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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DEMARIS MASADAS and KOA GARCES, individually, and on behalf of Aggrieved Employees pursuant to the California Private Attorneys General Act,

Plaintiffs,

vs.

CALIFORNIA DINNER ENTERTAINMENT, LLC dba PIRATE'S DINNER ADVENTURE, a Florida limited liability company; and DOES 1 through 25, inclusive,

Defendants.

Case No. 30-2023-01354556-CU-OE-CJC

[Assigned to Hon. Melissa R. McCormick, Dept. CX105]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT OF CLAIMS BROUGHT UNDER THE PRIVATE ATTORNEYS GENERAL ACT AND REASONABLE ATTORNEYS' FEES, COSTS, AND ENHANCEMENT PAYMENTS

Reservation ID: 74743689
Date: March 12, 2026
Time: 2:00 p.m.
Dept.: CX105

Complaint Filed: October 3, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on March 12, 2026 at 2:00 p.m., or as soon thereafter as the matter may be heard in Department CX105 of the above-entitled Court, located at Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiffs Demaris Masadas, Koa Garces, and Jacob Parcell ("Plaintiffs"), individually and on behalf of the State of California and other Aggrieved Employees, will, and hereby do, move this Court for entry of an Order as follows:

1. Granting approval, pursuant to California Labor Code § 2699(l), of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, *et seq.*) and as set forth in the Parties' Stipulation of Settlement of PAGA Action Claims and Release of Claims ("Settlement Agreement");
2. Appointing ILYM Group, Inc. as the Administrator;
3. Approving the proposed cover letter ("Cover Letter") as to form and content, and directing that it be distributed to the Aggrieved Employees pursuant to the terms of the Settlement Agreement;
4. Directing the funding and distribution of the Gross Settlement Amount pursuant to the terms of the Settlement Agreement;
5. Approving an award of attorneys' fees to PAGA Counsel of $206,666.67 and an award of litigation costs to PAGA Counsel in the amount of $26,986.75;
6. Approving enhancement payments of $5,000.00 to each Plaintiff ($15,000.00 total) for their service to the Aggrieved Employees and the State of California;
7. Approving $5,000.00 in administration expenses to ILYM Group, Inc.;
8. Approving the payment of $274,759.94 to the California Labor & Workforce Development Agency ("LWDA") for its share of PAGA civil penalties; and
9. Approving the payment of $91,586.64 to the Aggrieved Employees on a pro rata basis based on number of pay periods worked during the PAGA Period.

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This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the declaration of Sean M. Blakely and all exhibits attached thereto; the declaration of Paul K. Haines; the declaration of Joel M. Gordon; the declaration of Alexandra Rose; the declaration of Anthony Rogers of ILYM Group, Inc. and all exhibits attached thereto; the declarations of Plaintiffs Demaris Masadas, Koa Garces, and Jacob Parcell; the Settlement Agreement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Respectfully submitted,

Dated: January 7, 2026

HAINES LAW GROUP, APC

By: ______________________

Sean M. Blakely
Attorneys for Plaintiffs

Dated: January 7, 2026

BLACKSTONE LAW, APC

By: ______________________

Jonathan M. Genish, Esq.
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Demaris Masadas, Koa Garces, and Jacob Parcell ("Plaintiffs"), "aggrieved employees" under the Private Attorneys General Act of 2004 ("PAGA"), respectfully move this Court for an Order granting approval of the Stipulation of Settlement of PAGA Action Claims and Release of Claims ("Settlement Agreement" or "Settlement") with Defendant California Dinner Entertainment, LLC dba Pirate's Dinner Adventure ("California Dinner" or "Defendant").[1] This PAGA representative action seeks civil penalties predicated on California Dinner's alleged violations of the California Labor Code from July 28, 2022 to February 7, 2025 (the "PAGA Period"). The proposed Settlement, under which California Dinner has agreed to pay a <u>non-reversionary</u> Gross Settlement Amount of Six Hundred Twenty Thousand Dollars and Zero Cents ($620,000.00), will resolve Plaintiffs' representative claims filed on behalf of the State of California and all "Aggrieved Employees," which includes all non-exempt employees who are or previously were employed by California Dinner in California during the PAGA Period.

Notably, the relief provided for under the Settlement, and the claims released thereunder, are *solely* for the payment of *civil penalties* under the PAGA, and not for any underlying Labor Code violations. The release also encompasses only PAGA civil penalties based upon the factual allegations and theories alleged by Plaintiffs in this Action, and only for claims arising during the PAGA Period, which, as noted above, ends on February 7, 2025.

In deciding whether to grant approval of the Settlement, the primary issue is whether the Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it: (1) is the product of arm's-length negotiations; (2) was negotiated by attorneys experienced in wage-and-hour issues and PAGA litigation with the assistance of an experienced, neutral mediator; (3) was negotiated after undertaking sufficient discovery and investigation to evaluate the relative

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[1] The proposed Stipulation of Settlement of PAGA Action Claims and Release of Claims ("Settlement Agreement" or "Settlement") is attached as **Exhibit 1** to the Declaration of Sean M. Blakely filed herewith. The Cover Letter is attached as **Exhibit A** to the Settlement Agreement. All terms in the Motion have the same definitions as used in the Settlement.

strength and value of Plaintiffs' PAGA claim and California Dinner's defenses thereto; and (4) reflects a reasoned compromise based on the relative strength and value of the PAGA claim, as well as the risks, expenses, complexity and likely duration of further litigation.

As noted, the Settlement provides for a non-reversionary Gross Settlement Amount of $620,000.00. Settlement, §§ I.M, III.A.1. After deducting amounts for requested attorneys' fees ($206,666.67), litigation costs ($26,986.75), Plaintiffs' Enhancement Payments ($5,000.00 each, $15,000.00 total), and settlement administration costs ($5,000.00), the Settlement provides for distribution of a Net Settlement Amount of approximately $366,346.58 to be paid to Aggrieved Employees and the California Labor & Workforce Development Agency ("LWDA"). *Id.*, § III.A.2; *see also* Declaration of Sean M. Blakely ("Blakely Decl."), ¶¶ 12, 22, Exhibit 3; Declaration of Alexandra Rose ("Rose Decl."), ¶ 18, Exhibit 4; Declaration of Anthony Rogers of ILYM Group, Inc. ("Rogers Decl."), ¶ 7, Exhibit C.

The Net Settlement Amount shall be distributed 75% (approximately $274,759.94) to the LWDA, and 25% (approximately $91,586.64) to Aggrieved Employees, pursuant to the requirements of the PAGA as codified in Lab. Code § 2699(i). *See* Settlement, § III.A.2.d. There are approximately 374 Aggrieved Employees, resulting in average payments of approximately $244.88 to each Aggrieved Employee. *Id.*, § III.B.1; Blakely Decl., ¶ 12.

The Settlement represents a positive result for the State of California and Aggrieved Employees. Further litigation may have resulted in a smaller recovery or even no recovery at all, based on the defenses asserted by California Dinner and significant ongoing litigation risks. Moreover, the Gross Settlement Amount is greater than other PAGA penalty awards that have been approved as reasonable. *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 total PAGA set-aside of $5,000, or $7.49 per employee); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, Mar. 12, 2013) (approving PAGA set-aside of $10,000, or $3.33 per employee). The amounts requested for attorneys' fees and costs, Plaintiffs' Enhancement Payments, and settlement administration costs are all fair, adequate, and reasonable. Thus, Plaintiffs respectfully request that the Court enter the [Proposed] Order and

Judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION

A. Brief Factual Background and Summary of Claims

California Dinner operates a pirate-themed dinner theater in Buena Park, California. Blakely Decl., ¶ 8. Plaintiff Masadas worked for California Dinner as a non-exempt employee in the position of Server from approximately June 2022 until approximately December 2022. *See* Declaration of Demaris Masadas ("Masadas Decl."), ¶ 2. Plaintiff Garces worked for California Dinner as a non-exempt employee in the position of Lead Server from approximately June 2019 until approximately January 2023. *See* Declaration of Koa Garces ("Garces Decl."), ¶ 2. Plaintiff Parcell worked for California Dinner as a non-exempt employee in the position of Performer from approximately September 14, 2021 to approximately October 2023. *See* Declaration of Jacob Parcell ("Parcell Decl."), ¶ 2. Plaintiffs, like all Aggrieved Employees, were employed by California Dinner in California as non-exempt employees during the PAGA Period and were subject to California Dinner's wage and hour policies and practices. *Id.*

Plaintiffs' PAGA claims are predicated primarily on allegations that they and other non-exempt employees were not provided compliant meal and rest periods, were not paid all non-productive time under California Dinner's piece-rate/commission pay plan for Performers, were not provided with accurate and compliant wage statements, and did not receive all final wages owed at the time of separation of employment. As explained below, California Dinner denies Plaintiffs' allegations and has asserted several affirmative defenses to their claims.

B. Relevant Procedural History

On July 28, 2023, Plaintiff Masadas submitted her notification letter to the LWDA and California Dinner regarding California Dinner's alleged Labor Code violations and her intent to pursue a PAGA representative action, as required by Labor Code § 2699.3. *See* Rose Decl., ¶ 2, Exhibit 1. On August 9, 2023, Plaintiff Masadas amended her notice to add Plaintiff Garces as a representative. *Id.*, ¶ 3, Exhibit 2. On September 13, 2023, Plaintiffs Masadas and Garces filed a Class Action Complaint in the Superior Court of Orange, Case No. 30-2023-01349443-CU-OE-CXC, alleging: (1) minimum wage violations, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) failure to timely pay wages during employment; (6) failure to furnish accurate wage statements; (7) waiting time penalties; (8) failure to reimburse necessary business expenses, and (9) unfair competition ("*Masadas* Class Action"). Rose Decl., ¶ 4. On September 20, 2023, Plaintiff Parcell filed a Class Action Complaint in the Superior Court of Orange, Case No. 30-2023-01350262-CU-OE-CXC, alleging: (1) minimum wage violations, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) wage statement violations, and (6) unfair competition ("*Parcell* Complaint"). Blakely Decl., ¶ 9. On September 21, 2023, Plaintiff Parcell submitted his notification letter to the LWDA and California Dinner regarding California Dinner's alleged Labor Code violations and his intent to pursue a PAGA representative action, as required by Labor Code § 2699.3. *Id.*, Exhibit 2. On October 3, 2023, after exhausting their pre-filing PAGA requirements under Labor Code § 2699.3(a)(2)(A), Plaintiffs Masadas and Garces filed a Representative Action Complaint in the Superior Court of Orange, Case No. Case No. 30-2023-01354556-CU-OE-CXC. Rose Decl., ¶ 5. On November 27, 2023, after exhausting his pre-filing PAGA requirements under Labor Code § 2699.3(a)(2)(A), Plaintiff Parcell filed a First Amended Class and Representative Action Complaint in this Court, adding a single cause of action for civil penalties under the PAGA. Blakely Decl., ¶ 9.

Shortly after the *Masadas* and *Parcell* Complaints were filed, California Dinner produced arbitration agreements that Plaintiffs signed during their employment with California Dinner. Blakely Decl., ¶ 10. In light of these arbitration agreements, the Parties decided to mediate only the Plaintiffs' individual claims and PAGA claims. *Id.* On October 10, 2024, the Parties participated in mediation before mediator Jeffrey A. Ross, Esq., a well-respected wage and hour mediator. *Id*. Prior to mediation, California Dinner informally produced information and documents pertaining to Plaintiffs and other Aggrieved Employees, including, but not limited to, payroll and timekeeping records for Plaintiffs and approximately 25% of Aggrieved Employees during the PAGA Period; several data points including the number of Aggrieved Employees and the number of aggregate pay periods worked by Aggrieved Employees during the PAGA Period; and its employee handbook and other written policies in effect during the PAGA Period, in order for Plaintiffs' counsel to investigate Plaintiffs' allegations and value the claims prior to mediation. *Id*. With the help of a retained expert, Plaintiffs conducted a comprehensive analysis and extrapolation of the data produced by California Dinner to calculate California Dinner's potential PAGA exposure. *Id*.

During mediation, the Parties vigorously debated Plaintiffs' ability to proceed on a representative basis, the legal basis for Plaintiffs' claims and California Dinner's defenses, the potential amount of penalties, and the Parties' data analyses and conclusions based thereon. Blakely Decl., ¶ 11. At the conclusion of mediation, Mr. Ross issued a mediator's proposal with a response deadline of February 7, 2025. *Id.* On February 7, 2025, the Parties accepted Mr. Ross' mediator proposal. *Id.* Over the following months, the Parties negotiated and finalized the Settlement Agreement now before the Court. *Id*.

As a condition of the Settlement, the Parties stipulated to the filing of a First Amended Representative Action Complaint ("FAC" or "Operative Complaint") in this case, adding Plaintiff Parcell as a named plaintiff along with factual allegations related to Plaintiff Parcell's claims. Blakely Decl., ¶ 11. The stipulation was filed with the Court on January 6, 2026, and after the Court approves the stipulation the Parties will immediately file the FAC. *Id.*

III. <u>SUMMARY OF THE SETTLEMENT</u>

A. <u>"Aggrieved Employees" Defined</u>

The "Aggrieved Employees" under the Settlement consist of all non-exempt employees who are or previously were employed by California Dinner in California during the PAGA Period. *See* Settlement, § I.D. The number of Aggrieved Employees, including Plaintiffs, is estimated to be approximately 374 individuals. *Id*., at § III.B.1. The PAGA Period is defined as the time from July 28, 2022, to February 7, 2025. *Id*., at § I.X.

B. <u>Monetary Terms</u>

The Settlement provides for California Dinner's payment of a <u>non-reversionary</u> Gross Settlement Amount of $620,000.00[2]. *See* Settlement, §§ I.M, III.A.1. After deducting requested

[2] In addition to the Gross Settlement Amount, Plaintiffs are receiving $10,000.00 individual settlement payments (for a total of $30,000.00) to resolve their individual labor code claims against California Dinner.

attorneys' fees, litigation costs, Plaintiffs' Enhancement Payments, and settlement administration costs, the Settlement provides for the Net Settlement Amount to be distributed 75% to the LWDA and 25% to Aggrieved Employees, per Labor Code § 2699(i). *Id.*, § III.A.2.d. The 25% portion to Aggrieved Employees shall be distributed based on each Aggrieved Employee's proportional number of pay periods worked for California Dinner in California during the PAGA Period. *Id.*, § III.A.2.d(1).

1. *Attorneys' Fees and Costs, Administration Costs, and Plaintiffs' Enhancement Payments*

Plaintiffs' counsel requests one-third of the Gross Settlement Amount (i.e., $206,666.67) in attorneys' fees, and $26,986.75 in litigation costs. *See* Settlement, §, III.A.2.a; Blakely Decl., ¶¶ 21-22, Exhibit 3; Rose Decl., ¶¶ 12-18, Exhibit 4. As discussed in detail below, a fee award of one-third of the Gross Settlement Amount is fair, adequate, and reasonable as a percentage of the settlement fund and is in line with fee awards in other PAGA settlements.

The parties have agreed to engage ILYM Group, Inc. ("ILYM") as the third-party settlement administrator. *See* Settlement, § I.C. ILYM will update the Aggrieved Employee addresses using the National Change of Address database, calculate and distribute Individual Settlement Payments, mail payments to all Aggrieved Employees together with the Cover Letter, and perform other duties that are integral to the effectuation of the Settlement. *Id.*, § III.E. Plaintiffs request that the Court approve $5,000.00 in administration costs to ILYM, which will cover all costs incurred by ILYM in connection with the Settlement. *Id.,* at § III.A.2.c.; *see also* Rogers Decl., Exhibit C.

Finally, Plaintiffs request Enhancement Payments of $15,000.00 total ($5,000.00 each), in recognition of Plaintiffs' contributions to this case and their efforts in bringing this case to successful resolution. *See* Settlement, § III.A.2.b.; Masadas Decl., ¶ 11; Garces Decl., ¶ 11; Parcell Decl., ¶¶ 4-7.

2. *Payment to LWDA and Aggrieved Employees*

The Net Settlement Amount will be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i); Settlement, § III.A.2.d. Based on the above requested distributions, the Net Settlement Amount is estimated to be $366,346.58, with $274,759.94 paid to the LWDA and $91,586.64 distributed to Aggrieved Employees. Blakely Decl., ¶ 12. As noted, there are approximately 374 total Aggrieved Employees. *Id.*; Settlement, §§ III.B.1, III.F.1. Thus, it is anticipated that overall, the Aggrieved Employees will receive average Individual Settlement Payments of approximately $244.88. Blakely Decl., ¶ 12. The estimated highest Individual PAGA Payment will be approximately $716.88. *Id.* The estimated lowest Individual PAGA Payment will be approximately $8.24. *Id.*

3. *Funding of the Settlement*

Within thirty (30) calendar days of the Effective Date, California Dinner will deposit half of the Gross Settlement Amount (i.e. $310,000.00) by transmitting the funds to ILYM. Settlement §§ III.B.3. Six months after funding the first half of the Gross Settlement Amount, California Dinner shall fund the second half of the Gross Settlement Amount (i.e. $310,000.00) by transmitting the funds to ILYM. *Id.* Within fourteen (14) calendar days after California Dinner fully funds the Gross Settlement Amount, ILYM will mail the Notice in English and Spanish, all Individual PAGA Payments, the LWDA PAGA Payment, Plaintiffs' Enhancement Payments, the Administration Expenses Payment, and the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. *Id.*, at § III.B.4. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. *Id.*

Funds from any settlement checks remaining uncashed after the void date (180 days after the date of mailing) will be sent by ILYM to the California State Controller's Office for deposit in the Unclaimed Property Division in the name of the Aggrieved Employee. *See* Settlement, §§ III.B.4.a, III.B.4.c.

IV. <u>LEGAL ARGUMENT</u>

A. <u>Standards for Approval of a PAGA Settlement</u>

The settlement of a PAGA claim requires court approval pursuant to the PAGA statute, which states that the "court shall review and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(l). Of course, "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." *See In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226 at *9 (N.D. Cal. Sept. 13, 2011). "[T]he very essence of a settlement is… 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir. 1982). As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*.

Although the PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, "a PAGA claim asserted on a non-class representative basis…is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action]." *Casida v. Sears Holdings Corp.*, 2012 WL 253217 at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 at *4 (E.D. Cal. Jul. 1, 2010) ("PAGA claims are law enforcement actions, not class actions"). A court's review of a PAGA settlement implicates the following unique features that render the approval process distinct from approval of a class action settlement.

First, in evaluating a PAGA settlement, the court is <u>not</u> concerned with amount(s) received by "aggrieved employees," but rather, must focus on the total settlement amount in achieving PAGA's objective. "The remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." *Mendez,* 2010 WL 2650571 at *4. "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." *Ochoa-Hernandez v. Cjaders Foods, Inc.*, No. C-08-2073-MHP, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). As our Supreme Court confirmed, "PAGA claims are 'representative' actions in the sense that they are brought on the state's behalf. The employee… 'represents the same legal right and interest as' those agencies — 'namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA].'" *ZB, N.A. v. Sup. Ct.*, 8 Cal.5th 175, 185 (2019) (citing *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th

348, 380 (2014)).

Moreover, while "'[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct" (*Mendez*, 2010 WL 2650571 at *4), a PAGA settlement – like any settlement – involves a compromise that stops short of rendering findings of liability and damages. "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *Ochoa-Hernandez,* 2010 WL 1340777 at *4.

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,[3] "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." *Ochoa-Hernandez*, 2010 WL 1340777 at *5; *see also Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476, 482 (2020) (recognizing that "there is no mechanism for opting out of the judgment entered on the PAGA claim."). This renders the approval process of a PAGA settlement distinct from a class action settlement, as the Court need not employ the "two-step approval process" required for class action settlements under Fed. R. Civ. Proc. Rule 23(e) and Cal. Rule of Court 3.769.

Finally, unlike a class action settlement under Fed. R. Civ. Proc. Rule 23(e) or Cal. Rule of Court 3.769, the scope of release in a PAGA settlement is limited to *civil penalties*. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding…the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Arias v. Sup. Ct.*, 46 Cal. 4th 969, 986-87 (2009). Thus, the scope of release in a PAGA settlement is strictly confined to PAGA penalties.

/ / /

[3] "The [PAGA] does not create property rights or any other substantive rights" as "[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009).

1. *Factors in Evaluating a Representative PAGA Settlement*

In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.,* 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

> [T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive, and trial courts should tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id*. In the context of a PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

Because settlements inherently involve compromise, even a settlement providing for substantially narrower relief than might be obtained if the suit were successfully litigated can be reasonable because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001) (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *Kullar v. Foot Locker Retail, Inc.,* 168 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Clark v. Am. Residential Serv. LLC,* 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." *Kullar,* 168 Cal.App.4th at 132.

a. **The Strength of Plaintiffs' Case**

Although Plaintiffs steadfastly maintain their claims are meritorious, Plaintiffs acknowledge that there are substantial risks and uncertainty in proceeding to trial. Blakely Decl., ¶ 13. For example, with respect to Plaintiffs' claim that California Dinner required them and other non-exempt employees to arrive before their scheduled shifts and perform work duties after their scheduled shifts, even though the employees were only paid for their scheduled shift times, California Dinner counters that its timekeeping policies/practices complied with California law and that it has always properly compensated Aggrieved Employees for all hours worked throughout the PAGA Period. *Id*. California Dinner further contends that no off-the-clock work was actually being performed prior to the scheduled start or end of shifts. *Id*.

With respect to Plaintiffs' meal period claims, Plaintiffs allege that they and other Aggrieved Employees were often provided with late, short, and/or interrupted meal periods. Blakely Decl., ¶ 14. Plaintiffs also allege that they were not given a second 30-minute meal period on shifts of more than 10.0 hours. *Id.* California Dinner counters that it maintained compliant written meal period policies throughout the PAGA Period and provided compliant meal periods in line with those policies. *Id*. California Dinner further contends that it always provided employees with the opportunity to take meal periods and is not required to ensure they are taken. *Id*.; *see Brinker Restaurant Corporation v. Superior Court*, 53 Cal.4th 1004, 1034 (2012) (rejecting "ensure" standard). Thus, California Dinner argues, any non-compliant meal periods were the result of lawful employee choice, rather than any policy and/or practice of California Dinner. Blakely Decl., ¶ 14. As for second meal periods, California Dinner asserts many employees choose to waive their second meal periods on shifts over 10.0 hours but less than 12.0 hours, as they may do under Labor Code § 512(a), so that they do not need to stay at work for an extra unpaid 30 minutes. *Id*. Finally, California Dinner maintains Plaintiffs' meal period claim is not suited for representative treatment, since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, the reasons why a particular employee did not take a meal period on a particular shift, and (for second meals) whether they waived the meal period. *Id*.

With respect to Plaintiffs' rest period claims, Plaintiffs contend that due to work demands they and other Aggrieved Employees were not authorized and permitted to take compliant 10-minute rest periods. Blakely Decl., ¶ 15. California Dinner contends that it has maintained and enforced compliant written rest period policies/practices and has always authorized and permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction thereof, as required under the Wage Order, and that any failure to take rest periods was a result of employee choice rather than any California Dinner's policy and/or practice. *Id*. California Dinner further argues that Plaintiffs' rest period claim is not amenable to representative treatment, since individual inquiries would be required to determine which employees failed to take rest periods, how many rest periods they failed to take, and the reasons why each employee failed to take rest period(s) on a particular shift. *Id*. These manageability concerns are especially present with respect to rest period claims, California Dinner argues, given that rest periods are not, and need not, be recorded. *Id*.

With respect to Plaintiffs' claim that Performers were not paid for non-productive time under California Dinner's Performer piece-rate/commission plan, California Dinner contends that its compensation plans fully comply with California law and compensate employees for all hours worked. Blakely Decl., ¶ 16. California Dinner further contends that employees experienced minimal (if any) uncompensated "non-productive" time. *Id*. California Dinner also argues that any questions of non-productive time would be highly individualized, as employees worked in a variety of positions, some of them not compensated by piece-rate/commission plans, and there are no records or other common evidence of time spent on potentially non-productive tasks necessary to prove liability on a representative basis. *Id.*

Plaintiffs also allege that California Dinner failed to adequately reimburse Plaintiffs and other Aggrieved Employees for all reasonable and necessary work expenditures, including, but not limited to, use of their personal cellular phones and purchase of their own uniforms. Blakely Decl., ¶ 17. California Dinner argues that employees did not have to use their personal cellular phones or purchase their own uniforms to perform their job duties. *Id.* California Dinner further argues that this claim would require individual inquiries into whether Aggrieved Employees actually purchased these items for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding representative treatment. *Id.*

As a result of California Dinner's alleged failure to pay all wages and all meal and rest period premiums, Plaintiffs allege derivative PAGA claims for failure to issue accurate and itemized wage statements and failure to pay all wages owed at separation of employment. *See* Labor Code §§ 226(a), 201-203; Blakely Decl., ¶ 18. In response, California Dinner argues that Plaintiffs' underlying claims will fail and, as a result, the derivative claims will also fail. *See Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail"). California Dinner also maintains that any "derivative" PAGA claims for violations of Labor Code Sections 226 or 203 would be entirely duplicative and would be unlikely to be awarded in any significant manner by a Court. Blakely Decl., ¶ 18.

California Dinner further maintains that even if the Court awarded PAGA penalties for any of the alleged violations, it would substantially reduce the penalties based on the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). Blakely Decl., ¶ 19. Indeed, California Dinner argues, many courts have reduced PAGA penalties drastically where, as here, the employer presented good-faith defenses and attempted to comply with the law. *Id.*; *see Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because "Defendant took their obligations…seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK, 2011 WL 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

While Plaintiffs were prepared to litigate their claims through trial, Plaintiffs faced substantial challenges in prevailing in this matter and obtaining a better result than will be provided through the Settlement. Thus, this factor supports approval.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Although the Parties engaged in significant informal discovery prior to mediation, the Parties still had much formal discovery to conduct if the case did not settle. Substantive motion work and trial preparation also remained for the Parties, as well as potential appeals. As a result, the Parties would likely incur considerably more attorneys' fees and costs through trial and possible appeal. The Settlement avoids those risks and the accompanying expense.

c. <u>Amount Offered in Settlement Given Realistic Value of Claims</u>

The proposed Settlement provides a fair and reasonable monetary recovery for the State of California and allegedly Aggrieved Employees in the face of hotly disputed claims. Based on data provided by California Dinner, there were approximately 11,120 Pay Periods worked by the Aggrieved Employees during the PAGA Period. Blakely Decl., ¶ 19; Settlement*,* § III.B.1.

Labor Code § 2699(f)(2) provides for PAGA civil penalties in the amount of $100 for each allegedly Aggrieved Employee per pay period for the initial violation, and $200 for each allegedly Aggrieved Employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose the $200 subsequent penalty after an employer has been notified that its conduct violates the Labor Code. *See, e.g., Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009) (finding that California law imposes the "subsequent violation penalty" only after an employer has been notified its conduct violates the Labor Code). Therefore, assuming that Plaintiffs could prove at least one Labor Code violation in each and every pay period, Plaintiffs calculated California Dinner's maximum PAGA exposure at $1,112,000 (11,120 pay periods * $100 per violation). Blakely Decl., ¶ 19. The Gross Settlement Amount of $620,000 (approximately $55.76 per pay period) is an excellent result for Aggrieved Employees and the State of California given California Dinner's arguments as to the merits of Plaintiffs' claims as well as the likelihood of the Court reducing the amount of civil penalties awarded. *See also, e.g., Thurman, supra,* 203 Cal.App.4th at 1136 (affirming reduction of PAGA penalties); *Fleming,* 2011 WL 7563047 at *5 (reducing PAGA penalties by over 82%); *Carrington*, *supra,* 30 Cal.App.5th at 529 (affirming PAGA civil penalty of just $5 per pay period).

In the face of California Dinner's defenses on the merits and the Court's discretion to reduce PAGA penalties, Plaintiffs felt that the negotiated settlement of $620,000.00, was clearly in the best interests of the LWDA and the Aggrieved Employees and was well within the range of reasonableness. Blakely Decl., ¶ 19; *See Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotations omitted).

Approval of the Settlement is appropriate, as the Settlement will provide tangible monetary relief to Aggrieved Employees and the State of California while avoiding the risks and costs of continued litigation and trial.

d. <u>Discovery Completed and the Status of Proceedings</u>

As noted, the Parties engaged in substantial informal discovery to evaluate the value of Plaintiffs' PAGA claim. California Dinner provided Plaintiffs with, *inter alia*, timekeeping and payroll records for approximately 25% of non-exempt employees, additional relevant data points, and its relevant written policies. Blakely Decl., ¶ 10. Only after engaging in mediation and in adversarial discussions about the likelihood of proceeding on a representative basis and prevailing on the merits, did the parties reach the proposed Settlement. Thus, this factor supports settlement approval.

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e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Plaintiffs are represented by experienced wage and hour counsel with decades of combined experience, who believe this Settlement to be fair and adequate for all involved. Blakely Decl., ¶¶ 2-6; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-9; Declaration of Joel M. Gordon ("Gordon Decl."), ¶¶ 3-4; Rose Decl., ¶ 15. This factor strongly supports settlement approval. *Kullar*, 168 Cal.App.4th at 130 ("The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct").

B. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Gross Settlement Amount

Plaintiffs are entitled to attorneys' fees in this PAGA action under Labor Code § 2699(g)(1), which provides that "[a]ny employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorneys' fees and costs." *See also Gouskos v. Aptos Village Garage, Inc.*, 94 Cal.App.4th 754, 765 (2001) (holding that attorneys' fees to prevailing party are mandatory when the statute uses the word "shall"). It is undisputed that by obtaining PAGA penalties for the LWDA and Aggrieved Employees, Plaintiffs have prevailed. *See Graciano v. Robinson Ford Sales*, 144 Cal.App.4th 140, 153 (2006) ("[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves some of the benefit the parties sought in bringing suit." (internal citation omitted)).

A fee award is justified where the legal action has produced its benefits by way of settlement. *See*, *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Comty. for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff…for the benefit of all results in the creation or preservation of that fund, such plaintiff…may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of Plaintiff' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure").

Fee awards of one-third of the settlement fund are routinely awarded in California courts in class and representative PAGA actions. The California Supreme Court confirmed its approval of the use of the "percentage of fund" method in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), where it announced "the percentage of fund method survives in California class action cases…" Specifically, the *Laffitte* Court held:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id., at 503 (internal citation omitted). Indeed, "[F]ee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008); *see also Chavez v. Saticoy Lemon Ass'n*, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys' fees of one-third of settlement fund in PAGA settlement); *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601223 (Ventura Cty. Super. Ct., Mar. 25, 2016) (same). This is also consistent with Plaintiffs' counsel's experience in similar wage-and-hour class and PAGA matters.

Here, Plaintiffs' fee request of one-third of the Gross Settlement Amount (estimated to be $206,666.67) which is the same percentage approved by the California Supreme Court in *Laffitte*, is fair and reasonable based on the percentage of the recovery method.

Critically, Plaintiffs' recovery for the State of California and the Aggrieved Employees of approximately $366,346.58 (Net Settlement Amount) significantly exceeds other PAGA awards approved by California courts. *See, e.g., Aguirre v. DSW, Inc.*, No. DCV-11-01522-GW (SPx), 2012 WL 11875296 at *3 (C.D. Cal. Nov. 29, 2012) (approving $10,000 PAGA payment); *Jamil v. Workforce Res., LLC*, No. 18-CV-27 JLS (NLS), 2020 WL 6544660) at *6 (S.D. Cal. Nov. 5, 2020) (approving $10,000 total PAGA payment, finding the amount "fair and adequate in view of the purposes and policies of PAGA"); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-cv-0324-AWI-SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) ("approving $10,000 total PAGA payment, finding that "[t]his comports with settlement approval of PAGA awards in other cases. [Citations.]"); *Boyd v. Bank of Am. Corp.*, No. SACV-13-0561-DOC (JPRx), 2014 WL 6473804 at *8 (C.D. Cal. Nov. 18, 2014) (approving $18,750 PAGA payment); *Franco v. Ruiz Food Prods.*, No. 1:10-cv-02354-SKO, 2012 WL 5941801 at *14 (E.D. Cal. Nov. 27, 2012) (approving $10,000 PAGA payment); *Chu v. Wells Fargo Inv., LLC*, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) ($10,000 PAGA payment).

As discussed above, this case presented significant risks to Plaintiffs. Plaintiffs' counsel conducted extensive research regarding the merits of Plaintiffs' claims, their ability to recover PAGA civil penalties, and California Dinner's potential defenses. Blakely Decl., ¶¶ 13-19. Since undertaking representation of Plaintiffs, Plaintiffs' counsel have dedicated substantial resources to this litigation without receiving any compensation to date. Blakely Decl., ¶¶ 21-22; Rose Decl., ¶¶ 12-16. Plaintiffs' counsel also performed, with the assistance of a retained expert, extensive analysis of data and information produced by California Dinner, used this analysis to evaluate Plaintiffs' claims, and drafted a comprehensive mediation brief. Blakely Decl., ¶¶ 21-22; Rose Decl., ¶ 16. Plaintiffs' counsel attended a full-day mediation, and expended significant effort in preparing settlement documents, this Motion and supporting documents, and will oversee the settlement administration process. *Id*. Given the considerable potential for adverse outcomes in this case, the contingent risk borne by Plaintiffs' counsel was great. The quality of Plaintiffs' counsel's work, and the efficacy and dedication with which it was performed, should be compensated. Thus, Plaintiffs submit the requested fee award is fair, reasonable and adequate and should be approved.

Plaintiffs' counsel have over three decades of combined wage-and-hour class and representative action experience and have been certified as class counsel in numerous wage and hour class actions. Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 3-9; Gordon Decl., ¶¶ 3-4; Rose Decl., ¶¶ 12-15. Because it is reasonable to compensate counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable. Other factors show the requested fee is reasonable. This case involved nuanced legal issues, including the legality of California Dinner's obligations to "provide" meal periods and "authorize and permit" rest periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. Blakely Decl., ¶ 21. California Dinner was also represented by experienced wage-and-hour litigation counsel. Thus, Plaintiffs submit the requested fee award is fair, reasonable and adequate and should be approved.

C. <u>The Requested Litigation Costs and Settlement Administration Costs Are Fair, Reasonable, and Adequate</u>

Plaintiffs' request for reimbursement of litigation costs of $26,986.75 is also fair and reasonable. All of Plaintiffs' litigation costs are reasonably incurred. *See* Blakely Decl., ¶ 22, Exhibit 3; Rose Decl., ¶ 18, Exhibit 4. Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See*, *e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, 2011 WL 825713 at * 3 (N.D. Cal. Mar. 7, 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs reimbursable); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

Likewise, the request for administration costs of $5,000.00 is also fair and reasonable. ILYM was selected because it is an experienced settlement administrator and returned a reasonable bid. Blakely Decl., ¶ 20 *See* Settlement, § III.B.2.c; *See also* Rogers Decl. and Exhibits. Moreover, ILYM will perform several important functions that are integral to the implementation of the Settlement. Its requested fee is therefore reasonable.

D. <u>The Court Should Approve Plaintiffs' Requested Enhancement Payments Because They Are Fair, Adequate, and Reasonable in View of Plaintiffs' Efforts and the Risks They Assumed in This Litigation.</u>

Courts routinely approve enhancement awards to compensate named plaintiffs for the services they provide and the risks they incur during representative litigation. *See, e.g., Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named Plaintiff); *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294 (N.D. Cal. 1995) (approving $50,000 incentive payment). Here, Plaintiffs seek Enhancement Payments of $15,000.00 total ($5,000.00 each). *See* Settlement, § III.A.2.b. This request is reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of the Aggrieved Employees and the State of California. Masadas Decl., ¶¶ 4-9; Garces Decl., ¶¶ 4-9; Parcell Decl., ¶¶ 4-7. Plaintiffs provided substantial factual information and documents to counsel, assisted in identifying potential witnesses and participated in numerous discussions with Plaintiffs' counsel regarding the case. *Id*. Accordingly, Plaintiffs' requested Enhancement Payments are appropriate and justified as part of the Settlement.

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V. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion and adopt the [Proposed] Order and Judgment submitted concurrently herewith.

Dated: January 7, 2026

Respectfully submitted,

HAINES LAW GROUP, APC

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Dated: January 7, 2026

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