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Attorneys for PLAINTIFF ADRIANA M. CHAVIRA ARMENTA,  
on behalf of herself and other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE – CIVIL COMPLEX**

ADRIANA M. CHAVIRA ARMENTA, on  
behalf of herself and other aggrieved employees,

Plaintiff,

vs.

COLLECTORS UNIVERSE, INC.; and DOES  
1 to 100, inclusive,

Defendants

Case No.: 30-2023-01336673-CU-OE-CXC

*[Assigned for All Purposes to Hon. Melissa R.  
McCormick, Dept. CX104]*

**PLAINTIFF’S NOTICE OF MOTION AND  
MOTION FOR APPROVAL OF PRIVATE  
ATTORNEYS GENERAL ACT  
SETTLEMENT**

*[Filed concurrently with the Declaration of  
William Tran in Support; [Proposed] Order]*

Hearing Information:

Date: May 23, 2024

Time: 2:00 PM

Dept.: CX104

**Reservation Number: 74217299**

1           **TO THE HONORABLE COURT, TO ALL PARTIES, AND TO THEIR COUNSEL**  
2 **OF RECORD: NOTICE IS HEREBY GIVEN** that on May 23, 2024 at 2:00 p.m. in Department  
3 CX104 of the Orange County Superior Court, Civil Complex Center located at 751 W. Santa Ana  
4 Blvd., Santa Ana, CA 92701. Plaintiff ADRIANA M. CHAVIRA ARMENTA ("Plaintiff") will move  
5 for an order granting approval of the proposed settlement on the terms and conditions set forth in the  
6 Private Attorney General Act (Labor Code § 2698, *et seq.*) Settlement Agreement (the "Settlement  
7 Agreement") between Plaintiff and Defendant COLLECTORS UNIVERSE, INC. ("Defendant"). A  
8 copy of the Settlement Agreement is attached as **Exhibit 1** to the Declaration of William Tran in  
9 Support of Plaintiffs' Motion for Approval of Private Attorneys' General Act Settlement ("Tran  
10 Dec.").

11           **Notice to the LWDA:** On **January 19, 2024** Plaintiff's Counsel filed the settlement  
12 agreement with the LWDA. (Tran Dec. ¶.)

13           The motion is based on this Notice of Motion and Motion, the Memorandum of Points and  
14 Authorities in Support, Declaration of William Tran in Support, exhibits, all other pleadings and  
15 papers on file in this action, and any oral argument or other matter that may be considered by the  
16 Court.

17  
18 Date: January 29, 2024

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

19  
20  
21 By: 

Joseph Lavi, Esq.  
Vincent C. Granberry, Esq.  
William Tran, Esq.  
Arthur Adamian, Esq.  
Attorneys for PLAINTIFF ADRIANA M.  
CHAVIRA ARMENTA,  
on behalf of herself and other aggrieved  
employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff ADRIANA M. CHAVIRA ARMENTA ("Plaintiff") respectfully submits this  
4 memorandum in support of her motion for approval of the settlement of this action pursuant to the  
5 Private Attorneys General Act of 2004, Labor Code section 2698, et seq. (hereinafter "PAGA") with  
6 Defendant COLLECTORS UNIVERSE, INC. ("Defendant" or "Collectors"). Plaintiff seeks entry  
7 of a proposed order and judgment granting approval of the PAGA settlement.

8 As consideration for this settlement, Defendant will fund a non-reversionary, common fund  
9 settlement of \$1,000,000.00 (the "Settlement Amount") which includes: payment to the California  
10 Labor and Workforce Development Agency ("LWDA") and the aggrieved employees, attorneys' fees  
11 and costs, and settlement administration costs. (Tran Dec. ¶ 21.) The non-reversionary Settlement  
12 Amount of \$1,000,000.00 represents a fair and reasonable monetary recovery for the LWDA and the  
13 Aggrieved Employees in the face of hotly disputed claims. (Tran Dec. ¶ 22.)

14 **II. SUMMARY OF LITIGATION**

15 **A. The Parties**

16 Defendant is an American Company based in Santa Ana, California, which provides  
17 authentication and grading services, focusing primarily on coins, medals, tokens, trading cards, sports  
18 memorabilia, and autographs. (Tran Dec. ¶ 11.)

19 Plaintiff worked as a non-exempt hourly paid employee for Defendant from approximately  
20 April 26, 2022, until on or about November 29, 2022. Based on information from Defendant, there  
21 were approximately 1,830 non-exempt hourly employees who worked for the Defendant during the  
22 PAGA Period. (Tran Dec. ¶ 12.)

23 **B. The Complaint and Allegations**

24 On May 8, 2023, Plaintiff submitted a letter to the California Labor and Workforce  
25 Development Agency ("LWDA") to notify the LWDA pursuant to the Private Attorneys General Act  
26 of 2004, Labor Code section 2698, et seq. ("PAGA") of Plaintiff's intent to seek civil penalties under  
27 PAGA for alleged violations of the Labor Code. (Tran Dec. ¶ 13.)

28 On July 13, 2023, Plaintiff commenced this Action by filing a Complaint alleging a single

1 cause of action for Civil Penalties Pursuant to the Private Attorneys General Act of 2004 (“PAGA”)  
2 against Defendant arising from the following alleged predicate violations against Defendants: (1)  
3 failure to pay wages for all hours worked at the legal minimum wage; (2) failure to pay wages for  
4 overtime hours worked at the overtime rate of pay; (3) failure to pay wages to hourly non-exempt  
5 employees for workdays that Defendants failed to provide legally required and compliant meal  
6 periods; (4) failure to pay wages to hourly non-exempt employees for workdays that Defendants failed  
7 to provide legally required and compliant rest periods; (5) failure to timely pay earned wages during  
8 employment; (6) failure to provide complete and accurate wage statements; and (7) failure to pay all  
9 wages due and owing upon separation of employment. (Tran Dec. ¶ 14.)

10 At all times, Defendant has denied the allegations in the Operative Complaint, denies any  
11 failure to comply with the laws identified in in the Operative Complaint and denies any and all liability  
12 for the causes of action alleged. (Tran Dec. ¶ 15.)

13 **C. Production Of Directly Relevant Informal Discovery And Legal Analysis By**  
14 **Parties' Counsel**

15 In preparation for mediation, Plaintiff obtained, through informal discovery, time and pay  
16 records for Plaintiff and the Aggrieved Employees, as well as documents establishing Defendant’s  
17 policies, procedures, and practices. During this process, Plaintiff’s counsel and Plaintiff’s counsel’s  
18 expert analyzed, researched, and investigated the potential issues, including matters related to the  
19 calculation of potential PAGA damages, interviews of the named Plaintiff, potential trial management  
20 issues, and appellate issues and risks.(Tran Dec. ¶ 17.)

21 The Parties have undertaken reasonable investigation of the facts and law during the pendency  
22 of this action. Plaintiff’s Counsel diligently conducted and pursued an investigation of the PAGA  
23 claims against Defendants, including research of the applicable law and the potential defenses and  
24 review of relevant documents. Plaintiff obtained directly relevant data including Defendant’s written  
25 policies related to the claims at issue in Plaintiff’s Complaint. Plaintiff also received the number of  
26 aggrieved employees and sampling of payroll data for Defendant’s potentially aggrieved employees  
27 during the PAGA period. (Tran Dec. ¶ 18.)

28 ///

1 On September 22, 2023, the Parties attended an all-day mediation with experienced wage-  
2 and-hour mediator David Phillips, Esq. at Signature Resolution, and reached an agreement in  
3 principle to resolve the action. Plaintiff and Plaintiff's Counsel concluded—after considering the  
4 sharply disputed factual and legal issues involved on the PAGA claims, the risks attending further  
5 prosecution, and the benefits to be received pursuant to the compromise and settlement of the action  
6 as set forth in the agreement—that settlement was in the best interest of the representative Plaintiff,  
7 the LWDA, and the aggrieved employees and is fair and reasonable and furthers the purpose of the  
8 PAGA to enforce the Labor Code. (Tran Dec. ¶ 15.)

9 Thereafter, the Parties negotiated and finalized the terms of a settlement memorialized in a  
10 long-form PAGA Settlement Agreement. A true and correct copy of the fully executed PAGA  
11 Settlement Agreement is attached hereto as **Exhibit 1**. (Tran Dec. ¶ 19)

### 12 **III. SUMMARY OF SETTLEMENT**

#### 13 **A. Terms Of Settlement**

14 The Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions  
15 and for the consideration set forth in the Settlement Agreement a copy of which is attached to the  
16 concurrently filed Declaration of William Tran as **Exhibit "1"**.

17 A summary of the key terms of the Settlement is as follows:

- 18 1. Aggrieved Employees: “Aggrieved Employee” means current and former  
19 California-based hourly non-exempt employees that worked for Collectors during  
the PAGA period. (Settlement § 1.4)
- 20 2. Gross Settlement Amount: “Gross Settlement Amount” means One Million  
21 Dollars (\$1,000,000) which is the total amount Collectors agrees to pay under the  
Settlement. The Gross Settlement Amount will be used to pay Individual PAGA  
22 Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA  
Counsel Litigation Expenses Payment, and the Administrator's Expenses  
23 Payment. (Settlement § 1.12.)
- 24 3. Net Settlement Amount: “Net Settlement Amount” means the Gross Settlement  
Amount minus any award of attorneys' fees and litigation costs, and  
25 Administrative Costs. (Settlement § 1.17.)
- 26 4. PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment:  
27 PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment  
mean the amounts allocated to PAGA Counsel for reimbursement of reasonable  
attorneys' fees and expenses, respectively, incurred to prosecute the Action.  
28 (Settlement § 1.19)

1 5. Plaintiff's Release. Plaintiff, on behalf of herself and her respective former and  
2 present spouses, representatives, agents, attorneys (including PAGA Counsel),  
3 heirs, administrators, successors, and assigns generally, and as private attorney  
4 general acting on behalf of the State of California, hereby release and discharge  
5 Released Parties from all claims, transactions, or occurrences, including, but not  
6 limited to all claims that were, or reasonably could have been, alleged, based on  
7 the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's  
8 Release"). Plaintiff's Release does not extend to any claims or actions to enforce  
9 this Agreement, or to any claims for vested benefits, unemployment benefits,  
10 disability benefits, social security benefits, workers' compensation benefits that  
11 arose at any time, or based on occurrences outside the PAGA Period. Plaintiff  
12 acknowledges that Plaintiff may discover facts or law different from, or in addition  
13 to, the facts or law that Plaintiff now knows or believes to be true but agrees,  
14 nonetheless, that Plaintiff's Release shall be and remain effective in all respects,  
15 notwithstanding such different or additional facts or Plaintiff's discovery of them.  
16 (Settlement § 5.1)

17 6. Aggrieved Employee Data. Within thirty (30) business days of the Approval  
18 Order, Collectors will deliver the Aggrieved Employee Data to the Administrator  
19 in the form of a Microsoft Excel Spreadsheet. To protect Aggrieved Employee'  
20 privacy rights, the Administrator must maintain the Aggrieved Employee Data in  
21 confidence, use the Aggrieved Employee Data only for purposes of this Settlement  
22 and for no other purpose, and restrict access to the Aggrieved Employee Data to  
23 Administrator employees who need access to the Aggrieved Employee Data to  
24 effect and perform under this Agreement. Collectors has a continuing duty to  
25 immediately notify PAGA Counsel if it discovers that the Aggrieved Employee  
26 Data omitted employee identifying information and to provide corrected or  
27 updated Aggrieved Employee Data as soon as reasonably feasible. The Parties and  
28 their counsel will expeditiously use best efforts, in good faith, to reconstruct or  
otherwise resolve any issues related to missing or omitted Aggrieved Employee  
Data. (Settlement § 4.2.)

#### **B. Notice And Distribution Of PAGA Funds**

Within thirty (30) business days of the Approval Order, Collectors will deliver the Aggrieved  
Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect  
Aggrieved Employees' privacy rights, the Administrator must maintain the Aggrieved Employee  
Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for  
no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees  
who need access to the Aggrieved Employee Data to effect and perform under this Agreement.  
Settlement § 4.2.)

Collectors shall fully fund the Gross Settlement Amount by transmitting the funds to the  
Administrator no later than sixty (60) business days after the Effective Date. (Settlement § 4.3.)  
Within fourteen (14) days after Collectors funds the Gross Settlement Amount, the Administrator will

1 mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration  
2 Expenses Payment, the PAGA Counsel Expenses Payment. (Settlement § 4.4.)

3 The Administrator will issue checks for the Individual PAGA Payments and send them to the  
4 Aggrieved Employees via First Class U.S. Mail. The face of each check shall prominently state the  
5 date (not less than one hundred eighty (180) days after the date of the mailing) when the check will  
6 be voided. (Settlement § 4.4.2.)

#### 7 **IV. ARGUMENT IN FAVOR OF APPROVAL**

##### 8 **A. The Proposed PAGA Settlement Should Be Approved**

9 It is well established that PAGA serves to augment the limited enforcement capability of the  
10 Labor and Workforce Development Agency by empowering employees to bring actions to enforce  
11 California's labor standards. (*Iskanian v. CLS Transportation L.A., LLC* (2014) 59 Cal.4th 348, 383;  
12 accord *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 986 ["The act's declared purpose is to supplement  
13 enforcement actions by public agencies, which lack adequate resources to bring such actions  
14 themselves."].) In the similar context of wage and hour class actions, the Courts review settlements  
15 to determine whether the proposed settlement is within the range of reasonableness considering the  
16 strength of the claims against the proposed settlement, the risk, expense, complexity and likely  
17 duration of further litigation, the extent of discovery completed and the stage of the proceedings, and  
18 the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)  
19 Furthermore, courts must give "proper deference to the private consensual decision of the parties"  
20 because "the court's intrusion upon what is otherwise a private consensual agreement negotiated  
21 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment  
22 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating  
23 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."  
24 (*Hanlon v. Chrysler Corp.* (9<sup>th</sup> Cir. 1998) 150 F.3d 1011, 1027.)

25 In this case, the settlement was reached through arms' length bargaining, and sufficient  
26 investigation was performed to allow counsel to act intelligently. (Tran Dec. ¶¶ 17-19.) As described  
27 above, the parties thoroughly investigated and evaluated the factual strengths and weaknesses of this case  
28 before reaching the proposed settlement and engaged in sufficient investigation and discovery, to support

1 the settlement. Accordingly, the settlement came only after the case was fully investigated by counsel.  
2 This litigation, therefore, had reached the stage where "the Parties certainly have a clear view of the  
3 strengths and weaknesses of their cases" sufficient to support the settlement. (*Boyd v. Bechtel Corp.*  
4 (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

5 The settlement negotiations have been at all times adversarial and non-collusive in nature.  
6 Indeed, continued good faith but occasionally contentious negotiations were required to ultimately reach  
7 an agreement following mediation and with the significant assistance from an experienced mediator.  
8 (Tran Dec. ¶16.) While Plaintiff believes in the merits of the case, she also recognizes the inherent risks  
9 of litigation and understand the benefit of settlement and providing funds immediately as opposed to  
10 delaying payment or risking an unfavorable decision on summary adjudication/judgment, at trial and/or  
11 the damages awarded, and/or appeal all of which have potential to eliminate any relief.

12 Further, experienced counsel, operating at arms-length, have weighed the strengths of the case  
13 and examined all of the issues and risks of litigation and endorse the proposed settlement. The view  
14 of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding  
15 whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)  
16 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661  
17 F.2d 939 (9th Cir. 1981); *Boyd*, 485 F.Supp. at 617.) Plaintiff's Counsel is experienced in similar  
18 Class Action and PAGA litigation and approve the settlement. (Tran Dec. ¶¶ 5-8.)

19 There are significant legal uncertainties associated with cases such as this as they can be  
20 factually complex and require protracted litigation to resolve. A settlement is not judged solely against  
21 what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide  
22 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th  
23 Cir. 1998) 151 F. 3d 1234, 1242; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246  
24 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, "[c]ompromise is  
25 inherent and necessary in the settlement process ... even if the relief afforded by the proposed  
26 settlement is substantially narrower than it would be if the suits were to be successfully litigated, this  
27 is no bar to a class settlement because the public interest may indeed be served by a voluntary  
28 settlement in which each side gives ground in the interest of avoiding litigation" (*Wershba*, 91

1 Cal.App.4th at 250.)

2 **B. The Proposed Settlement Is A Reasonable Compromise Of Claims**

3 To evaluate a settlement, the trial court must receive "basic information about the nature  
4 and magnitude of the claims in question and the basis for concluding that the consideration being  
5 paid for the release of those claims represents a reasonable compromise." (See *Kullar v. Foot Locker*  
6 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In evaluating the reasonableness of the Settlement  
7 in this case, Plaintiff's office thoroughly evaluated the merits of this case and considered the nature  
8 and purpose of PAGA as well as comparable PAGA settlements reached by our firm, and those  
9 obtained by other firms. (Tran Decl. ¶ 20.)

10 Here, the Gross Settlement Amount is appropriate in light of the underlying principles of  
11 PAGA, i.e., "to ensure that settlements involving penalties arising out of Labor Code Section 2699  
12 do not undercut the dual statutory purposes of punishment or deterrence, or result in unjust,  
13 arbitrary, and oppressive, or confiscatory settlements." (See July 29, 2004 Letter by Senator Dunn  
14 to the President Pro Tem of the Senate Re SB 1809). The non-reversionary Settlement Amount of  
15 \$1,000,000.00 represents an excellent recovery that is large enough to achieve PAGA's purposes.  
16 The proposed Settlement provides a fair and reasonable monetary recovery for the LWDA and the  
17 Aggrieved Employees in the face of hotly disputed claims. (Tran Decl. ¶ 22.)

18 The Net Settlement Amount shall be allocated for payment of civil penalties and shall be  
19 distributed 75% to the LWDA and 25% to the aggrieved employees. (Lab. Code §2699(i) [civil  
20 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the  
21 [LWDA] ...; and 25 percent to the aggrieved employees]. Plaintiff estimates the LWDA will receive  
22 approximately \$486,000 (\$648,000.00 X 0.75 to LWDA = \$486,000.00). Plaintiff estimates  
23 \$480,525 will be distributed pro rata to the aggrieved employees based on the number of pay periods  
24 worked during the PAGA Period (\$648,000.00 X .25 = \$162,000). As set forth below, Plaintiff  
25 believes this is a fair result for the PAGA litigation. (Tran Decl. ¶ 23.)

26 Based on the informal discovery produced by Defendant, during the PAGA Period,  
27 Defendant employed approximately 1,830 aggrieved employees over the course of approximately  
28 42,913 pay periods. Based on the data, the maximum exposure for the PAGA claims amounted to

approximately \$31,768,650.00, this means that a violation for each claim could be proven during each pay period. As discussed below, this is likely significantly more than would be awarded or recovered. This amount was calculated based on the PAGA penalty calculation formula - (Initial violation penalty x total number of employees in the one-year PAGA period) + (subsequent violation penalty x [total number of pay periods in the one-year period – total number of employees in the one-year PAGA period]) as follows: (Tran Decl. ¶ 24.)

1. **Failure to Pay Minimum and Overtime Wages for All Hours Worked:**

In the PAGA exhaustion letter to the LWDA, as well as the Complaint, Plaintiff alleged Defendant failed to compensate her and other aggrieved employees for all hours worked as a result of Defendant's practice of requiring Plaintiff and other aggrieved employees to undergo off-the-clock bag checks prior to being permitted to clock-in for the start of their shifts, after clocking-out for meal breaks and after clocking-out for the end of their shifts. (Tran Dec. ¶ 25.)

Based on the informal discovery provided by Defendant, during the PAGA Period, Defendant employed approximately 1,816 current and former employees over the course of approximately 42,913 pay periods. Therefore, Defendant's PAGA exposure for this claim amounts to \$4,199,800. This amount was calculated as follows: (Initial violation penalty x total number of employees in the one-year period) + (subsequent violation penalty x [total number of pay periods in the one-year period – total number of employees in the one-year period]) (\$50/initial violations X 1,830 employees = \$91,500) + (\$100/subsequent violations X [42,913 pay periods – 1,830 employees = 41,083] = \$4,108,300) = \$4,199,800. [Penalty Amounts set by Lab. Code, § 558, subds. (a)(1)-(2).]. (Tran Dec. ¶ 26.)

2. **Failure to Provide All Meal Periods Pursuant to Labor Code Sections 226.7 and 512:**

Plaintiff alleged that Defendant failed to provide her and other aggrieved employees with legally compliant meal periods due to Defendant's practice of requiring Plaintiff and other aggrieved employees to undergo off-the-clock bag checks after clocking-out for meal breaks. Additionally, Plaintiff alleged that Defendant's practice of requiring Plaintiff and other aggrieved employees to undergo off-the-clock bag checks discouraged them from taking meal breaks off-premises. Further,

1 Plaintiff alleged that Defendant failed to provide Plaintiff and other aggrieved employees a second  
2 uninterrupted duty-free meal period of no less than thirty (30) minutes for each workday that they  
3 worked shifts over ten (10) hours. (Tran Dec. ¶ 27.)

4 Defendant's PAGA exposure for this claim amounts to \$8,399,600. This amount was  
5 calculated as follows: (\$100 initial violations X 1,830 employees = \$183,000) + (\$200/subsequent  
6 violations X [42,913 pay periods – 1,830 employees = 41,083]) = \$8,216,600 = \$8,399,600. [Penalty  
7 Amounts set by Lab. Code, § 2699, subd. (f)(2).] (Tran Dec. ¶ 28.)

8 **3. Failure to Provide All Rest Periods Pursuant to Labor Code Section 226.7:**

9 Plaintiff alleged that Defendant failed to provide Plaintiff and other aggrieved employees a  
10 third uninterrupted duty-free rest period of no less than ten (10) net minutes on each workday that  
11 they worked shifts over ten (10) hours. (Tran Dec. ¶ 29.)

12 Defendant's PAGA exposure for this claim amounts to \$8,399,600. This amount was  
13 calculated as follows: (\$100 initial violations X 1,830 employees = \$183,000) + (\$200/subsequent  
14 violations X [42,913 pay periods – 1,830 employees = 41,083]) = \$8,216,600 = \$8,399,600. [Penalty  
15 Amounts set by Lab. Code, § 2699, subd. (f)(2).]] (Tran Dec. ¶ 30.)

16 **4. Failure to Provide Complete and Accurate Wage Statements Pursuant to Labor**  
17 **Code Section 226:**

18 Based on the foregoing allegations, Plaintiff alleged Defendant failed to provide complete and  
19 accurate wage statements based on all minimum wages, overtime wages, meal and rest period  
20 premiums owed which were not reflected in the wage statements. Therefore, Defendant's maximum  
21 exposure for this claim amounted to \$10,728,250.00. This amount was calculated as follows: 42,913  
22 pay periods X \$250 = \$10,728,250.00. [Penalty Amounts set by Lab. Code, § 226.3.] (Tran Dec. ¶  
23 31.)

24 **5. Failure to Timely Pay All Wages After Separation of Employment Pursuant to**  
**Labor Code Sections 201 and 202:**

25 As a result of the foregoing allegations of meal period and rest period violations, Plaintiff  
26 alleged Defendant failed to timely pay all wages to employees following separation of employment  
27 by not paying employees for all time worked and for failing to pay meal and rest period premiums  
28 owed. Plaintiff estimated \$41,400.00 in civil penalties for this claim (approximately 414 former

employees x \$100 for violation at termination = \$41,400.00). (Tran Dec. ¶ 32.)

**C. Defendant's Defenses to Plaintiff's Claims:**

With regard to Plaintiff's minimum and overtime wage claim, Defendant contended that it paid for all minimum and overtime wages for all hours worked by the aggrieved employees. Defendant also contended that the time Plaintiff and aggrieved employees spent to undergo bag checks was likely *de minimis*, limited to a brief time period when the practice was in effect, and limited only to employees who wished to enter the premises with bags. With regard to Plaintiff's meal period claim, Defendant contended that any bag checks Plaintiff and aggrieved employees were subjected to by Defendant were on-the-clock, prior to them clocking-out for their meal periods. Further, Defendant contended that it did not have any policies restricting employees from leaving its premises, and employees voluntarily chose to remain on its premises during meal period. With respect to Plaintiff's rest period claim, Defendant contended that there is no evidence that employees suffered from non-compliant rest periods and that to the extent employee took rest periods that were either late, short, or missed altogether, they did so voluntarily and without Defendant's knowledge. Defendant contended that Plaintiff's wage statement and waiting time claims were wholly derivative of Plaintiff's primary claims and , as explained above, would fail for the same reasons. (Tran Dec. ¶ 33.)

Defendant argued that PAGA penalties would be limited. Defendant argued that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts to consider the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. (Tran Dec. ¶ 34.)

Moreover, Defendant argued that Plaintiff is not entitled to recover PAGA's default penalties of \$100 initial violations and \$200 for subsequent violations under Labor Code section 2699, subd. (f)(2), but rather the penalties of \$50 for initial violations and \$100 for subsequent violations provided under Labor Code section 558, subd. (a). (Tran Dec. ¶ 34.) Furthermore, Defendant argued that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation

1 rates under either Labor Code statute. California’s appellate courts have held that “[u]ntil the  
2 employer has been notified that it is violating a Labor Code provision (whether or not the  
3 commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware  
4 [of the violation]” and therefore, until a Court or the Commissioner issues a finding of a violation,  
5 the initial \$100 violation rate applies for each pay period in which the alleged violation occurred.  
6 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit*  
7 *Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at  
8 \*9 (“[u]nder California law, courts have held that employers are not subject to heightened penalties  
9 for subsequent violations unless and until a court or commissioner notifies the employer that it is  
10 in violation of the Labor Code”). (Tran Dec. ¶ 34.)

11 Thus, Defendant argued that even if the Plaintiff was able to establish any violation of the  
12 Labor Code, the PAGA penalties assessed for these violations will be computed at the initial  
13 violation rate, as opposed to the subsequent violation rate per pay period at maximum, and there is  
14 a likelihood that a further reduction of the penalty to \$5 per pay period as approved in *Carrington*  
15 would apply given Defendant’s compliance with the Labor Code as discussed above. (Tran Dec. ¶  
16 34.)

17 Plaintiff understood Defendant’s position to be, using the most recent court of appeal  
18 decision on the topic of evaluating the value of a PAGA claim (*Carrington v. Starbucks, supra*)  
19 (i.e. at \$100.00 per pay period X 42,913 pay periods at issue), that it is likely Defendant’s maximum  
20 exposure is actually only **\$4,291,300.00**. Defendant could argue that this Court would use the  
21 *Carrington* valuation as a ceiling for assessing PAGA penalties and that this amount (i.e.,  
22 **\$4,291,300** was its true “worst case scenario” exposure). As such, the settlement amount of  
23 **\$1,000,000** is approximately **23%** of the “worst case scenario” exposure. (Tran Dec. ¶ 35.)

24 Further, in analyzing all of the claims and the action as a whole, Plaintiff was forced to  
25 consider the risks of proceeding with litigating the action. (Tran Dec. ¶ 36.) These risks at the time of  
26 mediation included the Court finding the action unmanageable such was the case in *Wesson v. Staples*  
27 *The Office Superstore, LLC*. See *Staples The Office Superstore, LLC*, (Cal. Ct. App., Sept. 9, 2021,  
28

No. B302988) 2021 WL 4099059.<sup>1</sup> There are even further risks if the case proceeded to trial such that the Court could award significantly less penalties than are statutorily prescribed due to Defendant’s good faith conduct and compliant employment policies. (Tran Dec., ¶ 36.) Finally, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4<sup>th</sup> 46, 63. Because the proposed Settlement is neither unjust nor ignores the public interest, it should be approved. (Tran Dec. ¶ 36.)

Practically speaking, if Plaintiff continued litigating this matter, the Plaintiff, LWDA, and employees potentially could have received nothing if the Court had agreed with Defendant’s position especially in light of the volatility of this area of law and the aforementioned defenses. The settlement is reasonable in light of the risks involved in this case—including the prospect of a potential adverse summary adjudication ruling, defenses to the case, potential appeal, and potential costs which could be forced on our client if Plaintiff was not successful. (Tran Dec. ¶ 37.)

Moreover, the proposed Settlement even with deductions, provides a substantial sum to the PAGA Members. The Settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by California state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. See, e.g., *Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at \*2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class of approximately 3,000 members). (Tran Dec. ¶ 38.)

Plaintiff’s Counsel is convinced that the proposed settlement is fair based on the negotiations and a detailed knowledge of the issues present in this action. (Tran Dec. ¶ 39.) The length and risks

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<sup>1</sup> At the time of the mediation, the Supreme Court of California had not yet issued a decision in the case of *Jorge Luis Estrada, et al., v. Royalty Carpet Mills, Inc.*, Case No. S274340, --- P.3d ----, 2024 WL 188863 (Cal. Jan. 18, 2024), wherein the Court disapproved of *Wesson*. While the *Estrada* court held that a trial court “cannot dismiss a PAGA claim based on manageability”, it re-affirmed a trial court’s ability to use case management techniques, including limiting the types of evidence a plaintiff may present, and left open the question of whether such case management techniques, as applied to that case, preserves the parties’ statutory and constitutional rights. 2024 WL 188863 at \*18-\*19.

1 associated with a motion for summary adjudication, trial, and other normal perils of litigation have  
2 impacted the value of the claims and were all weighed in reaching the proposed settlement. In light  
3 of the above, the proposed Settlement is well within the range of reasonableness and should be granted  
4 approval. Plaintiffs believe that in providing employees with relief and obtaining penalties for the  
5 LWDA, this settlement furthers the purpose of PAGA to enforce compliance with the Labor Code  
6 and should be approved. (Tran Dec. ¶ 39.)

7 Accordingly, the Gross PAGA penalty payment is highly reasonable in light of the risks and  
8 uncertainties associated with the PAGA claims in this case. The Settlement commits Defendant to  
9 pay a sum large enough such that if it were assessed as a civil penalty by the Court or the Labor  
10 Commissioner, it would serve to punish Defendant for alleged violations and to deter such alleged  
11 conduct in the future. At the same time, in light of the alleged violations and defenses thereto, it is  
12 not so large as to be unjust, oppressive or confiscatory. Based upon the foregoing, the proposed  
13 settlement is fair, reasonable, and in the best interest of the state of California and the Aggrieved  
14 Employees. (Tran Dec. ¶ 40.)

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

16 Counsel seeks \$333,333.00, one-third of the Gross Settlement Amount, in fees for the time  
17 spent litigating this matter and reimbursement of expenses of \$13,069.50 incurred in the prosecution  
18 of this action. The request is for fair compensation for undertaking complex, risky, expensive, and  
19 time-consuming litigation on a contingent fee basis.

### 20 **A. Plaintiff's Attorneys' Fee Request Of \$333,333.00, One-Third Of The Gross** 21 **Settlement, Is Proper Under The Common Fund Doctrine**

22 California state and federal courts have recognized that in actions creating a common fund  
23 benefiting others as well as a plaintiff, an appropriate method for determining an award of attorneys' fees  
24 is based on a percentage of the total value of benefits provided by the litigation. (*Laffitte v. Robert Half*  
25 *Int'l Inc.* (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co.*  
26 *v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 577 F.2d 759,  
27 769.) Such "fee spreading" assures that all those benefited by the litigation pay their fair share of  
28 obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.) (Tran Dec. ¶42.)

1 In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein  
2 Counsel obtained a \$19 million non-reversionary settlement on behalf of the class, the California  
3 Supreme Court approved the use of the percentage of fund or common fund method to award one-third  
4 of the settlement amount or \$6,333.333.00 to Counsel for attorneys' fees. The Court stated:

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

20 (*Laffitte*, 1 Cal.5th at 503.) (Tran Dec. ¶ 43.)

21 Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund for  
22 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from  
23 the fund as a whole." (*Boeing*, 444 U.S. at 478.) The Supreme Court explained: "The doctrine rests  
24 on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are  
25 unjustly enriched at the successful litigants' expense. Jurisdiction over the fund involved in the  
26 litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund,  
27 thus spreading fees proportionately among those benefitted by the suit." (*Id.*) Thus, the common fund  
28 doctrine ensures that each beneficiary of the settlement contributes proportionately to the payment of  
the attorneys' fees recovered from monetary payments that the prevailing party recovered in the  
lawsuit. (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt. L.P.* (9th  
Cir. 2002) 301 F.3d 1115.) (Tran Dec. ¶ 44.) In common fund cases, the percentage approach is  
preferable to the lodestar because: (1) it aligns the interests of Counsel and absent class members; (2)  
it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable,  
settlement; and (3) it reduces the demands on judicial resources. (*Laffitte*, 1 Cal.5th at 486-487; see  
*Lealao*, 82 Cal.App.4th at 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,

1375, 1378-79.) (Tran Dec. ¶ 45.)

A percentage of the common fund is appropriate here given that PAGA actions are on behalf of a large number of aggrieved employees, similar to a class action. As noted above in *Laffitte*, this method is preferred to the lodestar method. Plaintiff's counsel has been acting on behalf of the aggrieved employees for a significant amount of time on a contingent fee basis and has achieved a positive result for both the group of aggrieved employees and the State of California. The settlement was reached quickly and efficiently, which has resulted in less of the Court's resources being used to litigate the action. The lodestar (described below) is merely a cross check on the reasonableness of the percentage sought by Plaintiff's counsel. (Tran Dec. ¶ 46.)

Furthermore, California appellate courts, while not expressly announcing a "benchmark," have instead found fees in the one-third (33.3333%) percent range appropriate. (See, *Laffitte II*, 1 Cal.5th at 506 (affirming award of 33% of the common fund); *Chavez v. Nelflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (2008) ("[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"); *Laffitte v. Robert Half Intern. Inc.* (2014) 180 Cal.Rptr.3d 136, 149 ("the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.") (Tran Dec. ¶ 47.) Among other things, a 35% award is appropriate because "the amount of attorney's fees typically negotiated in comparable litigation should be considered in the assessment of a reasonable fee in representative actions .... Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class ... actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 47 (emphasis added). Here, the legal marketplace for PAGA only settlements that result in a common fund provide for a fee award in the range of 33.3333% (one-third). (*Id.*)

A fee of \$333,333.00 which constitutes one-third of the gross settlement is within the range of reasonableness. (See *Laffitte*, 1 Cal.5th at 503-504 [approving common fund method used for

attorneys' request of one-third of settlement].) Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378.) Because Counsel's requested fee is reasonable and falls well within the historical range of attorney's fee awards under the common fund theory, the Court should approve the requested fees as reasonable pursuant to the common fund approach.

**B. Plaintiff's Fee Request Is Reasonable Under The Lodestar Method**

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

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

Plaintiff's Counsel has spent a considerable amount of time extensively investigating, researching, and litigating this matter, including but not limited to the following: reviewing Plaintiff's documents, speaking to Plaintiff, preparing the Notice to the LWDA, drafting and preparing the complaint, and legal research into the viability of Plaintiff's claims; reviewing and researching Defendant's responsive pleadings; reviewing data, records, and documents produced via informal discovery by Defendant prior to mediation; communicating with plaintiff, defense counsel, the mediator, and proposed settlement administrators; preparing for and attending mediation; preparing the settlement agreement and moving papers for approval; negotiating and corresponding with defendant's counsel in reaching the settlement at issue before the court; preparing and appearing for approval. (Tran Dec. ¶ 49, a-h.)

Counsel's total blended lodestar in this case as of the date of this motion is approximately \$70,016.25. (Tran Dec. ¶ 56.) Counsel's hourly rates are reasonable, Counsel's hours spent are

1 reasonable, and Plaintiff would even be entitled to a multiplier to account for the successful result in  
2 this action and to compensate Plaintiff and her counsel for the contingent risk inherent in the litigation  
3 and for the delay in receiving fees. Applying a modest multiplier of 4.8 brings counsel’s weighted  
4 lodestar to \$336,078.00, which exceeds Plaintiff’s request. A multiplier of 4.8 is appropriate to  
5 account for the successful result in the action and to compensate plaintiffs and their counsel for the  
6 contingent risk assumed by counsel and delay in receiving fees. (Tran Dec. ¶ 56.)

7 **C. Counsel’s Hourly Rates and Hours Are Reasonable**

8 The hourly rates of the attorneys—\$500 for William Tran; \$925 for Joseph Lavi; \$650 for  
9 Vincent C. Granberry, and \$500 for Arthur Adamian —are in line with rates approved for attorneys  
10 in this region with similar experience. (Tran Dec. ¶¶ 50–56, Exhibits 5, 7, 9 [printouts of the Laffey  
11 Matrix, 2023 Locality Pay Table for Los Angeles-Long Beach, CA and 2023 Judiciary Salary Plan  
12 for Los Angeles-Long Beach, CA].) A reasonable hourly rate is the prevailing rate charged by  
13 attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler*  
14 (2000) 22 Cal. 4th 1084, 1095.) When determining a reasonable hourly rate, courts may consider  
15 factors such as the attorney's skill and experience, the nature of the work performed, the relevant area  
16 of expertise and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998)  
17 61 Cal. App. 4th 629, 632.) Class Counsel’s skill and experience support their hourly rates. (Tran  
18 Dec. ¶¶ 5-6; 49 [describing experience in employment law and class actions with Mr. Lavi a founding  
19 partner and out of law school and practicing since 2000 and Mr. Tran an attorney out of law school  
20 in 2020 and practicing law since April 2021].) (*Id.*)

21 The requested attorneys’ fees are justified here due to the contingent nature of the  
22 representation, the risks involved, the complexity of the issues, the high quality of legal work  
23 performed, and the excellent results obtained. After initially calculating the combined lodestar, the  
24 Court may adjust the lodestar based on several factors in order to “fix a fee at the fair market value  
25 for the particular action.” *Ketchum v. Moses* (2001) Cal.4th 1122, 1132; *Graham v. Daimler Chrysler*  
26 *Corp.* (2004) 34 Cal.4th 553, 574. These additional factors include the contingent risk of litigation,  
27 the novelty and complexity of the issues, and exceptional results obtained. *Ketchum*, 24 Cal.4th at  
28 1132, *Serrano III*, 20 Cal.3d at 48. (Tran Dec. ¶ 57.)

Moreover, the case involved significant risks of non-payment of attorneys' fees and non-recovery of costs if the settlement was not granted approval, or of Plaintiff did not prevail. California courts consider the risks counsel takes in litigating a case where they may not prevail on the merits in granting attorneys' fees awards. *See Graham v. Daimler Chrysler Corp.*, 34 Cal.4th 553, 583 (Cal. 2004). Thus, not only are Plaintiff's Counsel's rates reasonable and typical, but the attorneys' fees requested are also fair and reasonable. (Tran Dec. ¶ 57.)

**C. Plaintiff's Costs Request Of \$13,069.50 Is Reasonable**

Plaintiff's Counsel requests \$13,069.50 in costs in this matter. This amount is reasonable and incurred in the litigation of this matter. (See Tran Dec. ¶ 58, Exhibit 3.) All costs were reasonably incurred in prosecution of the lawsuit and paid on a contingency basis. (*Id.*) This amount includes, but is not limited to, costs associated with the costs associated with filing of the papers filed and responded to in this matter, Orange County superior court appearances, expert witness, depositions, and mediation. The total costs incurred of \$13,069.50, which is less than the Parties agreed Plaintiff's Counsel could seek in the Settlement Agreement and will result in an increase in the Net Settlement Amount payable to the State of California and Aggrieved Employees. Attached as Exhibit 3 is a true and correct record of the costs incurred to date by Lavi & Ebrahimian, LLP. (*Id.*)

**VI. CONCLUSION**

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

Date: January 29, 2024

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

By: \_\_\_\_\_

  
Joseph Lavi, Esq.  
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Arthur Adamian, Esq.  
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on behalf of herself and other aggrieved employees