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

SUZANNE DOHERTY OHMAN,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

CKW ENTERPRISES, LLC; and DOES 1
through 10, inclusive,

Defendants

Case No.: 30-2025-01502881-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, and (4) [Proposed] PAGA
Approval Order and Judgment]

PAGA APPROVAL HEARING:

Date: November 19, 2026

Time: 2:00 p.m.

Dept.: CX-105

Judge: Hon. Melissa R. McCormick

Reservation number: 74943861

Action filed: August 11, 2025

FAC filed: October 17, 2025

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on November 19, 2026, at 2:00 p.m. in Department CX-105 of the
3 Orange County Superior Court, located at 751 West Santa Ana Blvd., Santa Ana, California 92701,
4 Plaintiff Suzanne Doherty Ohman (“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 Joint Stipulation and Settlement Agreement (“Settlement”) between Plaintiff
7 and Defendant CKW Enterprises, LLC;
- 8 2. Approving the requested Attorneys’ Fees of \$76,666.67;
- 9 3. Approving the requested Attorneys’ Costs of \$25,035.32;
- 10 4. Appointing Plaintiff as the PAGA Representative and approving a \$7,500.00 PAGA
11 Representative Payment to her;
- 12 5. Appointing Phoenix Class Action Administration Solutions as the Administrator and
13 approving a \$6,000.00 in Administration Costs Payment;
- 14 6. Approving the scope of the Released PAGA Claims and Released Parties;
- 15 7. Approving a non-reversionary Gross Settlement Amount of at least \$230,000.00, subject to
16 potential increase under an escalator clause;
- 17 8. Approving \$114,798.01 for PAGA Penalties as settlement of the Released PAGA Claims,
18 subject to potential increase pursuant to the escalator clause, to be distributed as 65%
19 (\$74,618.71 to the LWDA) and 35% (\$40,179.30 to Aggrieved Employees);
- 20 9. Directing consummation of the Settlement pursuant to its terms and provisions;
- 21 10. Entering Judgment; and
- 22 11. Retaining continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
23 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii)
24 such post-Judgment matters as may be appropriate under court rules or as set forth in the
25 Settlement.

26 This Motion is based upon this notice, the attached Memorandum of Points and Authorities, the
27 declarations and exhibits filed concurrently herewith, the records and files in this action, and any other
28 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 requirement set by California Rules of Court, Rule 3.1113(d).

Respectfully submitted,

DATED: September 1, 2026

MOON LAW GROUP, PC

By: _____

Kane Moon
Allen Feghali
Edwin M. Kamarzarian
Enzo Nabiev
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Suzanne Doherty Ohman (“Plaintiff”) seeks approval of a non-reversionary
4 \$230,000.00 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 mediation with
6 experienced and neutral mediator Tripper Ortman, Esq., and extensive settlement negotiations,
7 Plaintiff reached a resolution with Defendant CKW Enterprises, LLC (“Defendant”) (collectively,
8 Plaintiff and Defendant are the “Parties”). The Parties have executed the Joint Stipulation and
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 Settlement resolves the Released Claims, which include any and all claims that were
14 alleged or could have been alleged based on the claims, facts, and/or allegations contained in the
15 operative Complaint and in the PAGA Notice submitted by Plaintiff to the LWDA, for the PAGA
16 Period. (Settlement, ¶¶ I.Y, III.F.) For purposes of settlement, the “PAGA Period” is August 10,
17 2024, through April 30, 2026. (*Id.* at ¶ I.T.) This Settlement is on behalf of the California Labor and
18 Workforce Development Agency (the “LWDA”), Plaintiff, and all current and former non-exempt
19 employees who worked for Defendant in California at any time during the PAGA Period (“Aggrieved
20 Employees”). (*Id.* at ¶ I.C; Moon Decl., ¶ 3.) Plaintiff’s Counsel is unaware of any other pending
21 litigation involving similar claims against Defendant that may be impacted by approval of the
22 Settlement, nor has Defendant pointed to any. (Moon Decl., ¶ 23.)

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

benefit the public,” and whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at *5; *see also O’Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the LWDA and the estimated **564** Aggrieved Employees will, cumulatively, receive no less than **\$114,798.01** as PAGA Penalties. (Moon Decl., ¶¶ 20–21.) 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 franchise operator of Handel’s Homemade Ice Cream in two locations in California. (Moon Decl., ¶ 4.) Plaintiff worked for Defendant as an event coordinator from approximately June 2024 to May 2025. (*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.*)

1 Because of the alleged violations of the Labor Code, as detailed at paragraph 5 in the
2 Declaration of Kane Moon, Plaintiff filed a Class Action Complaint on August 11, 2025, alleging
3 Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation,
4 (3) failed to provide meal periods, (4) failed to authorize and permit rest breaks, (5) failed to
5 indemnify necessary business expenses, (6) failed to timely pay final wages at termination, (7) failed
6 to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶
7 6.)

8 Pursuant to PAGA, on August 10, 2025, Plaintiff submitted notice of the alleged Labor Code
9 violations to the LWDA, with certified mail service on Defendant, and paid the required filing fee.
10 (*Id.* at ¶ 7, Ex. 2.) The administrative exhaustion period under PAGA expired without the LWDA
11 indicating any intent to investigate the allegations. (*Id.* at ¶ 7.) On October 17, 2025, Plaintiff filed a
12 First Amended Class and Representative Action Complaint to allege a ninth cause of action for civil
13 penalties under PAGA (The First Amended Complaint with the class claims compelled to individual
14 arbitration is the “Operative Complaint”). (*Id.*) Accordingly, Plaintiff is duly authorized to act as a
15 private attorney general with respect to the PAGA claims involved in this action. (*Id.*) In compliance
16 with Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped
17 copy of the First Amended Complaint containing the Court-assigned case number. (*Id.* at ¶ 8.) To
18 date, the LWDA has not sought to intervene in this action. (*Id.*)

19 Defendant ardently opposes the merits of this case and denies each of Plaintiff’s factual
20 allegations. (*Id.* at ¶ 9.) Defendant’s defenses are outlined in the Declaration of Kane Moon at
21 paragraph 9. Defendant also maintains the claims are not susceptible to proof on a representative
22 basis because of the individualized and varying nature of each employee’s experience, making this
23 matter unmanageable. (*Id.*)

24 **B. Discovery and Investigation**

25 Before continuing with arbitration regarding Plaintiff’s individual claims, the Parties agreed
26 to an early mediation of the representative PAGA claims. (*Id.* at ¶ 10.) The Parties engaged in
27 informal discovery exchange prior to mediation. (*Id.*) Defendant provided information and
28 documents, which enabled Plaintiff’s Counsel to meaningfully investigate Plaintiff’s allegations and

1 assess the value of the PAGA claims. (*Id.*) Specifically, Defendant produced Plaintiff's personnel file
2 and her time and payroll records, documents regarding Defendant's written policies and practices in
3 effect during the relevant period, and time and corresponding payroll records for approximately
4 19.5% of all Aggrieved Employees. (*Id.*)

5 Prior to mediation, Plaintiff's Counsel reviewed and analyzed all the information that
6 Defendant produced, including the time/pay records and Defendant's written policies, in conjunction
7 with information provided by Plaintiff. (*Id.* at ¶ 11.) Plaintiff's Counsel retained an expert to analyze
8 the time/pay records and prepare a damage analysis prior to mediation. (*Id.*) The time/pay records
9 contained 8,238 shifts actually worked (roughly 14.7% of all shifts), which allowed the expert to
10 prepare an analysis with a reasonable degree of certainty. (*Id.*) Further, Plaintiff's Counsel
11 investigated the applicable law regarding the claims and defenses asserted in this action. (*Id.*)
12 Accordingly, Plaintiff's Counsel were able to evaluate the probability of success on the merits and
13 Defendant's monetary exposure. (*Id.*) In sum, Plaintiff and her Counsel's familiarity with the facts
14 of the case and the legal issues involved allowed them to act intelligently in negotiating the
15 Settlement. (*Id.*)

16 C. Settlement Negotiations

17 On April 17, 2026, the Parties participated in a full day of private mediation facilitated by
18 Tripper Ortman, Esq., an experienced PAGA action mediator. (*Id.* at ¶ 12.) The negotiations were at
19 arm's length and although conducted in a professional manner, were adversarial. (*Id.*) Both sides
20 went into the mediation willing to explore the potential for a settlement of the dispute, but they were
21 also prepared to litigate their position through trial and appeal if a settlement had not been reached.
22 (*Id.*) Negotiations were protracted, with extended discussions and instances in which it appeared the
23 Parties would not reach a resolution. (*Id.*) Following a full discussion of the strengths and weaknesses
24 of the claims and defenses, the Parties ultimately reached a resolution, the material terms of which
25 are encompassed within the Settlement at issue. (*Id.*)

26 In reaching a resolution, the Parties recognized that the issues presented in this action are
27 likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further
28 litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to

the potential benefits of litigation. (*Id.* at ¶ 13.) Plaintiff and her Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*) In sum, Plaintiff and her Counsel believe the proposed Settlement is in the best interests of Aggrieved Employees and the LWDA. (*Id.*) In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff’s motion and the hearing date. (*Id.* at ¶ 14, Ex. 3.) To date, the LWDA has not indicated any objection to the Settlement. (*Id.* at ¶ 14.)

D. Key Terms of the Proposed Settlement

The Settlement’s key financial and other terms include:

1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross Settlement Amount (“GSA”) is \$230,000.00 and is non-reversionary. (Settlement, ¶ III.A.) The Gross Settlement Amount will be wired by Defendant to the settlement administrator within thirty (30) days of the Effective Date. (*See id.* at ¶ III.E.2.b.) The Settlement Administrator will disburse the GSA within fifteen (15) days after funding. (*Id.* at ¶ III.E.2.d.) If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. (*Id.* at ¶ III.E.6.b.) All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining uncashed shall be transmitted by the Settlement Administrator to the California Controller’s Unclaimed Property Fund in the name of the Aggrieved Employee. (*Id.*)

2. Escalator Clause: Defendants represent that there is a total of approximately 11,150 pay periods during the PAGA Period, through April 17, 2026. (*Id.* at ¶ III.A.1.) In the event of an increase in pay periods of more than 10% from the original estimate of 11,150 pay periods during the PAGA Period, the Gross Settlement Amount may change. (*Id.*) Specifically, if the number of pay periods in the PAGA Period is greater than 12,265, the Gross Settlement Amount shall be increased by the percentage that the actual number of pay periods exceeds 12,265. (*Id.*) However, should the number of pay periods exceed 12,265, Defendants will have the right, in the exercise of their sole discretion, to limit the PAGA Period to the time at which the number of pay periods reaches 12,265. (*Id.*)

1 Defendants agree to inform Plaintiff and Plaintiff's counsel which option they are exercising before
2 the hearing on approval of the settlement. (*Id.*) If Defendants elect to limit the PAGA Period to a time
3 at which the number of pay periods reaches 12,265, Defendants must provide written notice of the
4 modified end date of the PAGA Period to Plaintiff, to be memorialized in the final approval motion
5 and/or an amended settlement agreement. (*Id.*)

6 3. Attorneys' Fee and Cost Award. The Settlement includes attorneys' fees in an amount
7 not to exceed 1/3 (currently \$76,666.67) of the GSA, and a cost award not to exceed \$30,000.00,
8 payable to Plaintiff's Counsel. (*Id.* at ¶ III.C.1.) In the event the Court does not approve the entirety
9 of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall
10 pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall
11 be responsible for paying the difference between the amount requested and the amount awarded. (*Id.*)
12 If the amount awarded is less than the amount requested by Plaintiff's Counsel for the Attorney Fee
13 Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be
14 available for distribution to Aggrieved Employees. (*Id.*) Plaintiff's Counsel have incurred \$25,035.32
15 in actual litigation costs to date. (Moon Decl., ¶ 18, Ex. 4.) There is no fee-splitting agreement. (Moon
16 Decl., ¶ 17.)

17 4. Settlement Administration Costs. The Settlement provides for Administration Costs to
18 the Administrator, payable from the GSA, not to exceed \$7,000.00, for its fees and expenses in
19 administering this Settlement. (Settlement, ¶ III.C.3.) If the actual amount of Administration Costs is
20 less than the amount estimated and/or requested, the difference shall become part of the NSA and be
21 available for distribution to Aggrieved Employees. (*Id.*) The Parties jointly selected Phoenix Class
22 Action Administration Solutions ("Phoenix") as the neutral entity to administer this Settlement based
23 on Phoenix's bid of \$6,000.00. (*Id.*; Moon Decl., ¶ 19, Ex. 5; *see generally* Declaration of Jodey
24 Lawrence.)

25 5. Net Settlement Amount. The Net Settlement Amount ("NSA") is the total amount of
26 money available for payout to Aggrieved Employees and the LWDA, which is the GSA less the
27 Attorney Fee Award, Cost Award, PAGA Representative Payment, and Administration Costs. (*Id.* at
28

¶ I.Q.) Accordingly, the NSA is estimated to be **\$114,798.01**,¹ which will be distributed 65% (i.e., 65% * \$114,798.01= **\$74,618.71**) to the LWDA and 35% (i.e., 35% * \$114,798.01= **\$40,179.30**) to Aggrieved Employees. (Moon Decl., ¶ 21.)

6. Individual Settlement Share. Each Aggrieved Employee will receive a proportionate share of the Aggrieved Employee Net Settlement Amount that is equal to (i) the number of pay periods he or she worked for Defendant in California during the PAGA Period based on the Database provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same Database, which is then multiplied by the NSA. (*Id.* at ¶ III.B.1.a.) One day worked in a given pay period will be credited as a pay period for purposes of this calculation. (*Id.*) Therefore, the value of each Aggrieved Employee's Individual Settlement Share ties directly to the number of pay periods that he or she worked. (*Id.*) This results in an average Individual Settlement Share of roughly **\$71.24** for each of the estimated **564 Aggrieved Employees** (\$40,179.30 / 564), and a PAGA Pay Period value of **\$3.60** for each of the **11,150 estimated PAGA Pay Periods** (\$40,179.30 / 11,150). (Moon Decl., ¶ 20.) Assuming an Aggrieved Employee worked one Pay Period, the lowest PAGA payment to an Aggrieved Employee is estimated to be **\$3.60** (1 Pay Period x \$3.60 average Pay Period value). (*Id.*) Assuming an Aggrieved Employee worked 45 Pay Periods, the maximum number of Pay Periods during the Class Period, the highest PAGA payment is estimated to be **\$162.00** (45 Pay Periods x \$3.60 average Pay Period value). (*Id.*) Settlement Payments will be allocated to 100% penalties for tax purposes. (Settlement, ¶ III.B.2.) Aggrieved Employees will receive a Notice of PAGA Settlement with their Individual Settlement Share check. (*Id.* at ¶ I.S.)

7. PAGA Representative Payment. The Settlement includes a PAGA Representative Payment to Plaintiff of up to \$7,500.00 from the GSA, in addition to Plaintiff's Individual Settlement Share, and subject to the Court's approval. (*Id.* at ¶ III.C.2.) This is being offered in consideration for

¹ The estimated PAGA Penalties Fund was calculated by deducting the following amounts from the GSA (\$230,000.00): \$7,500.00 for the Representative Payment, \$25,035.32 for the Attorneys' Costs, \$76,666.67 for the Attorneys' Fees, and \$6,000.00 for the Settlement Administration Costs. (*See* Settlement, ¶ I.Q.)

1 Plaintiff's efforts in litigating the Action and risks of incurring financial obligation to Defendant in
2 the event Plaintiff was not successful in the Action and held to pay for Defendant's costs and/or
3 attorney's fees. (*Id.* at ¶ I.V.) If the Court awards less than the amount requested, any amount not
4 awarded will become part of the Net Settlement Amount for distribution to Aggrieved Employees.
5 (*Id.*) Based on Plaintiff's employment from approximately June 2024 to May 2025, approximately
6 26 Pay Periods, Plaintiff is estimated to receive approximately \$93.60 as Plaintiff's Individual
7 Settlement Share. (Moon Decl., ¶ 21.) Plaintiff and Defendant have also entered into an Individual
8 Settlement Agreement and Mutual Release where Defendant agrees to pay Plaintiff \$10,000.00 in
9 exchange for Plaintiff's general release of her non-wage, individual claims. (*Id.*) The Individual
10 Settlement Agreement and Mutual Release is contingent upon approval of the PAGA Settlement at
11 issue here. (*Id.*)

12 8. Release of Claims. Upon full funding of the GSA, Plaintiff, all Aggrieved Employees,
13 and the LWDA shall fully release and discharge Defendant and the Released Parties from any and all
14 claims that were alleged or could have been alleged based on the claims, facts, and/or allegations
15 contained in the operative Complaint and in the PAGA Notice submitted by Plaintiff to the LWDA.
16 The release shall be for the PAGA Period. (*Id.* at ¶¶ I.Y, III.F.) The "Released Parties" are
17 "Defendant, including its past, present, and future divisions, affiliates, parents, subsidiaries,
18 predecessors, successors, assigns, members, shareholders, owners, officers, directors, employees,
19 agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees,
20 executors, partners, and privies." (*Id.* at ¶ I.Z.)

21 9. No Related Cases. To the best of my knowledge, there is no other pending litigation
22 involving similar claims against Defendant that may be impacted by approval of the Settlement at
23 issue, nor has Defendant pointed to any. (Moon Decl., ¶ 23.) I have come to this conclusion after a
24 reasonable inquiry and review of the LWDA's PAGA Case Search website, this Court's case search
25 website, and other information reasonably available online. (*Id.*)

26 **III. DISCUSSION**

27 **A. Availability of Civil Penalties**

28 The LWDA and its constituent departments and divisions are authorized to assess and collect

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

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

17 **B. The Settlement Merits Approval**

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

20 **1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory** 21 **Purposes of Deterrence and Punishment under PAGA**

22 The \$230,000.00 GSA amounts to “genuine and meaningful” relief “consistent with the
23 underlying purpose of the statute to benefit the public.” (Moon Decl., ¶ 33; *see O’Connor*, 201
24 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of
25 the estimated full worth].) This is an excellent result, particularly because, under the Settlement,
26 Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk
27 of not being able to recover anything at all. (Moon Decl., ¶ 33.)

28 The Settlement is a fair and reasonable resolution that satisfies PAGA’s dual statutory

1 purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with
2 genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation,
3 Defendant has had to hire legal counsel, engage in employee-wide discovery, and participate in
4 mediation. (Moon Decl., ¶ 34.) Assuming approval is granted, Defendant will also have to pay civil
5 penalties pursuant to PAGA. Not including its own attorneys' fees and costs, Defendant will pay
6 \$230,000.00 to resolve this matter—of which \$114,798.01 is allocated toward PAGA Penalties and
7 will be distributed as 65% to the LWDA and 35% to Aggrieved Employees. (*See* Settlement, ¶ I.P.)
8 This amount represents roughly **41%** of the realistic exposure for the claims (\$114,798.01 /
9 \$278,750.00), as discussed below. (Moon Decl., ¶ 34.)

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

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

22 Based on Plaintiff's Counsel's analysis of the arguments and information provided by
23 Defendant, on an expert analysis of the time/pay records, and on information from Plaintiff, Plaintiff's
24 Counsel evaluated both Defendant's maximum and risk-adjusted potential exposure in preparation
25 for mediation. (*Id.* at ¶ 24.) Although the expert's analysis revealed that the time and pay records
26 supported several violations by Defendant, those identifiable violations were primarily based on
27 unpaid overtime, wage statement, meal period, and rest period violations. (*Id.*) The records
28 themselves did not provide strong support for the off-the-clock work and expense reimbursement

1 claims, and derivative penalties for those claims, as these claims are predominantly testimony based.
2 (*Id.*) In other words, Plaintiff's analysis revealed that certain claims were not as strong as originally
3 believed. (*Id.*)

4 Because Defendant did not require employees to record all rest periods, there are limited
5 records to establish the rest period claim on the merits. (*Id.* at ¶ 25.) Additionally, there are no records
6 to establish the off-the-clock work and reimbursement claims on the merits. (*Id.*) Rather, proof of
7 these claims would need to be supported by declarations from Aggrieved Employees regarding
8 missed rest periods, reimbursements, and off-the-clock work as the records themselves cannot
9 demonstrate what breaks were missed, when, and why, what business expenses were incurred without
10 reimbursement, and they cannot demonstrate the time, if any, Aggrieved Employees spent working
11 off the clock. (*Id.*)

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

22 Even as to the meal period and regular rate claims, Plaintiff's recovery is subject to risk. As
23 to meal periods, Plaintiff's expert identified a 44.0% gross violation rate and 40.4% net violation rate
24 after accounting for meal period premium payments, with 4,623 pay periods reflecting a net unique
25 meal period violation. (*Id.* at ¶ 27.) However, Defendant maintains that Aggrieved Employees were
26 provided with compliant meal periods. (*Id.*) To the extent there were any missed breaks, Defendant
27 contends it was a result of the Aggrieved Employee voluntarily choosing to forego a meal period, to
28 take it after the end of the fifth hour, or to stop his or her break early to return to work. (*Id.*) As to the

1 regular rate issue, Plaintiff's expert determined that there was no additional compensation that
2 Defendant failed to incorporate into the regular rate of pay. (*Id.*) As such, the time and pay records did
3 not provide support for Plaintiff's regular rate claim. (*Id.*)

4 The likelihood that Defendant could assert viable legal defenses would likely further reduce
5 its overall exposure. (*Id.* at ¶ 28.) For example, the individualized and testimony-intensive nature of
6 certain claims could bar manageability of this representative action or otherwise significantly reduce
7 Defendant's overall liability. (*Id.*) Defendant also generally and specifically denies any and all
8 liability or wrongdoing, asserts defenses to the claims, and agreed to settle only to put to rest the
9 Released Claims. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic because it
10 presumes Plaintiff would be able to stack multiple PAGA penalties across the same pay periods,
11 although penalty stacking is not expressly permitted by PAGA. (*Id.* at ¶ 29.) Rather, without either
12 (i) a prior finding by the LWDA or a court within the past five years that the employer violated PAGA
13 or (ii) evidence that the employer's conduct was malicious, fraudulent, or oppressive, PAGA provides
14 for a maximum \$100.00 penalty for each pay period. (*Id.*, Lab. Code § 2699(f)(2)(A)–(B).)
15 Additionally, Plaintiff's Counsel believe it would be unrealistic to expect the Court to award the full
16 penalty-stacked exposure given the discretionary nature of awarding penalties and Defendant's
17 defenses, including that any failure to pay premiums, wages, or for off-the-clock work was not
18 knowing or willful, that any alleged wage statement inaccuracies caused no actual resulting damage
19 or harm, and that the alleged violations would require individualized proof. (Moon Decl., ¶ 29.)
20 Moreover, awarding the full amount of penalties would likely raise Due Process concerns. (*Id.*) For
21 the foregoing reasons, the *realistic* exposure is thus far below the *optimistic* maximum estimate. (*Id.*
22 at ¶ 30.)

23 Based on the foregoing, Plaintiff's Counsel believe it is more reasonable to assess penalties
24 on a \$100.00 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of
25 the estimated 11,150 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
27 **\$1,115,000.00** (\$100 x 11,150). (*Id.*) However, based on the discovery, Defendant's arguments at
28 mediations and continued settlement discussions, an understanding that the claims are heavily

1 dependent on the unlikely participation by Aggrieved Employees and their varying employment
2 experience, and other important considerations discussed above, it is reasonable to assume a violation
3 occurred in at most one-fourth of all pay periods, which results in a realistic (*risk-adjusted*) exposure
4 of **\$278,750.00** (\$1,115,000.00 / 4). (*Id.*) As a result, the GSA of \$230,000.00 represents roughly
5 **83%** of the realistic exposure (\$230,000.00 / \$278,750.00). (*Id.*)

6 The proposed Settlement therefore represents a substantial recovery when compared to the
7 reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of litigation, the
8 uncertainties involved in continued litigation, the burdens of proof necessary to establish liability,
9 and the probability of appeal, it is clear the GSA of \$230,000.00 is within the “ballpark” of
10 reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.*
11 (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
12 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum
13 amount the plaintiff class could recover if it prevailed on all its claims,” but instead, only an
14 “understanding of the amount that is in controversy and the realistic range of outcomes of the
15 litigation”].)

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

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

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

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

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

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

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

6 **C. The Representative Payment to Plaintiff is Reasonable and Should Be Approved**

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

16 Here, in light with the Settlement and subject to the Court's approval, Plaintiff requests a
17 Representative Payment of \$7,500.00. (Settlement, ¶ III.C.2.) Plaintiff and her Counsel respectfully
18 submit that the requested enhancement is reasonable in recognition of Plaintiff's role as the named
19 Plaintiff and PAGA Representative, for the risks to future employment inherent in undertaking this
20 role and for her service and participation in litigation that resulted in a fair settlement under PAGA.
21 (Moon Decl., ¶¶ 41–44; Declaration of Plaintiff Suzanne Doherty Ohman in Support of Motion for
22 Approval of PAGA Settlement, ¶¶ 6–17.)

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

24 In line with the Settlement, my firm requests an award of attorneys' fees in an amount not to
25 exceed 1/3 of the GSA (currently, \$76,666.67), plus reimbursement for actual litigation costs in the
26 amount of \$25,035.32. (Moon Decl., ¶ 71; *see* Settlement, ¶ III.C.1.)

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

28 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., ¶ 72.) 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 Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

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

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

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

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

The Settlement at issue is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff’s Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff’s Counsel who undertook this matter on a contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 74–81.) Once Plaintiff’s Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 78.)

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

As demonstrated by their prior experience in pursuing class and representative actions on behalf of employees, Plaintiff’s Counsel possess considerable expertise in litigating class action and

1 representative matters. (*Id.* at ¶¶ 46–65.) Plaintiff’s Counsel have been involved as lead counsel or
2 co-counsel in a multitude of class and representative actions resulting in beneficial results to class
3 members and aggrieved employees in California. (*Id.*) Because it is reasonable to compensate
4 Plaintiff’s Counsel commensurate with their skill, reputation, and experience, the requested fee award
5 is supported here.

6 Plaintiff’s Counsel’s experience in wage-and-hour class and representative actions was
7 integral in evaluating the strengths and weaknesses of the case against Defendant and the
8 reasonableness of this Settlement. (*Id.* at ¶ 66.) Practice in the narrow field of wage-and-hour
9 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and
10 federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 65.) Based on these
11 and other factors, Plaintiff’s Counsel have frequently received fee awards of this percentage from the
12 gross recovery for aggrieved employees. (*See id.* at ¶¶ 49, 54, 59, 64.) Thus, the requested fee award
13 is reasonable and fair.

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

16 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.”
17 (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar
18 method as a drain on the judicial system and a disincentive on attorneys to take on high-risk,
19 challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload of an
20 already overtaxed judicial system,’ (2) is ‘insufficiently objective and produce[s] results that are far
21 from homogenous,’ (3) ‘creates a sense of mathematical precision that is unwarranted in terms of the
22 realities of the practice of law,’ (4) ‘is subject to manipulation by judges who prefer to calibrate fees
23 in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an
24 overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and . . . engage in
25 duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7)
26 deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as
27 early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest bar,’
28

1 and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third Circuit Task Force, *Court*
2 *Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

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

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

24 Here, Plaintiff’s Counsel current lodestar is *no less than* **\$71,665.00**, which is based on *no*
25 *less than* **86.9 hours** of attorney time spent to-date at their customary hourly rates. (Moon Decl., ¶
26 71.) Thus, in comparison to this lodestar, the fee request represents a multiplier of approximately
27 **1.07**. (*Id.* at ¶¶ 74(c).) Further, the foregoing lodestar does not reflect additional work that will be
28 devoted to this litigation, including to obtain and monitor approval of the Settlement and requested

1 awards, oversee the settlement administration process and distribution of funds, respond to inquiries,
2 and communicate with Plaintiff regarding the case. (*Id.* at ¶ 74.) The amount of fees requested under
3 the Settlement is warranted based on the contingent risk that Plaintiff's Counsel incurred, the
4 difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees
5 and State of California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel.
6 (*Id.* at ¶ 74.) Plaintiff's Counsel also bear the risk of taking whatever actions are necessary if
7 Defendant fails to pay. (*Id.* at ¶ 72.) Thus, the request for attorneys' fees is more than reasonable
8 under a lodestar check.

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

10 Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably
11 incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327
12 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff's Counsel seek reimbursement in the total
13 amount of \$25,035.32 for expenses that were actually and reasonably incurred in this litigation.
14 (Moon Decl., ¶¶ 18, 79, Ex. 4.) Moreover, this amount is below the maximum allocation under the
15 Settlement and thus, the remainder (\$4,964.68) will revert to the Net Settlement Amount. (*Id.* at ¶ 80;
16 Settlement, ¶ III.C.1.) Thus, costs should be reimbursed in full.

17 **IV. CONCLUSION**

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

20 Respectfully submitted,

21 DATED: September 1, 2026

MOON LAW GROUP, PC

22
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