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[*Additional Counsel listed on the next page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

CHRISTIAN MATTHEW MARTINEZ, JOEL SUAREZ, and HUGO GAMEZ, as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

v.

BUILDER SERVICES GROUP, INC., dba TRUTEAM OF CALIFORNIA, a Florida Corporation; ERIK BRAND, an individual; JEFFREY UTEGG, an individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. CVRI2305906

Consolidated/Related Actions: *Suarez v. Builder Services Group*, San Bernardino Superior Court, Case No. CIVSB2316043; *Gamez v. Builder Services Group*, Sacramento Superior Court, Case No. 23CV009171; *Martinez v. Builder Services Group, et al*., Riverside Superior Court, Case No. CVRI2304542

[Assigned for all purposes to the Hon. Harold Hopp in Dept. 1]

PAGA REPRESENTATIVE ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with the Declarations of Vedang J. Patel, David D. Bibiyan, David Glenn Spivak, Louis M. Benowitz, Bryan J. Mankin, Christian Matthew Martinez, Joel Suarez, Hugo Gamez, and Patrick J. Ivie; [Proposed] **Order; and** [Proposed] **Judgment]**

HEARING INFORMATION

DATE: December 16, 2025
TIME: 8:30 a.m.
DEPT: 1

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 16, 2025 at 8:30 a.m., or as soon thereafter as plaintiffs Hugo Gamez, Joel Suarez and Christian Matthew Martinez (collectively, “Plaintiffs”) may be heard in Department 1 of the Riverside County Superior Court of California, Plaintiffs will, and hereby do move for this Court for entry of an order approving the PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”), under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), entered into by and between Plaintiffs, on one hand; and Defendant Builder Services Group, Inc. (“Defendant”), on the other hand, in the above-referenced action.

This motion is based upon this Notice, the attached Memorandum of Points and Authorities, the accompanying Declarations of Vedang J. Patel, David D. Bibiyan, David Glenn Spivak, Louis M. Benowitz, Bryan J. Mankin, Christian Matthew Martinez, Joel Suarez, Hugo Gamez, and Patrick J. Ivie, exhibits attached thereto, the [Proposed] Order and judgment Approving the PAGA Settlement, , and any other evidence or argument that may be presented at the hearing.

Dated: November 20, 2025

BIBIYAN LAW GROUP, P.C.

By: ***/s/ Vedang J. Patel***

VEDANG J. PATEL

Attorneys for Plaintiffs, CHRISTIAN MATTHEW MARTINEZ, JOEL SUAREZ and HUGO GAMEZ, as aggrieved employees, and on behalf of all other aggrieved employees

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Labor Code section 2699(l)(2) requires that the Superior Court review and approve any settlement of a civil action filed pursuant to the Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*, ("PAGA"). Plaintiffs Hugo Gamez, Joel Suarez and Christian Matthew Martinez (collectively, "Plaintiffs"), on one hand; and Defendant Builder Services Group, Inc. ("Defendant"), on the other hand, have agreed to settle Plaintiff's PAGA claims, fully resolving this case pursuant to the PAGA Settlement Agreement[1] ("Settlement," "Agreement" or "Settlement Agreement").

The approximately 1,549 "Aggrieved Employees" who are covered by the Settlement Agreement are all persons employed by Defendant and worked as non-exempt employees in California at any time during the period from May 8, 2022 through February 2, 2025 ("PAGA Period").

The Settlement Agreement provides that Defendant shall pay $2,445,000.00[2] as Gross Settlement Amount. From this amount, Plaintiffs request an award of $30,000.00 in administration costs to administer the settlement, attorneys' fees of thirty-three and one third percent (33 and 1/3%) of the Gross Settlement Amount, which amounts to $815,000.00, and reimbursement of no more than $50,000.00 in litigation costs (the Settlement provides up to $50,000 for PAGA Counsel Litigation Expenses Payment). Detailed descriptions of litigation costs are included in the declarations of class counsel in support of this motion. Of the remaining sum (hereinafter, the "PAGA Penalties"), seventy-five percent (75%) of which shall be paid to the California Labor and

[1] A true and correct copy of the Settlement Agreement is attached as Exhibit "1" to the Declaration of Vedang J. Patel ("Patel Decl.") for the Court's convenience.

[2] As set forth in the Settlement Agreement, based on its records, Defendant estimated at the time of mediation that, during the period May 8, 2022, to December 3, 2024, there were approximately 96,513 Pay Periods. If the PAGA Pay Periods exceeds the estimated PAGA Pay Periods by more than 10% (i.e., the estimated number of pay periods is greater than 106,164 (i.e., 96,513 + 10%)), then Defendant has the option to either: (1) Increase the Gross Settlement Amount (including the PAGA Counsel Fees Payment) by a pro-rata dollar value equal to the number of PAGA Pay Periods in excess of 106,164 PAGA Pay Periods (the 10% escalation limit) or (2) Adjust the PAGA Period End Date and the PAGA Release end date so that the PAGA Pay Periods at issue are no more than 96,513 plus 10% percent, or 106,164 pay periods in total. Defendant states that the Pay Periods for the Aggrieved Employees is approximately 102,068 which is less than the escalator provision. Thus, the PAGA Period end date will remain at February 2, 2025.

Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which will be paid to Aggrieved Employees. These penalties are genuine and meaningful and fulfill PAGA's underlying purpose to benefit the public. Accordingly, Plaintiffs request that the Court approve the Settlement as such awards are reasonable and warrant approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Plaintiff Hugo Gamez was employed by Defendant as a non-exempt employee within California from around May 18, 2017through around February 23, 2023. Declaration of David Spivak ("DS"), ¶ 2.

Plaintiff Joel Suarez was employed by Defendant as a non-exempt employee, specifically as a garage door installer, within California from approximately January of 2022 through approximately December of 2022.

Plaintiff Christian Matthew Martinez was employed by Defendant as a non-exempt employee, with duties that included, but were not limited to, spray foam installation and repair, within California from approximately November of 2021 through approximately September of 2022.

Based on information provided by Defendant, there are approximately 1,551 Aggrieved Employees in the PAGA Period.

B. Procedural History

On May 8, 2023, plaintiff Joel Suarez filed with the LWDA and served on Defendant, a notice under Labor Code section 2699.3, stating he intended to serve as a proxy of the LWDA to recover civil penalties for various alleged Labor Code violations (the "Suarez PAGA Notice").[3]

On July 13, 2023, when after 65 days passed without any communication from the LWDA, plaintiff Joel Suarez filed a representative action under PAGA in the San Bernardino County Superior Court, captioned *Joel Suarez v. Builder Services Group, Inc.*, Case Number CIVSB2316043, alleging PAGA claims for: (1) failure to pay minimum wages, (2) failure to pay

[3] A true and correct copy of the Suarez PAGA Notice is attached as Exhibit "2" to the Declaration of Vedang J. Patel.

overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to pay vested vacation, (7) failure to timely pay wages, (8) failure to timely pay final wages, and (9) failure to provide accurate itemized wage statements (the "Suarez PAGA Action" or the "Suarez Action"). After the Effective Date in the Consolidated Action, the Suarez Action will be dismissed with prejudice.

On August 23, 2023, plaintiff Christian Matthew Martinez filed with the LWDA and served on Defendant, a notice under Labor Code section 2699.3, stating he intended to serve as a proxy of the LWDA to recover civil penalties for various alleged Labor Code violations (the "Martinez PAGA Notice").[4]

On August 29, 2023, plaintiff Christian Matthew Martinez filed a putative wage-and-hour class action in the Riverside County Superior Court, captioned *Christian Matthew Martinez v. Builder Services Group, Inc., dba TruTeam of California, et al*., Case No. CVRI2304542, alleging Defendant: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6) failed to provide accurate wage statements; (7) failed to timely pay wages during employment; (8) failed to pay unused vested vacation time; (9) engaged in unfair competition (the "Martinez Class Action").

On November 1, 2023, when after 65 days passed without any communication from the LWDA, plaintiff Christian Matthew Martinez filed a separate representative action under PAGA in the Riverside County Superior Court, captioned *Christian Matthew Martinez v. Builder Services Group, Inc., dba TruTeam of California, et al*., Case Number CVRI2305906, for civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 in connection with the allegations made in the Martinez PAGA Notice (the "Martinez PAGA Action").

On April 2, 2024, following Defendant's Motion to Compel Arbitration, the Court dismissed the Martinez Class Action.

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[4] A true and correct copy of the Martinez PAGA Notice is attached as Exhibit "3" to the Declaration of Vedang J. Patel.

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On September 26, 2023, plaintiff Hugo Gamez filed a putative wage-and-hour class action in the Sacramento County Superior Court, captioned *Hugo Gamez v. Builder Services Group, Inc., dba TruTeam of California, et al*., Case No. 23CV009171 (the "Gamez Class Action" or the "Gamez Action").

On September 26, 2023, plaintiff Hugo Gamez filed with the LWDA and served on Defendant, a notice under Labor Code section 2699.3, stating he intended to serve as a proxy of the LWDA to recover civil penalties for various alleged Labor Code violations (the "Gamez PAGA Notice").[5] The Suarez PAGA Notice, the Martinez PAGA Notice and the Gamez PAGA Notice are hereinafter collectively referred to as the "PAGA Notices." DS, ¶ 3, Exhibit 7. Plaintiff Gamez filed his lawsuit in Sacramento County Superior Court on September 27, 2023. DS, ¶ 4, Exhibit 8.

On December 6, 2023, after sixty-five (65) days had passed since plaintiff Hugo Gamez filed and served the Gamez PAGA Notice, and without any action by the LWDA with respect to the alleged Labor Code violations, plaintiff Hugo Gamez filed a first amended complaint in the Gamez Action, seeking PAGA civil penalties against Defendant for the Labor Code violations alleged in the Gamez PAGA Notice.[7] DS, ¶ 5, Exhibit 9. After the Effective Date in the Consolidated Action, the Gamez Action will be dismissed with prejudice.

On December 4, 2024, Plaintiffs and Defendant (collectively, the "Parties") participated in a full-day global mediation before the Hon. Carl J. West (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters, which led to the Agreement to settle the Actions. As part of the Settlement, the Parties agreed to stipulate to plaintiff Christian Matthew Martinez's filing of a First Amended Complaint in the Martinez PAGA Action, adding plaintiffs Hugo Gamez and Joel Suarez as named plaintiffs, and alleging the Released PAGA Claims, as defined in the Settlement Agreement (the "Consolidated Complaint"). The First

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[5] A true and correct copy of the Gamez PAGA Notice is attached as Exhibit "4" to the Declaration of Vedang J. Patel.

[7] On May 15, 2024, the court in the Gamez case signed an order dismissing TopBuild Home Services, Inc., TopBuild Support Services, Inc., Capital Insulation, Inc. and TruTeam of California, Inc.

Amended Complaint in the Martinez PAGA Action also references and attach as exhibits the PAGA Notices, and asserts all claims set forth in the PAGA Notices. The First Amended Complaint in the Martinez PAGA Action will become the Operative Complaint. Filed concurrently with this motion, plaintiff Christian Matthew Martinez's filed a stipulation to file a First Amended Complaint in the Martinez PAGA Action pursuant to the Agreement.

Prior to mediation, Plaintiffs obtained, through informal discovery: (1) time and payroll records for approximately 20% of the Aggrieved Employees from May 8, 2022 through October 4, 2024; (2) data points, including the estimated number of Aggrieved Employees, the estimated number of Pay Periods, and the number of Aggrieved Employees separated from employment from May 8, 2022 through October 4, 2024, and the average hourly rate of pay; (3) Defendant's applicable policy documents; and (3) all documents concerning Plaintiffs available to Defendant.

PAGA Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Aggrieved Employees, and, to the extent permitted by law, the State of California, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiffs' allegations, and the substantial benefits to be received by Aggrieved Employees.

Defendant has concluded that, because of the substantial expense of defending against the Action, the length of time necessary to resolve the issues presented herein, the inconvenience involved and the concomitant disruption to its business operations, it is in its best interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against it in the Action. However, Defendant nevertheless desires to settle the Action for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies engendered by the Action.

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C. Discovery and Investigation

In the leadup to mediation, PAGA Counsel investigated Plaintiffs' claims, performed legal research regarding Defendant's defenses and engaged in informal discovery. During that time, Defendant produced the documents and information described above.

This yielded sufficient information to determine, for the PAGA Period, the total number of Aggrieved Employees, the total number of shifts and PAGA pay periods, the length of shifts for all Aggrieved Employees, average rates of pay, detailed analysis of alleged meal and rest period violations, and the policies and practices in play during the PAGA Period. The documents and information produced enabled PAGA Counsel to analyze the law and facts relating to Plaintiffs' claims. PAGA Counsel also retained an expert data consultant to review and analyze the time and payroll records and prepare a model setting forth Defendant's potential exposure for civil penalties for use in the mediation. The documents and information shared also enabled Plaintiffs to evaluate the potential hurdles to recovery, including in connection with the merits of the claims and manageability. Based on this investigation and discovery, Plaintiffs were able to act intelligently and effectively in negotiating the proposed Settlement.

D. Mediation

On December 4, 2024, the Parties participated in a full-day global mediation before the Hon. Carl J. West (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters, which led to the Agreement to settle the Actions.

The Settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into mediation willing to explore the potential for a settlement of the Action, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. After several exchanges of draft settlement agreements, the Parties fully executed the Settlement Agreement, a copy of which is attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto.

Based on Plaintiffs' investigation, informal discovery and evaluation of Plaintiffs' claims, Defendant's defenses regarding the merits of the claims and the manageability of a trial thereon, Defendant's potential exposure, the expense and time necessary to pursue this action through trial, the risks and costs of further prosecution of this action, the uncertainties of complex litigation and developing law, and the benefits that will accrue to the LWDA and the Aggrieved Employees, the Parties and their counsel believe that a settlement on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA and Defendant.

III. SUMMARY OF SETTLEMENT

A. The Aggrieved Employees

The "Aggrieved Employees" who are covered by the Settlement Agreement are all persons employed by Defendant working as non-exempt employees in California at any time during the period from May 8, 2022 through February 2, 2025 ("PAGA Period"). It is estimated that there are approximately 1,549 Aggrieved Employees in the PAGA Period.

B. Settlement Terms

The Settlement provides for a Gross Settlement Amount ("GSA") of $2,445,000.00, as the same may be escalated pursuant to the Parties' Settlement Agreement, to be paid by Defendant. The GSA shall be allocated as follows:

1. PAGA Penalties

The amount of the GSA that remains after deducting the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment will be designated as PAGA Penalties.

2. Settlement Administrator and Administration Expenses Payment

The Parties have agreed that the Settlement Administrator will be Simpluris, Inc. The cost of administering the Settlement, including, but not limited to, mailing the Individual PAGA Payments to the Aggrieved Employees, shall not exceed $30,000.00 and will be paid to the Settlement Administrator from the Gross Settlement Amount.

3. PAGA Counsel Fees and Litigation Expenses Payments

An award of attorneys' fees to PAGA Counsel in an amount not to exceed thirty-three and one third percent (33 and 1/3%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, will be $815,000.00, as well as reimbursement of litigation expenses reasonably incurred in an amount of $34,304.96.

4. Settlement Administration

Within thirty (30) days after the Approval Order, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a password protected Microsoft Excel spreadsheet. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendant's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date. No earlier than (30) days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment and PAGA Counsel Fees Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment and PAGA Counsel Fees Payment shall not precede disbursement of Individual PAGA Payments.

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such check to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

5. Taxes

The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. The Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Parties do not expect there to be any employer side taxes arising from the Settlement because this is a settlement of a representative action for civil penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount, such taxes will be funded by the Gross Settlement Amount.

6. Plaintiff's Release

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiffs and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the PAGA Period, including, but not limited to: all claims that were, or reasonably could have been alleged based on the facts contained in the Consolidated Complaint and the PAGA Notices. This release is set forth in paragraph 5.1 of the Settlement Agreement.

7. PAGA Release

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiffs release all claims for civil penalties and statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff Suarez, Plaintiff Martinez and/or Plaintiff's Gamez's pre-filing letters to the LWDA as set forth in the Consolidated Complaint. Plaintiffs do not release any Aggrieved Employee's non-PAGA claims such as claims for wages or damages. This release is set forth in paragraph 5.2 of the Settlement Agreement.

8. Escalator Provision

Based on its records, Defendant estimated that, during the period May 8, 2022, to December 3, 2024, there were approximately 96,513 Pay Periods. The Settlement Agreement provides that if the PAGA Pay Periods exceeds the estimated PAGA Pay Periods by more than 10% (i.e., the estimated number of pay periods is greater than 106,164 (i.e., 96,513 + 10%)), then Defendant has the option to either: (1) Increase the Gross Settlement Amount (including the PAGA Counsel Fees Payment) by a pro-rata dollar value equal to the number of PAGA Pay Periods in excess of 106,164 PAGA Pay Periods (the 10% escalation limit) or (2) Adjust the PAGA Period End Date and the PAGA Release end date so that the PAGA Pay Periods at issue are no more than 96,513 plus 10% percent, or 106,164 pay periods in total. Defendant states that the Pay Periods for the Aggrieved Employees is approximately 102,068 which is less than the escalator provision. Thus, the PAGA Period end date will remain at February 2, 2025.

8. Uncashed Checks

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after the date of mailing), the Administrator shall transmit the funds represented by such check to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

IV. <u>ARGUMENT</u>

A. The PAGA Penalties Secured by the Settlement are Genuine and Meaningful, and Fulfill PAGA's Underlying Purpose to Benefit the Public

The PAGA statute specifically provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (Lab. Code, § 2699, subd. (l)(2).) The statute, however, does not require a two-step process or otherwise mimic the class action approval requirements when the parties reach a settlement only as to PAGA civil penalties. (*Salazar v. Sysco Central Cal., Inc.* (E.D. Cal. Feb. 2, 2017) 2017 WL 1135801, *2 [rejecting the application of class action settlement rules and procedures for PAGA settlement approval].). In the absence of an explicit statutory requirement, the LWDA has provided guidance, explaining that courts should evaluate settlements of PAGA claims based on whether "the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public." (*O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133.). Courts defer to the agency's interpretation of a statute where authority has been delegated to that agency. (*New Cingular Wireless PCS, LLC v. Pub. Utilities Comm'n* (2016) 246 Cal.App.4th 784, 807.) When evaluating a PAGA settlement, the Court should analyze whether the amount of civil penalties obtained is "genuine and meaningful" in light of the PAGA's statutory purpose.

The California Legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 383.). This statute authorizes an employee to bring an action for "civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." (*Id.* at 360.). An action under PAGA to recover civil penalties "is essentially a law enforcement action designed to protect the public and not benefit private parties." (*Id.* at 381.). Fundamentally, "a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer." (*Sakkab v. Luxottica Retail North America,* *Inc.* (9th Cir. 2015) 803 F.3d 425, 435.) "As the state's proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent employees [citation], just as the state could if it brought an enforcement action directly." (*Id.*)

Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered go to the State, while the remaining amount is given to the aggrieved employees. (Lab. Code, § 2699, subd. (i).) The PAGA action is one of the "primary mechanisms for enforcing the Labor Code." (*Iskanian,* 59 Cal.4th at 383.) As the State's proxy or agent, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies- namely, recovery of civil penalties that otherwise would have been assessed by and collected by the [LWDA]." (*Id.*) "[A]n aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself." (*Id.*) The goal of PAGA is to impose civil penalties for Labor Code violations "significant enough to deter violations." (*Id.* at 379.)

Thus, a PAGA action is "fundamentally different from a class action." (*Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 ["These differences stem from the central nature of PAGA. PAGA plaintiffs are private attorneys general who, stepping into the shoes of the LWDA, bring claims on behalf of the state agency."]. The PAGA statute expressly distinguishes and preserves the right of employees to separately (or concurrently) pursue their own causes of action against their employers and to recover other available federal and state remedies. (Lab. Code, § 2699, subd. (g)(l); *see Baumann,* 747 F.3d at 1123 [explaining the differences between the finality in class action judgments and the limited res judicata effect of PAGA judgments].) "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." (*McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1233.) PAGA penalties do not seek damages that are compensatory in nature. (*ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188.)

Here, the Settlement provides a significant benefit of $1,550,000.00 in PAGA Penalties to the State and also provides relief to the Aggrieved Employees that is genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the Gross

Settlement Amount of $2,445,000.00, is significant enough to deter future violations noting that the settlement is a compromise of highly disputed claims and that there is nothing in the Settlement Agreement that can be construed as an admission of the allegations in the Consolidated Complaint or that there was liability on behalf of Defendant. Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the public.

B. The Settlement is Reasonable Given the Risks of Further Litigation

In assessing whether the amount in civil penalties is genuine and meaningful, the Court may balance the amount in penalties with the risks of further litigation. Here, Plaintiffs obtained a meaningful amount in civil penalties despite facing significant challenges had the litigation continued.

The potential claims for penalties include, as further described in the Consolidated Complaint failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or compensation in lieu thereof, failure to provide rest periods or compensation in lieu thereof, failure to pay all wages due upon separation from employment, failure to provide accurate wage statements, failure to timely pay wages during employment, failure to pay unused vested vacation time, failure to reimbursed for business expenses, and engaging in unfair competition. These claims are disputed by Defendant.

Moreover, initial violation rates were used in calculating estimated potential penalties as, until "notified that it is violating a Labor Code provision… the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties." (*Amaral v. Cintas Corp. No. 2 [Amaral] (2008)* 163 Cal. App. 4th 1157, 1209.) Thus, subsequent violations in the PAGA context means not just later in time but following notice to the employer that it is in violation of the Labor Code. (*Patel v. Nike Retail Servs., Inc.* (N.D. Cal. 2014) 58 F.Supp.3d 1032, 1042; *accord Amaral,* 163 Cal. App. 4th at 1209 [only "after the employer has learned its conduct violates the Labor Code, the employer is on notice that any future violations will be punished… at twice the rate of penalties… that were imposed for the initial violation"].) Because in this instance there was no evidence that Defendant was provided notice that it was in violation of the Labor Code, initial violation rates were used to calculate estimates of penalties.

Based on the information produced by Defendant, Plaintiffs understood there to be approximately 96,513 pay periods in the period of May 8, 2022, to December 3, 2024,. While PAGA Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, PAGA Counsel believe one reasonable calculation estimate of Defendant's maximum exposure in PAGA penalties are as follows:

1. Overtime Wage Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $4,825,650 (96,513 pay periods x $50).
2. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $9,651,300 (96,513 pay periods x $100).
3. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $4,825,650 (96,513 pay periods x $50).
4. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $4,825,650 (96,513 pay periods x $50).
5. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial

pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of \$9,651,300 (96,513 pay periods x \$100).

6. Waiting Time Penalties: Labor Code section 558 prescribes penalties of \$50 for an initial violation and \$100 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include be just one violation per employee. PAGA Counsel understood at mediation through the documents provided by Defendant that there were approximately 673 terminated Aggrieved Employees during the PAGA Period. This amounts to a maximum exposure of \$67,300 (673 terminated Aggrieved Employees x \$100).

7. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of \$100 for an initial violation and \$200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of \$9,651,300 (96,513 pay periods x \$100).

In sum, PAGA Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be approximately \$43,498,150.

On the other hand, PAGA Counsel understand from the mediator and the mediation process that Defendant argued the following in connection with this claim:

Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Plaintiffs is vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked and that, even if they could, very few Courts have ever exercised discretion to stack them. Second, Defendant denies that a violation for each pay period can be established. Third, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, Defendant contends there is no conduct shown by Plaintiffs that would show any Labor Code violations by Defendant, if any, is knowing and intentional that would justify PAGA penalties. Finally, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial pursuant to *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746 [*Wesson*]. Thus, Defendant contends that the Court cannot, should not, and will not exercise its discretion to award any penalties under PAGA.

While Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to each predicate Labor Code violation. For example, Plaintiffs contend that the Aggrieved Employees were subjected to, *inter alia*, not being paid for all time under Defendant's control, unlawful meal and rest break policies, and were denied meal and rest break premiums. Defendant refutes these contentions, claiming, for example, that everyone was paid for all time worked, they authorized and permitted rest breaks, and provided meal periods.

Plaintiffs also considered the fact that continued litigation would be expensive, time-consuming and an uncertain proposition, involving a trial and possible appeals, and would delay any recovery to the State and the Aggrieved Employees. There is also a substantial risk that the Court would reduce the award even if Plaintiffs are successful or otherwise exercise its discretion not to award penalties at all even if Labor Code violations are found. In contrast, if the Court approves the Settlement, the Aggrieved Employees will receive timely relief and avoid the risk of an unfavorable judgment. And, in light of the Court's ruling in *Wesson*, Plaintiffs had to account for the real possibility that a Court determines that some or all of the theories advanced by Plaintiffs in this Action would not lend themselves to a manageable trial, despite the fact Plaintiffs deny that there is a manageability requirement under PAGA. (*See, e.g., Estrada v. Royalty Carpet Mills,* (2022) 76 Cal.App.5th 685, 709-710). Plaintiffs objectively and knowledgably balanced the strengths and weaknesses of their claims, the likelihood of reaching a trial, and the likelihood of success at trial against the risk of continued litigation and was able to determine a realistic range of settlement recovery for PAGA penalties.

As such, PAGA Counsel believe an 80% discount of this maximum exposure, resulting in

$8,699,630 to be a reasonable estimate of the likelihood of what Plaintiffs may potentially recover at trial for PAGA penalties ($43,498,150 x 0.2). In all, PAGA Counsel obtained a Gross Settlement Amount of **$2,445,000.00**.

Thus, when the risks of litigation, including, without limitation, the burdens of proof necessary to establish liability, the mixed case law on manageability, as well as the probability of appeal of a favorable judgment are considered, it is clear that the Settlement is reasonable and in the best interest of the State and the public. The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties s, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory."[9] (Lab. Code, § 2699, subd. (e)(2); *Iskanian,* 59 Cal.4th at 384.)

C. PAGA Counsel's Requested Fees and Costs are Reasonable

PAGA Counsel are entitled to reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) which provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Lab. Code, § 2699, subd. (g)(1); see also *Gouskos v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 765 [holding that attorneys' fees to prevailing party are mandatory when the statute uses the word "shall"].) Additionally, PAGA Counsel are entitled to fees based on the contingent agreement with its clients. It is undisputed that Plaintiffs are the prevailing party. (*See Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153, internal citations omitted ["[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.")

Accordingly, Plaintiffs are entitled to recover attorneys' fees and costs. Plaintiffs request a fee of thirty-three and one third percent (33 and 1/3%) of the Gross Settlement Amount, which, amounts to $815,000.00, is reasonable, is well within the range of fees generally sought and

[9] The Settlement Agreement provides that it is a compromise and settlement of highly disputed claims and is not intended as an admission in any way. The Parties also agreed that the Settlement shall not be deemed a finding or determination that any of Defendant's policies or practices were unlawful in this Action or any other action.

approved in other class and representative cases, and is also reasonable based on PAGA Counsel's lodestar.

1. An Award of Fees Based on a Percentage of the Common Fund is Appropriate and Reasonable

The percentage of attorneys' fees set forth in the Settlement (*i.e.,* one third of the GSA) is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50% in collective actions, depending on the circumstances of the case. (Newberg on Class Actions, 4th Ed. 2002, § 14: 6.) Furthermore, California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total recovery. (*Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; *see also In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn.13, emphasis added ["Empirical 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"].) *See also* DS, ¶¶ 15.

Here, the requested fee is consistent with the fees awarded in other PAGA settlements approved by California courts. (*See, e.g.*, *Ortiz v. Morgan Stanley Smith Barney, LLC* San Francisco County Superior Court, Case No. CGC-17-560139 [awarding attorneys' fees of one-third under percentage method]; *Chavez v. Saticoy Lemon Ass'n Case No.* 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118, Ventura County Superior Court Aug. 29, 2015) [approving attorneys' fees of one-third of PAGA settlement fund]; *Tocci v. Yard House Northridge LLC,* Los Angeles County Superior Court Case No. BC625604 [same]; *Jozami v. Twilio Inc.,* San Francisco County Superior Court Case No. CGC-18-566356 [same].)

PAGA Counsel invested time and resources into litigating this Action, with over $30,000.00 of costs to date and counting deferred to the end of the case and entirely contingent on the outcome which, as set forth above, the recovery of which was far from certain with much of the litigation still potentially pending. It has been a long-recognized principle that an attorney merits a significantly larger fee when the compensation is contingent, rather than being fixed on a time or contractual basis. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) During the period that this Action has been pending, PAGA Counsel have advanced all expenses, and have not received any compensation for prosecuting the Action on behalf of the State and other Aggrieved Employees.

The significant outlay of monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a substantial settlement or the imposition of civil penalties at trial. PAGA Counsel should not be penalized with a lower fee for settling the case prior to trial, because the percentage of the fund method "encourages early settlement, which avoids protracted litigation." (*Laffitte v. Robert Half Int'l* (2016) 1 Cal.5th 480, 489.) Thus, the requested award of attorneys' fees is reasonable under the percentage of the fund method.

2. The Requested Fees are Also Reasonable Under a Lodestar Crosscheck

To measure reasonableness, the Court may cross-check the percentage of recovery against PAGA Counsel's lodestar. (*Laffitte*, 1 Cal.5th at 506; *see Privacy Cases*, 175 Cal.App.4th at 556-58.). The total lodestar amounts are included as part of the supporting motions to this agreement of the declarations of PAGA Counsel.

3. PAGA Counsel's Hours are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." (*Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 fn. 8.) The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 [noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."]. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records" (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, citations omitted; *see also Wershba,* 91 Cal.App.4th at 255 ["California permits fee awards in the absence of detailed time sheets"]; *Laffitte*, 1 Cal.5th at 505 [trial court properly exercised its discretion to perform the lodestar cross-check "using counsel declarations summarizing overall time spent rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task"].)

PAGA Counsel have spent an enormous amount of hours litigating this Action to bring it to resolution, not including time which will be expended monitoring the administration of the settlement and distribution of funds to Aggrieved Employees. The efforts expended by PAGA Counsel to achieve this result include, but are not limited to, the following:

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- The investigation of the matter, including meeting with Plaintiffs, reviewing policies provided by Plaintiffs, review of documents in Plaintiffs' possession, review and analysis of Plaintiffs' personnel files, and exploring Defendant's corporate structure to determine whether any other individuals or entities should be named in the litigation;
- Researching the dockets for other cases filed against Defendant, determining whether they named all allegedly culpable defendants and included all theories available;
- Compliance with prerequisites in connection with Plaintiffs' cause of action under PAGA;
- Filing and serving of the PAGA Notices, including the Martinez PAGA Notice, the Gamez PAGA Notice and the Suarez PAGA Notice;
- Filing and serving pleadings in the Action, including: the Martinez Class Action; the Martinez PAGA Action; the Gamez Class Action; the First Amended Complaint in the Gamez Class Action, adding causes of action set forth in the Gamez PAGA Notice; the Suarez PAGA Action; and the First Amended Complaint in the Martinez PAGA Action, adding plaintiffs Hugo Gamez and Joel Suarez as named plaintiffs, and alleging the Released PAGA Claims, as defined in the Settlement Agreement (the "Consolidated Complaint")
- Review and analysis of Defendant's answer to plaintiff's Christian Matthew Martinez's PAGA complaint;

- Filing and serving plaintiff Christian Matthew Martinez's Opposition to Defendant's Motion to Compel Individual Arbitration and Class Claims;
- Filing and serving plaintiff Christian Matthew Martinez's Opposition to Defendant's Request for Judicial Notice in Support of the Motion to Compel Individual Arbitration and Class Claims;

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- Review and Analysis of Defendant's Reply to plaintiff Christian Matthew Martinez's Opposition to Defendant's Request for Judicial Notice in Support of the Motion to Compel Individual Arbitration and Class Claims;
- Review and analysis of the Court's Minute Orders, attention to scheduling and delegation of actions in light thereof, meeting and conferring with Defendant's counsel, drafting and filing of Joint Reports, and preparation for appearance at conferences and hearings;
- Obtaining and reviewing informal discovery from Defendant, including time and payroll records for putative class members, Defendant's written policies, and other informal discovery produced for Plaintiffs to evaluate the claims;
- Discussing the potential merits of mediation, as well as negotiating the parameters thereof and the informal discovery to be exchanged beforehand, which involved iterations of written correspondence back and forth and several telephone discussions between counsel regarding the potential scope of discovery, as well as the scope of the pleadings;
- Obtaining a list of non-exempt employees who were Aggrieved Employees or witnesses of the alleged violations;
- Drafting a questionnaire, contacting Aggrieved Employees whose information was made available through Plaintiffs and third parties, obtaining responses to questionnaires, revising the questionnaires based on answers received, reducing

the questionnaire responses to declarations, and requesting further information as necessary upon review of the questionnaire responses and/or at mediation;

- Working with opposing counsel and consultants for the receipt of time records, payroll records, and data points for Aggrieved Employees, and analyzing the same with the aid of retained expert data consultants and Plaintiffs to perform analyses of liability and exposure;
- Selecting a mediator and scheduling a mediation date;

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- Preparation of mediation brief, analysis, and damages model in conjunction with expert data consultants, for use at the mediation session;
- Attendance at a full-day session of mediation by various attorneys;
- Extensive negotiation, with the assistance of a mediator, regarding the terms of the settlement, which was memorialized in a long form Settlement Agreement;
- Exchange of numerous versions of the long form Settlement Agreement, and finalizing and fully executing the long form Settlement Agreement;
- Drafting and reviewing the PAGA Payment Letter;
- Selecting a third-party administrator with counsel for Defendant for administration of PAGA Payment Letter and obtaining bids for settlement administration;
- Communicating with Plaintiffs who requested updates or other information regarding this matter; and
- Preparing the instant Motion for Approval of Representative Action Settlement.

PAGA Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. Thus, the Court should find that PAGA Counsel's hours were necessary and reasonable to achieve an excellent result. PAGA Counsel's hourly rates are in line with, and, in fact, modest, compared with the hourly rates of other counsel in similar actions.

The hours expended by the lawyers and staff members of PAGA Counsel is only a calculation of efforts made thus far; it does not include the time that will be spent preparing for and attending the approval hearing, reviewing the Settlement Administrator's final calculations, and subsequent coordination with the Settlement Administrator to ensure payments to Aggrieved Employees are timely distributed. Thus, PAGA Counsel request that the Court find that these hours are reasonable in this litigation.

The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigation of the facts and the law, and preparing the initial pleadings. (*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 attorney's fee claim. (*Serrano v. Priest* (1982) 32 Cal. 3d 621, 639.).

Once the Court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. (*Serrano*, 20 Cal.3d at 48). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. (*Id*.) However, this list is not exhaustive, and the Court can consider other factors it deems important in setting the multiplier. (*Id*.at 40.) A limitation in setting the multiplier is that the Court cannot duplicate factors already included in the lodestar. (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1139.).

Multipliers are commonly awarded in cases accepted on a contingent basis. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133 [contingent risk multipliers applied to attract attorneys to cases of significant societal importance and "to compensate them for the risk of loss generally in contingency cases *as a class*."]; *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 947 [contingency fee factor *alone* supported a multiplier].) Indeed, it is virtually impossible to bring a plaintiff's counsel's compensation "into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis" unless a premium *(i.e.,* a multiplier) is provided. (*Ketchum,* 24 Cal.4th at 1132.) "Multipliers can range from two to four or even higher". (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in *Hernandez Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 273-74, fn. 4.).

PAGA Counsel have been representing Plaintiffs for more than a year, while never receiving any compensation, and expending significant time and resources which could have been directed towards other cases. In agreeing to litigate this case on a contingent fee basis, PAGA Counsel assumed considerable risk given the uncertain outcome of PAGA actions, which was amplified in light of *Wesson*.

In applying the multiplier, *Newberg on Class Actions* states that "[m]ultipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier." (*Id.*, Vol. 3, §14.03, pp. 14-5, Dec. 1992.).

Here, no multiplier is necessary as Class Counsel has incurred far more in attorneys' fees than Class Counsel requests in fees from the Gross Settlement Amount. However, should a multiplier have been requested, it would have been warranted.

a. *<u>PAGA Counsel Would Have Been Entitled to a Multiplier Based on a Percentage of the Fund to Ensure that the Fee Awarded is Within the Range of Fees Freely Negotiated in the Legal Marketplace in Comparable Litigation</u>*

Had it been necessary, a multiplier to reach the fees requested by PAGA Counsel would have been more than justified to compensate PAGA Counsel at a rate reflecting the risk of nonpayment in this matter, as PAGA Counsel's representation of Plaintiffs was purely on a contingent basis. This is because litigating a wage-and-hour representative action through trial takes years and requires the investment of tens (if not hundreds) of thousands of dollars and thousands of hours of time. Litigation costs in the present case for PAGA Counsel are already over $30,000.00 Attorneys willing to undertake this risk deserve a high rate of recovery.

Moreover, wage-and-hour laws are still developing, and change in the law always threaten to wipe out the plaintiff's attorney. In fact, numerous appellate decisions and decisions of both the California and United States Supreme Courts have attacked the validity of PAGA actions directly relevant to this case, including *Wesson*, which, as set forth herein, could have significantly affected its value. It is this contingent nature of these cases that justify an award when and if PAGA Counsel are able to obtain a settlement or verdict, because oftentimes no money is recovered in a case, including plaintiff's counsel's costs, let alone their time.

b. *<u>The Quality of Representation, the Novelty, and Complexity of the Issues and Results Obtained</u>*

PAGA Counsel used a high level of skill in addressing the difficult questions presented in this case, which involved the contested issues regarding: the compliance of various of Defendant's policies with the Labor Code, including whether all time worked was paid for; whether meal and/or rest breaks were given in compliance with the Labor Code; issues regarding the timeliness of pay, including whether all pay was received by termination or resignation; the sufficiency and accuracy of wage statements (including whether issues therewith, if any, were intentional or injurious); and various other issues. Proof of PAGA Counsel's skill in this area of law lies in the size of this Settlement and the recoveries of the State and Aggrieved Employees despite Defendant's contentions that Plaintiffs' unpaid wages claims are speculative; Defendant's contention that its meal and rest period policies were compliant; and other hurdles encountered by PAGA Counsel that were traversed in reaching this Settlement pertaining to evolving case law regarding PAGA actions.

c. *<u>This Litigation Precluded Other Employment by PAGA Counsel</u>*

A practitioner can only properly litigate so many cases at one time. The requirements of this case were significant, requiring over extraordinary hours to be expended to date by PAGA Counsel, and another twenty-five (25) to fifty (50) hours conservatively expected to be expended in the future in connection with approval, settlement administration, answering questions of Aggrieved Employees, and updates to this Court regarding uncashed checks. PAGA Counsel were also most definitely precluded from other employment. This factor must also be considered.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095.) The Court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise, and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.)

One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a contingency fee relationship. Although there is no customary billing rate, the nature of class action work should be strongly considered by the court. Courts have upheld rates as high as $450[10] per hour (in 1993) in employment matters. (*Bihun v. AT&T Information Systems. Inc.* (1993) 13 Cal. App. 4th 976, overruled on other grounds.)

A survey conducted by the National Law Journal for the year 2002 provides a sample of a billing rate for California Lawyers. In that survey, six California firms provided their hourly billing rates. Of those six firms, five regularly charge in excess of $500.00 per hour for their partners. In fact, four of the firms charge as high as $600.00, $620.00, $650.00, and up to $850.00 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County and San Diego County and are the types of firms that Plaintiffs' Counsel regularly oppose in these class action cases. (*See* National Law Journal Survey, attached as Exhibit "5" to the Declaration of Vedang J. Patel.). The only difference is that these defense attorneys are paid on a monthly basis and do not have to advance any costs on a case.

Finally, PAGA Counsel attach the Declaration of Richard Pearl in support of the Motion for Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Los Angeles Superior Court Case No. BC441237, dated January 4, 2011. (*See* Declaration of Richard Pearl attached as Exhibit "6" to the Declaration of Vedang J. Patel.) Mr. Pearl specializes in issues related

[10] Adjusted for inflation, $450 in 1993 equals over $860 in 2022.

to cost-award attorney's fees, including the representation of parties in fee litigation and appeals, serving as an expert witness, mediator and arbitrator in disputes concerning attorney's fees and related issues. Mr. Pearl is also the author of California Attorney's Fee Awards (3d ed. Cal. CEB 2010), as well as the author of the Second Edition, years 1994 through 2008. He has also authored numerous other publications on attorney's fees, as set forth in his Declaration.

Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California. He confirms that courts have approved hourly rates of attorneys as follows:

- Rates of up to $875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- Rates of up to $750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County Superior Court (before applying a 3.7 multiplier); and
- Rates of up to $750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25 multiplier). *Id* at pages 4 and 5.

Additionally, Mr. Pearl has reviewed numerous declarations, depositions, and surveys of legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to $775.00, $795.00, $800.00, $855.00, $950.00, etc. (*Id.* at pp. 6-12). These are non-contingent rates where payment in full is expected promptly upon billing. (*Id.* at p. 13).

PAGA Counsel are experienced litigators which specialize in employment law, with a substantial PAGA and wage and hour class action practice. Moreover, similar rates for the attorneys and staff of PAGA Counsel have been approved by various California Superior Courts. Given the skill and experience of PAGA Counsel in this case, and the excellent result achieved for the State and other Aggrieved Employees, the requested rates are reasonable.

4. The Settlement Administrator Expenses are Reasonable

The Settlement Administrator's request for costs of up to $30,000.00 is reasonable, given the tasks to be performed by the Settlement Administrator, including but not limited to (a) processing the data provided by Defendant to be used in calculating the Aggrieved Employees' payments; (b) preparing, printing and mailing to the Aggrieved Employees the PAGA Payment

Letter, as well as following up with reasonable skip tracing; (c) calculating and mailing Aggrieved Employees' payments to Aggrieved Employees; (d) filing any required federal and state tax forms and related agency reporting; (e) filing any required reports with the Court; (f) establishing a settlement fund; (g) distributing the Gross Settlement Amount; (h) voiding uncashed or undeliverable checks to issue those funds to the State Controller's Office; (i) providing necessary reports and declaration; and (j) all other tasks described in the Settlement Agreement, as to which the Parties mutually agree. The Settlement Administrator's costs should be approved.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the PAGA Settlement Agreement in its entirety.

Dated: November 20, 2025

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

By: ______________________________

VEDANG J. PATEL

Attorneys for Plaintiffs, CHRISTIAN MATTHEW MARTINEZ, JOEL SUAREZ and HUGO GAMEZ, as aggrieved employees, and on behalf of all other aggrieved employees