representative sample of time and payroll data for the Aggrieved Employees.
18 (*Id.*)

19 Prior to negotiations, Plaintiff's Counsel reviewed and analyzed all the information that
20 Defendant produced, including the time/pay records and Defendant's written policies, in conjunction
21 with information provided by Plaintiff. (*Id.* at ¶ 13.) Further, Plaintiff's Counsel investigated the
22 applicable law regarding the claims and defenses asserted in this action. (*Id.*) Accordingly, Plaintiff's
23 Counsel were able to evaluate the probability of success on the merits and Defendant's monetary
24 exposure. (*Id.*) In sum, Plaintiff and her Counsel's familiarity with the facts of the case and the legal
25 issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

26 **C. Settlement Negotiations**

27 The Parties' negotiations were at arm's length and, though conducted in a professional
28 manner, were adversarial. (*Id.* at ¶ 14.) Both sides went into the negotiations willing to explore the

1 potential for a settlement of the dispute, but they were also prepared to litigate their position through
2 trial and appeal if a settlement had not been reached. (*Id.*) Negotiations were protracted, with
3 extended discussions and instances in which it appeared the Parties would not reach a resolution. (*Id.*)
4 Following a full discussion of the strengths and weaknesses of the claims and defenses, the Parties
5 ultimately reached a resolution, the material terms of which are encompassed within the Settlement
6 at issue. (*Id.*)

7 In reaching a resolution, the Parties recognized that the issues presented in this action are
8 likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further
9 litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to
10 the potential benefits of litigation. (*Id.* at ¶ 15.) Plaintiff and her Counsel also considered the risk and
11 uncertainty of the outcome inherent in any litigation when determining whether this Settlement was
12 the correct option. (*Id.*) In sum, Plaintiff and her Counsel believe the proposed Settlement is in the
13 best interests of Aggrieved Employees and the LWDA. (*Id.*)

14 In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the
15 proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff's motion and
16 the hearing date. (*Id.* at ¶ 16, Ex. 3.) To date, the LWDA has not indicated any objection to the
17 Settlement. (*Id.* at ¶ 16.)

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

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

20 1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross
21 Settlement Amount ("GSA") is \$112,500.00 and is non-reversionary. (Settlement, ¶ 3.1.) Defendant
22 shall fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than
23 fifteen (15) calendar days after the Effective Date as defined under the Settlement. (*Id.* at ¶ 4.1.)
24 Disbursement will occur within 14 days after Defendant fully funds the GSA. (*Id.* at ¶ 4.2.) Any funds
25 remaining uncashed and cancelled after 180 days from issuance will be transmitted to the California
26 Controller's Unclaimed Property Fund in the name of the Aggrieved Employee who did not cash the
27 check. (*Id.* at ¶¶ 4.2.1, 4.2.3.)
28

1 2. Escalator Clause: The GSA was negotiated based on an estimate that there are 4,353
2 aggregate PAGA Pay Periods worked by approximately 156 Aggrieved Employees. (*Id.* at ¶ 8.) If
3 the number of pay periods in the PAGA Period is 4,788 or more, the Gross Settlement Amount shall
4 be increased by the percentage that the actual number of pay periods exceeds 4,788. (*Id.*) However,
5 should the number of pay periods exceed 4,788, and Plaintiff elects to enforce the escalator clause,
6 Defendant will have the right, in the exercise of its sole discretion, to limit the PAGA Period to the
7 time at which the number of pay periods reaches 4,788. (*Id.*) If Defendant elects to limit the PAGA
8 Period to a time at which the number of pay periods reaches 4,788, Defendant must provide written
9 notice of the modified end date of the PAGA Period. (*Id.*)

10 3. PAGA Counsel Fees and Litigation Expenses Payment. The Settlement includes
11 attorneys' fees in an amount up to 30% of the GSA (i.e., at least \$33,750.00), plus reimbursement for
12 out-of-pocket litigation costs not to exceed \$20,000.00, payable to Plaintiff's Counsel from the GSA.
13 (*Id.* at ¶ 3.2.1.) There is no fee-splitting agreement. (Moon Decl., ¶ 19.) In the event actual costs are
14 less and/or the amount of fees and costs approved by the Court are less than the amounts requested,
15 the difference will be allocated to the Net Settlement Amount. (Settlement, ¶ 1.17.)

16 4. Administrator Expenses Payment. The Settlement provides for Administration Expenses
17 Payment to the Administrator, payable from the GSA, in an amount up to \$4,000.00, for its fees and
18 expenses in administering this Settlement. (*Id.* at ¶ 3.2.2.) In the event the amount of actual
19 administration costs is less and/or the amount approved by the Court is less than requested, the
20 difference will be allocated to the Net Settlement Amount. (*Id.* at ¶ 1.17.) The Parties jointly selected
21 Phoenix Class Action Administration Solutions ("Phoenix") as the neutral entity to administer this
22 Settlement. (*Id.* at ¶¶ 1.2, 7.1; Moon Decl., ¶ 20, Ex. 5; *see generally* Declaration of Jodey Lawrence)

23 5. Net Settlement Amount. After deducting the PAGA Counsel Fees and Litigation
24 Expenses Payments, and Administrator Expenses Payment from the GSA, in the amounts specifically
25 approved by the Court, any difference in the amounts requested and the amounts awarded will be
26 allocated to the Net Settlement Amount as PAGA Penalties. (*Id.* at ¶ 1.17.) Accordingly, the PAGA
27
28

Penalties is estimated to be **\$72,829.16**,¹ which will be distributed 65% (i.e., 65% * \$72,829.16= **\$47,338.95**) to the LWDA and 35% (i.e., 35% * \$72,829.16= **\$25,490.21**) to Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims. (Moon Decl., ¶ 21.)

6. Settlement Payments. Each Aggrieved Employee will be entitled to his or her pro rata amount from the 35% share of PAGA Penalties that is directly proportional to the number of pay periods worked in the PAGA Period without having to submit any claim form. (Settlement, ¶¶ 1.13, 3.1, 3.2.3.a.) This results in an average Individual PAGA Payment of roughly **\$163.40** for each of the estimated 156 Aggrieved Employees (\$25,490.21 / 156), and a PAGA Pay Period value of **\$5.86** for each of the 4,353 estimated PAGA Pay Periods (\$25,490.21 / 4,353). (Moon Decl., ¶ 22.) Assuming an Aggrieved Employee worked one Pay Period, the lowest PAGA payment to an Aggrieved Employee is estimated to be \$5.86 (1 Pay Period x \$5.86 average Pay Period value). (*Id.*) Assuming an Aggrieved Employee worked 38 Pay Periods (maximum number of biweekly Pay Periods in the PAGA Period), the highest PAGA payment is estimated to be \$222.68 (38 Pay Periods x \$5.86 average Pay Period value). (*Id.*) Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (Settlement, ¶ 3.2.3.a.)

7. Releases of Claims. Upon approval by the Court of the Settlement and as of the Effective Date, Plaintiff, the State of California and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors, and assigns, the Released Parties from all claims, rights, demands, liabilities, causes of action, and theories of liability for PAGA penalties that were pled or could have been pled based on the facts pled in the PAGA Notice and Operative Complaint during the PAGA Period. (*Id.* at ¶ 5.1) The Aggrieved Employees are only releasing their claims under California Labor Code § 2698, et seq. and are not releasing any other claims. (*Id.*) The "Released Parties" are

¹ The estimated Net Settlement Amount was calculated by deducting the following amounts from the GSA (\$112,500,00): \$1,920.84 for the PAGA Counsel Litigation Expenses Payment, \$33,750.00 for the PAGA Counsel Fees Payment, and \$4,000.00 for the Administrator Expenses Payment. (Settlement, ¶ 3.2.)

1 “Defendant and its, present and future subsidiaries, parents, affiliated predecessors, successors or
2 assigns.” (*Id.* at 1.28.)

3 **III. DISCUSSION**

4 **A. Availability of Civil Penalties**

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

18 Here, in compliance with Labor Code section 2699.3, Plaintiff submitted notice of the Labor
19 Code violations at issue to the LWDA, and she exhausted administrative remedies without the LWDA
20 noticing any intent to investigate the claims. (Moon Decl., ¶ 7, Ex. 2.) Accordingly, Plaintiff is duly
21 authorized to act as a private attorney general pursuant to PAGA. (*Id.* at ¶ 9.)

22 **B. The Settlement Merits Approval**

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

25 **1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory** 26 **Purposes of Deterrence and Punishment under PAGA**

27 The \$112,500.00 GSA amounts to “genuine and meaningful” relief “consistent with the
28 underlying purpose of the statute to benefit the public.” (Moon Decl., ¶ 33; *see O’Connor*, 201

1 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of
2 the estimated full worth].) This is an excellent result, particularly because, under the Settlement,
3 Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk
4 of not being able to recover anything at all. (Moon Decl., ¶ 33.)

5 The Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory
6 purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with
7 genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation,
8 Defendant has had to hire legal counsel, engage in employee-wide discovery, and participate in
9 negotiations. (Moon Decl., ¶ 34.) Assuming approval is granted, Defendant will also have to pay civil
10 penalties pursuant to PAGA. (*Id.*) Not including its own attorneys’ fees and costs, Defendant will pay
11 \$112,500 to resolve this matter—of which \$72,829.16 is allocated toward PAGA Penalties and will
12 be distributed as 65% to the LWDA and 35% to Aggrieved Employees, in compliance with PAGA
13 law governing the claims in this Action. (Settlement, ¶ 1.13, 3.2.3.) The PAGA Penalties represents
14 roughly **50%** of the realistic exposure for the claims (\$72,829.16 / \$145,100.00), as discussed below.
15 (Moon Decl., ¶ 34.) Additionally, the release obtained under the Settlement does not preclude
16 Aggrieved Employees from pursuing any individual (non-PAGA) claims they may have against
17 Defendant or the other Released Parties. (*Id.*; *see* Settlement, ¶ 5.1.)

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

20 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive,
21 and arm’s-length negotiations between the Parties. (Moon Decl., ¶ 25.) Plaintiff’s Counsel performed
22 an extensive investigation into the facts, claims, and defenses at issue and Defendant’s potential
23 liability, including a review of governing law and analysis of informal discovery, including
24 Defendant’s written policies and a representative sample of time/pay data for the Aggrieved
25 Employees. (*Id.* at ¶¶ 12–13.) Plaintiff’s Counsel used the foregoing discovery and investigation to
26 prepare for negotiations and assessed the probability of success on the merits and Defendant’s
27 monetary exposure, discussed the strengths and weaknesses of the claims and defenses in depth at
28 negotiations, and ultimately negotiated the resulting Settlement. (*Id.* at ¶¶ 12–15.)

1 Based on Plaintiff's Counsel's analysis of the arguments and information provided by
2 Defendant and on information from Plaintiff, Plaintiff's Counsel evaluated Defendant's both
3 maximum and risk-adjusted potential exposure in preparation for negotiations. (*Id.* at ¶ 25.) While
4 Plaintiff and Plaintiff's Counsel continue to believe in the merits of Plaintiff's claims, the records
5 themselves did not provide strong support for the off-the-clock work, rest period, and expense
6 reimbursement claims, and derivative penalties for those claims, as these claims are predominantly
7 testimony based. (*Id.*) In other words, Plaintiff's analysis revealed that certain claims were not as
8 strong as originally believed. (*Id.*)

9 Because Defendant did not require employees to record rest periods, there are no records to
10 establish the rest period claim on the merits. (*Id.* at ¶ 26.) Additionally, there are no records to
11 establish the off-the-clock work and reimbursement claims on the merits. (*Id.*) Rather, proof of these
12 claims would need to be supported by declarations from Aggrieved Employees regarding missed rest
13 periods, reimbursements, and off-the-clock work as the records themselves cannot demonstrate what
14 breaks were missed, when, and why, what business expenses were incurred, and they cannot
15 demonstrate the time, if any, Aggrieved Employees spent working off the clock. (*Id.*)

16 Indeed, the maximum exposure figures that were calculated for negotiations were based on
17 assumed high violation rates that would not likely be demonstrated at trial, as they assume either the
18 participation of all Aggrieved Employees (which would be difficult given the particularly large size
19 of this group), or alternatively, the use of surveys or statistical data as a surrogate (which would still
20 require the participation of a majority of Aggrieved Employees to establish a sound representation of
21 all non-exempt employees). (*Id.* at ¶ 27.) The reality is that many, if not all, employees would be
22 unwilling to participate due to fear of retaliation. (*Id.*) However, even assuming those employees
23 would be willing to participate, obtaining such declarations would potentially reveal that each
24 Aggrieved Employee had a different experience. (*Id.*) The individualized nature of their employment
25 experience and the numerosity of employees affected present significant risk with manageability and
26 proof on the merits. (*Id.*)

27 Even as to the regular rate and meal period claims, our analysis found that Defendant's
28 exposure is less than initially believed and Defendant also presented strong arguments against the

1 claims. (*Id.* at ¶ 28.) As to meal periods, Defendant argued that it provided Aggrieved Employees
2 with the opportunity to take code-compliant meal periods and to the extent there was any violation,
3 which Defendant disputes, it was a result of an Aggrieved Employee voluntarily foregoing their meal
4 period. (*Id.*) As to the regular rate claim, Defendant argues that any additional payments at issue were
5 discretionary bonuses that were not required to be incorporated into the regular rate of pay. (*Id.*)
6 Defendant also argued the individualized and testimony-intensive nature of Plaintiff's claims could
7 bar manageability of this representative action or otherwise significantly reduce Defendant's overall
8 liability. (*Id.*)

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

23 Based on the foregoing, Plaintiff's Counsel believe it is more reasonable to assess penalties
24 on a \$100 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the
25 estimated 4,353 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 31.)
26 Accordingly, Plaintiff's Counsel estimate Defendant's maximum PAGA exposure to be **\$435,300.00**
27 (\$100 x 4,353). (*Id.*) The GSA of \$112,500 represents **26%** of the maximum exposure (\$112,500 /
28 \$435,300). (*Id.*) However, based on the discovery, Defendant's arguments at negotiations and

1 continued settlement discussions, an understanding that the claims are heavily dependent on the
2 unlikely participation by Aggrieved Employees and their varying employment experience, and other
3 important considerations discussed above, it is reasonable to assume a violation occurred in at most
4 one-third of all pay periods, which results in a realistic (*risk-adjusted*) exposure of **\$145,100.00**
5 (\$435,300.00 / 3). (*Id.*) As a result, the GSA of \$112,500.00 represents roughly **78%** of the realistic
6 exposure (\$112,500 / \$145,100). (*Id.*)

7 The proposed Settlement therefore represents a substantial recovery when compared to both
8 the maximum and reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of
9 litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to
10 establish liability, and the probability of appeal, it is clear the GSA of \$112,500 is within the
11 “ballpark” of reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker*
12 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.*
13 (2010) 186 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require “an explicit statement of
14 the maximum amount the plaintiff class could recover if it prevailed on all its claims,” but instead,
15 only an “understanding of the amount that is in controversy and the realistic range of outcomes of the
16 litigation”].)

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

19 Plaintiff’s Counsel have conducted a thorough investigation into the facts of the allegations.
20 (Moon Decl., ¶ 35.) Based on the foregoing discovery and on their own independent investigation
21 and evaluation, Plaintiff’s Counsel are of the opinion that the proposed Settlement is fair, reasonable,
22 and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of
23 significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the
24 merits, the Settlement is in the best interests of the Aggrieved Employees and the State of California.
25 (*Id.*)

26 Although Plaintiff’s Counsel believe there is merit to Plaintiff’s allegations, they also
27 acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 36.) Plaintiff’s Counsel
28 also recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an

1 expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiff's Counsel are also
2 of the opinion that because the issues here are fairly contested, there is a possibility of the Court not
3 awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary
4 nature of awarding PAGA penalties. (*Id.* at ¶ 37.) Indeed, a Court may reduce PAGA penalties "if,
5 based on the facts and circumstances of the particular case, to do otherwise would result in an award
6 that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words,
7 were this matter to go to trial, any award granted would be at the discretion of the Court and subject
8 to a substantial reduction. (Moon Decl., ¶ 37.) While Plaintiff's Counsel believe there would be no
9 persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and
10 significantly reduce any award of penalties. (*Id.* at ¶ 38.) This wide range of potential recovery and
11 additional delays and risks of trial provide justification to settle for a reasonable amount of recovery
12 at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in
13 preparation for negotiations, the maximum exposure did not comport with the realistic exposure that
14 Defendant faced, as discussed above. (*Id.*)

15 Plaintiff's Counsel took into account the risk of not being able to proceed on a representative
16 basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk
17 that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary
18 nature of awarding PAGA penalties. (*Id.* at ¶ 49.) The provisions of the Labor Code triggering PAGA
19 penalties in this case include, among others, Labor Code sections 203, 210, 226, 1197.1, and 2802.
20 (*Id.*) However, PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).)
21 Accordingly, it is entirely possible that even if Plaintiff would be successful at trial, assuming she is
22 first able to win on the merits regarding her individual claims at arbitration and then defeat the
23 manageability issues presented at litigation by the large number of Aggrieved Employees in this
24 action, Plaintiff may still be awarded substantially less than what was obtained through the
25 Settlement. (Moon Decl., ¶ 39.)

26 The Settlement avoids the significant risks, burdens, and the accompanying expense of further
27 litigation. (*Id.* at ¶ 40.) Though the Parties have engaged in a significant amount of investigation,
28 informal discovery, and employee data analysis, they have not participated in formal discovery

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

C. The Requested Attorneys' Fees/Costs Are Reasonable and Should Be Approved

In line with the Settlement, Plaintiff's Counsel request an award of attorneys' fees in an amount of 30% of the GSA (i.e., no less than \$33,750.00), plus reimbursement for actual litigation costs in the amount of \$1,920.84. (Moon Decl., ¶ 73; *see* Settlement, ¶ 3.2.1.)

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., ¶ 74.) 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:

1 fairness to the successful litigant, who might otherwise receive no benefit because
2 his recovery might be consumed by the expenses; correlative prevention of an
3 unfair advantage to the others who are entitled to share in the fund and who should
4 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.

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

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

10 **This court is compelled to ask, “Is this process necessary?” Under a cost-benefit**
11 **analysis, the answer would be a resounding, “No!”** Not only do the *Lindy* and *Kerr-*
12 *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.

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

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

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

1 The Settlement at issue is beneficial in that it limits the risk of continued expenses and
2 consumption of time, energy, and resources facing Defendant while at the same time rewarding
3 Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of
4 this action involved significant financial risk for Plaintiff's Counsel who undertook this matter on a
5 contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 76–84.) Once Plaintiff's Counsel
6 undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its
7 conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could
8 have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 80.)

9 **3. Counsel's Experience, Reputation, and Ability Support the Requested Fee Award**

10 As demonstrated by their prior experience in pursuing class and representative actions on
11 behalf of employees, Plaintiff's Counsel possess considerable expertise in litigating class action and
12 representative matters. (*Id.* at ¶¶ 41–70.) Plaintiff's Counsel have been involved as lead counsel or
13 co-counsel in a multitude of class and representative actions resulting in beneficial results to class
14 members and aggrieved employees in California. (*Id.*) Because it is reasonable to compensate
15 Plaintiff's Counsel commensurate with their skill, reputation, and experience, the requested fee award
16 is supported here.

17 Plaintiff's Counsel's experience in wage-and-hour class and representative actions was
18 integral in evaluating the strengths and weaknesses of the case against Defendant and the
19 reasonableness of this Settlement. (*Id.* at ¶ 71.) Practice in the narrow field of wage-and-hour
20 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
21 federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 69.) Based on these
22 and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the
23 gross recovery for aggrieved employees. (*See id.* at ¶¶ 45, 50, 56, 59, 68.) Thus, the requested fee
24 award is reasonable and fair.

25 **4. While the Lodestar Method Is Not Necessary in Common Fund Cases, the Court** 26 **May Perform a Cross-Check to Award Fees**

27 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.”
28 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar

1 method as a drain on the judicial system and a disincentive on attorneys to take on high-risk,
2 challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload of an
3 already overtaxed judicial system,’ (2) is ‘insufficiently objective and produce[s] results that are far
4 from homogenous,’ (3) ‘creates a sense of mathematical precision that is unwarranted in terms of the
5 realities of the practice of law,’ (4) ‘is subject to manipulation by judges who prefer to calibrate fees
6 in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an
7 overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and . . . engage in
8 duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7)
9 deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as
10 early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest bar,’
11 and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third Circuit Task Force, *Court*
12 *Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

27 Further, “California case law permits fee awards in the absence of detailed time sheets.”
28 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) The Court “should defer to the

1 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
2 (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Generally, hours are reasonable
3 if they were “reasonably expended in pursuit of the ultimate result achieved in the same manner that
4 an attorney traditionally is compensated by a fee-paying client.” (*Hensley v. Eckerhart* (1983) 461
5 U.S. 424, 431.)

6 Here, Plaintiff’s Counsel current lodestar is *no less than* **\$44,892.50**, which is based on *no*
7 *less than* **64.3 hours** of attorney time spent to-date at their customary hourly rates. (Moon Decl., ¶
8 75.) Thus, in comparison to this lodestar, the fee request represents a multiplier of approximately
9 **0.75**. (*Id.* at ¶ 78(c).) In other words, the lodestar fees *are greater* than the fee request. (*Id.*)
10 Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation,
11 including to obtain and monitor approval of the Settlement and requested awards, oversee the
12 settlement administration process and distribution of funds, respond to inquiries, and communicate
13 with Plaintiff regarding the case. (*Id.* at ¶ 76.) The amount of fees requested under the Settlement is
14 warranted based on the contingent risk that Plaintiff’s Counsel incurred, the difficulty of the questions
15 involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a
16 result of the Settlement, and the skill displayed by Plaintiff’s Counsel. (*Id.* at ¶ 79.) Plaintiff’s Counsel
17 also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.* at ¶ 76.)
18 Thus, the request for attorneys’ fees is more than reasonable under a lodestar check.

19 **5. Plaintiff’s Counsel’s Costs Were Actually and Reasonably Incurred**

20 Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably
21 incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327
22 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff’s Counsel seek reimbursement in the total
23 amount of \$1,920.84 for expenses that were actually and reasonably incurred in this litigation. (Moon
24 Decl., ¶¶ 19, 83, Ex. 4.) Moreover, this amount is below the maximum allocation under the Settlement
25 and thus, the remainder (\$18,079.16) will revert to the PAGA Penalties. (*Id.* at ¶ 83; Settlement, ¶
26 3.2.1.) Thus, costs should be reimbursed in full.

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28 ///

1 **IV. CONCLUSION**

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

4 Respectfully submitted,

5 DATED: September 29, 2026

MOON LAW GROUP, PC

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