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12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 ROGER SHEER, individually, and on behalf
16 of other aggrieved employees pursuant to the
17 California Private Attorneys General Act,

18 Plaintiff,

19 v.

20 AMERICAN BANKERS INSURANCE
21 COMPANY OF FLORIDA, a Florida
22 corporation; ASSURANT, INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

23 Defendants.
24

Case No. 23STCV28865

Assigned for all purposes to:
Hon. Kevin C. Brazile, Dept. 20

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, SETTLEMENT
ADMINISTRATION COSTS, AND PAGA
REPRESENTATIVE ENHANCEMENT
PAYMENT; MEMORANDUM OF POINTS
AND AUTHORITIES**

[Declarations of Anthony J. Orshansky, Selena
Matavosian, Roger Sheer, and Proposed Order,
submitted concurrently herewith]

Approval Hearing

Date: May 21, 2026

Time: 8:30 a.m.

Dept. 20

Reserved by order of the Court

Action filed: November 27, 2023

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on May 21, 2026 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard before the Honorable Kevin C. Brazile in Department 20 of the above-
4 captioned court located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff Roger
5 Sheer (“Plaintiff”) will and hereby does move this Court pursuant to Labor Code section 2699,
6 subdivision (l)(2) for entry of an order:

7 1. Granting approval of the settlement entered into between Plaintiff and Defendants
8 American Bankers Insurance Company of Florida and Assurant, Inc. (“Defendants”) of claims
9 brought pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698 et seq.
10 (“PAGA”), as set forth in the Joint Stipulation and Settlement Agreement of PAGA Representative
11 Action (“Settlement Agreement”) attached as Exhibit 1 to the Declaration of Anthony J. Orshansky
12 filed concurrently herewith, including and not limited to, the payment by Defendants of the Gross
13 PAGA Settlement Amount of \$130,000;

14 2. Finding that Plaintiff exhausted all administrative remedies under the PAGA, and as
15 such, is authorized to enter into the settlement on behalf of the California Labor and Workforce
16 Development Agency (“LWDA”);

17 3. Approving the Net PAGA Fund—*i.e.*, the amount remaining after deductions from
18 Gross PAGA Settlement Amount for Court-approved payments of attorneys’ fees and costs to
19 Plaintiff’s counsel, enhancement payment to Plaintiff as the PAGA Representative, and costs of
20 settlement administration;

21 4. Appointing CPT Group, Inc. as the Settlement Administrator to administer the
22 settlement and distribute payments therefrom;

23 5. Awarding up to \$10,000 to CPT Group, Inc. for reimbursement of settlement
24 administration costs;

25 6. Awarding up to 35% of the Gross PAGA Settlement Amount (or, \$45,000) as
26 compensation for reasonable attorneys’ fees, and the amount of \$16,953.63 for reimbursement of
27 actual litigation costs and expenses, to CounselOne, PC and Lawyers *for* Justice, PC as PAGA
28 Counsel pursuant to California Labor Code section 2699, subdivision (g)(1);

1 7. Awarding \$5,000 to Plaintiff as an enhancement payment for his service as PAGA
2 Representative;

3 8. Directing Defendants to fund the Gross PAGA Settlement Amount, and directing the
4 Settlement Administrator to make payments therefrom in accordance with the Settlement
5 Agreement;

6 9. Directing the mailing of individual settlement checks to the PAGA Members, along
7 with the Notice of Settlement Award in substantially similar form and content as the version attached
8 as internal Exhibit A to the Proposed Order and Judgment Granting Approval of PAGA
9 Representative Action Settlement, Attorneys' Fees and Costs, Settlement Administration Costs, and
10 PAGA Representative Enhancement Payment submitted concurrently herewith; and

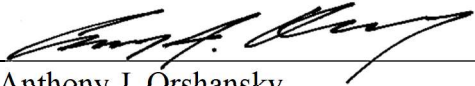
11 10. Entering final judgment in the form of the Proposed Order and Judgment Granting
12 Approval of PAGA Representative Action Settlement, Attorneys' Fees and Costs, Settlement
13 Administration Costs, and PAGA Representative Enhancement Payment submitted concurrently
14 herewith.

15 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
16 the concurrently filed Declarations of Anthony J. Orshansky, Selena Matavosian, and Roger Sheer
17 and the exhibits thereto, the pleadings and other records on file with the court in this matter, and any
18 oral argument as may be presented at the hearing on this motion. Finally, given the multiplicity of
19 issues addressed in this motion, Plaintiff respectfully submits that there is good cause to exceed the
20 15-page limit set forth in California Rules of Court, Rule 3.1113(d), and respectfully requests that
21 the Court consider the attached Memorandum of Points and Authorities.

22
23 Dated: March 27, 2026

Respectfully submitted,

COUNSELONE, PC

24
25 By: 

26 Anthony J. Orshansky
27 P. Bartholomew Quintans
28 Attorneys for Plaintiff and PAGA Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with Labor Code section 2699, subdivision (l), Plaintiff Roger Sheer
4 (“Plaintiff”) seeks approval of the Joint Stipulation and Settlement Agreement of PAGA
5 Representative Action (“Settlement Agreement”) entered into with Defendants American Bankers
6 Insurance Company of Florida and Assurant, Inc. (“Defendants;” together with Plaintiff, the
7 “Parties”), which resolves claims under the Private Attorneys General Act of 2004, Labor Code
8 section 2698 et seq. (“PAGA”) brought by Plaintiff on behalf of himself, the California Labor and
9 Workforce Development Agency (“LWDA”), and all current and former individuals who were
10 employed by Defendants as non-exempt field employees in California during the PAGA Period¹
11 (“PAGA Members”). A fully executed copy of the Settlement Agreement is attached as **Exhibit 1**
12 to the Declaration of Anthony J. Orshansky (“Orshansky Decl.”) filed concurrently herewith.

13 **This is a settlement of claims for civil penalties under the PAGA only**—it is not a class
14 settlement, and does not release the individual non-PAGA wage claims of any affected employees
15 other than those of the Plaintiff himself. (See Lab. Code, § 2699, subd. (g)(1); *ZB, N.A. v. Superior*
16 *Court* (2019) 8 Cal.5th 175, 182 [unpaid wages are not recoverable under PAGA].) As such, the
17 usual two-step preliminary and final approval process is not required.

18 As detailed below, the settlement fully satisfies the standard set forth in *Moniz v. Adecco*
19 *USA, Inc.* (2021) 72 Cal.App.5th 56, as fair, adequate, and reasonable, and the release is
20 appropriately tailored to the scope of claims that were asserted or could have been asserted based
21 on the facts alleged in Plaintiff’s PAGA Notice and the operative complaint during the PAGA
22 Period. The settlement is fair, adequate, and reasonable because it represents a reasoned compromise
23 of a disputed claim that has been reached through arm’s-length negotiations in light of the risks,
24 complexity, and expense of further litigation, and the strengths of the PAGA claim. The settlement
25 meets the requirements for court approval based upon the relevant fairness factors.

26
27
28 ¹ “PAGA Period” is defined as the period from September 23, 2022 to March 25, 2025. (Settlement Agreement ¶ 13.)

As set forth below, the Parties respectfully request that the Court approve the Settlement Agreement, award attorneys' fees and costs, settlement administration costs, and enhancement award, and approve the amounts allocated for payments to the LWDA and to PAGA Members as set forth in the Settlement Agreement.

II. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY

On September 21, 2023, Plaintiff filed a PAGA Notice with the LWDA, and sent a copy by certified mail to Defendants, alleging various violations of the Labor Code by Defendants in accord with the PAGA. (Declaration of Selena Matavosian ("Matavosian Decl."), filed concurrently herewith, at ¶ 9 and Exh. 1; Orshansky Decl. ¶¶ 16-17 and Exh. 2.) Plaintiff filed his Complaint alleging Defendants' violations of the Labor Code pursuant to the PAGA on November 27, 2023. (Orshansky Decl. ¶ 18.) Defendants filed their Answer to the Complaint on January 24, 2024. (*Id.* at ¶ 19.)

Following PAGA Counsel's investigation, and the exchange of relevant information and documents, the Parties participated in a full-day mediation, and as further described below, reached a settlement of the claims encompassed in the action. (Orshansky Decl. ¶ 20.)

III. SUMMARY OF SETTLEMENT TERMS

A. Scope of Settlement.

Under the settlement, and as noted above, PAGA Members are all current and former individuals who were employed by Defendants as non-exempt field employees in California during the PAGA Period. (Settlement Agreement ¶ 11.) There are an estimated 640 pay periods worked by 281 PAGA Members during the PAGA Period. (*Id.* at ¶ 30.)

If the Court grants approval of the settlement, upon the Effective Date,² Plaintiff,

² "Effective Date" means the later of the following events: five (5) calendar days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court's approval and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, i.e., 65 days from the date the court grants approval, enters Judgment, and notice of entry of judgment is filed; or, if any appeal, writ, or other appellate proceeding opposing Approval has been filed within that timeframe; five (5) business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief. (Settlement Agreement ¶ 4.)

PAGA Members, and the State of California will release the Released Parties³ from the Released Claims.⁴

B. Funding and Distribution of the Gross PAGA Settlement Amount and Resulting Net PAGA Fund.

The Settlement Agreement provides for payment by Defendants of the amount of \$130,000 to resolve the action (“Gross PAGA Settlement Amount”). (Settlement Agreement ¶ 54.) After deduction of \$45,000 in attorney’s fees and up to \$20,000 in litigation costs to PAGA Counsel, a \$5,000 enhancement payment to Plaintiff, and up to \$10,000 in settlement administration costs to CPT Group, Inc. (“CPT”), the Settlement Administrator, the Net PAGA Fund is expected to be approximately \$50,000, of which seventy-five percent (75%), or approximately \$37,500, will be paid to the LWDA, and the remaining twenty-five percent (25%), or approximately \$12,500, will be distributed to PAGA Members. (*Id.* at ¶¶ 29, 31-33, 35.) The Net PAGA Fund will be distributed to all PAGA Members in this non-reversionary settlement. (*Id.* at ¶ 29(b).) The payment to each PAGA Member will be on a pro rata basis based on the number of pay periods worked by each PAGA Member during the PAGA Period. (*Id.* at ¶ 33.) Specifically, the Net PAGA Fund shall be allocated by attributing one (1) share for each pay period each PAGA Member worked during the

³ “Released Parties” is defined as Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to, as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants. (Settlement Agreement ¶ 15.)

⁴ “Released Claims” is defined as all PAGA claims pled in the Lawsuit and any PAGA Notice sent to the LWDA by Plaintiff in or prior to the Lawsuit, and any PAGA claims which could have been alleged under the facts, allegations and/or claims pled in the Lawsuit or any PAGA Notice sent to the LWDA by Plaintiff in or prior to the Lawsuit, against the Released Parties, for work performed during the PAGA Period, including the claims set forth in the Lawsuit, specifically: penalties pursuant to the PAGA for alleged violations of the California Labor Code including: (1) failure to pay overtime compensation; (2) failure to provide meal periods or pay for all meal premiums; (3) failure to provide rest periods or pay rest premiums; (4) failure to pay minimum wages; (5) failure to timely pay wages upon separation of employment; (6) failure to timely pay wages during employment; (7) failure to provide complete and accurate wage statements; (8) failure to keep complete and accurate payroll records; (9) failure to reimburse necessary business-related expenses and costs; and claims predicated on the same or similar facts and/or claims alleged in the Lawsuit and/or PAGA Notice, including claims under the California Labor Code for violations of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197 et seq., 1197.1, 1198, 2698 et seq., 2800, 2802, applicable IWC Wage Orders; and California Code of Regulations, Title 8, section 11000 et seq. (Settlement Agreement ¶ 36.)

1 PAGA Period. (*Ibid.*) The total number of respective shares shall be added up and divided by the
2 total number of shares across the PAGA Period to get the percentage share for that PAGA Member.
3 (*Ibid.*)

4 Within fifteen (15) calendar days after the Effective Date, Defendants will provide the
5 Settlement Administrator, CPT Group, Inc. (“CPT” or “Settlement Administrator”) with a database
6 listing each PAGA Member’s name, last-known address, Social Security number, and number of
7 pay periods worked during the PAGA Period, based on Defendants’ payroll and other business
8 records. (Settlement Agreement ¶ 38.) At least thirty (30) calendar days following the Effective
9 Date, Defendants will transmit the Gross PAGA Settlement Amount to a qualified settlement
10 account established by the Settlement Administrator. (*Id.* at ¶ 29.) The Settlement Administrator
11 will run a check of PAGA Members’ addresses against those on file with the U.S. Postal Service’s
12 National Change of Address Database. (*Id.* at ¶ 39.)

13 Within fifteen (15) calendar days after Defendants fund the Gross PAGA Settlement
14 Amount, the Settlement Administrator will calculate payments and mail the Notice of Settlement
15 Award (“Settlement Notice”) (see Exh. 1 to Orshansky Decl. [Settlement Agreement] at internal
16 Exhibit A) along with PAGA Members’ individual settlement checks (collectively, “Settlement
17 Packets”) by first class U.S. mail. (Settlement Agreement ¶ 40.) Individual settlement payments will
18 be allocated entirely to penalties, to be reported on an IRS Form 1099, and PAGA Members assume
19 full responsibility and liability for any taxes owed or attributable to the settlement awards. (*Id.* at
20 ¶ 34.) Any Settlement Packets returned to the Settlement Administrator as undeliverable shall be
21 remailed to the forwarding address, if any, on the return envelope. (*Id.* at ¶ 41.) If no forwarding
22 address is provided, the Settlement Administrator will run searches and additional skip tracing as
23 necessary to determine the correct address. (*Ibid.*)

24 Individual settlement checks shall remain valid and negotiable for 180 calendar days from
25 the date of issuance and will be canceled by the Settlement Administrator if not cashed within that
26 time. (Settlement Agreement ¶ 42.) PAGA Members shall be bound by the settlement whether or
27 not they cash their individual settlement check. (*Ibid.*) Funds associated with canceled checks will
28 be transmitted to the California Unclaimed Property Fund pursuant to Code of Civil Procedure

1 section 384 to be held in the name of the PAGA Member until such time as he or she may claim it.
2 (*Ibid.*)

3 **IV. THE SETTLEMENT IS FAIR AND SHOULD BE APPROVED**

4 The settlement is the result of hard-fought negotiations conducted with the assistance of an
5 experienced mediator, fulfills the PAGA’s objectives, is fair, adequate, and reasonable, and meets
6 all the criteria for approval as detailed below.

7 **A. Standards for Approval of PAGA Settlements.**

8 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of the State of
9 California to recover civil penalties that the LWDA could normally pursue on behalf of employees
10 against an employer. Unnamed employees need not be given notice of the PAGA claim, nor do they
11 have the ability to opt out of the representative PAGA claim. (*Robinson v. Southern Counties Oil*
12 *Co.* (2020) 53 Cal.App.5th 476 [aggrieved employee cannot opt out of a PAGA settlement];
13 *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546-548 “[A] PAGA action is a statutory action
14 for penalties brought as a proxy for the State,” “whatever personal claims the absent employees
15 might have for relief are not at stake[,]” as such, “there is no need to protect absent employees’ due
16 process rights” and they “will be bound by the outcome of any PAGA action[.]”]; *Ochoa-Hernandez*
17 *v. CJADERS Foods, Inc.* (N.D.Cal. Apr. 2, 2010) 2010 WL 1340777, at *5 [unnamed employees
18 need not be given notice]; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 984-86 [same].) Before
19 bringing a civil action under the PAGA, an employee must comply with Labor Code section 2699.3.
20 (See Lab. Code, § 2699, subd. (a).) Plaintiff here has complied. (See Matavosian Decl., filed
21 concurrently herewith, at ¶ 9 and Exh. 1; Orshansky Decl. ¶ 17 and Exh. 2.)

22 The settlement of a PAGA action requires court approval. (See Lab. Code, § 2699, subd.
23 (l)(2).) However, a PAGA claim asserted on a non-class representative basis is not a class action,
24 but rather a law enforcement action. (*Casida v. Sears Holdings Corp.* (E.D.Cal. Jan. 26, 2012) 2012
25 WL 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D.Cal. June 2, 2011) 2011 WL 2173715,
26 at *11; *Arias, supra*, 46 Cal.4th at pp. 980-88 [plaintiff need not satisfy class action requirements to
27 assert a PAGA claim]; *Pedroza v. PetSmart, Inc.* (C.D.Cal. Jan. 28, 2013) 2013 WL 1490667, at
28 *15; *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993,

1 1003; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381.) A court’s
2 review of a PAGA settlement involves consideration of unique factors that render the approval
3 process distinct from, and simpler than the two-step court approval process for a class action
4 settlement. A court reviewing a PAGA settlement need only “ensur[e] that a negotiated resolution
5 is fair to those affected.” (*Williams, supra*, 3 Cal.5th at p. 549, citing Lab. Code, § 2699, subd.
6 (l)(2).) Although Labor Code section 2699, subdivision (l), does not set forth the criteria on which
7 a PAGA settlement is to be judged, courts have approved settlements of PAGA claims. (See, e.g.,
8 *Resendez v. Bridgestone Retail Operations, LLC* (June 2016) L.A. Cty. Super. Court Case No.
9 BC596892, *DCH Auto Wage and Hour Cases* (May 2017) L.A. Cty. Super. Court Case No.
10 JCCP4833; *Garcia v. Gordon Trucking* (E.D.Cal. Oct. 31, 2012) 2012 WL 5364575, at *3; *Schiller*
11 *v. David’s Bridal, Inc.* (E.D.Cal. June 11, 2012) 2012 WL 2117001, at *14; *Chu v. Wells Fargo*
12 *Invs., LLC* (N.D.Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v. Ruiz Food Prods.* (E.D.Cal
13 Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
14 589.)

15 In a PAGA case, the court’s focus is not on the monetary amount recovered, but instead
16 whether the total settlement amount achieves the PAGA’s objectives. The purpose of the PAGA is
17 “to incentivize private parties to recover civil penalties for the government that otherwise may not
18 have been assessed and collected by overburdened state enforcement agencies.” (See *Ochoa-*
19 *Hernandez, supra*, 2010 WL 1340777, at *4, citing *Arias, supra*, 46 Cal.4th at p. 986.) Penalties
20 recovered under the PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor
21 laws . . . and for education of employers and employees about their rights and responsibilities under
22 this code, to be continuously appropriated to supplement and not supplant the funding to the agency
23 for those purposes.” (See Lab. Code, § 2699, subd. (j).)

24 **B. The Factors Giving Rise to a Presumption of Fairness Exist.**

25 The Parties reached the settlement after conducting extensive, arm’s-length settlement
26 negotiations and participating in a full-day mediation with Eve Wagner, Esq. (Orshansky Decl.
27 ¶¶ 27-28.) A settlement that is “the product of extensive and hard-fought adversarial negotiations
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1 between the parties” is entitled to a presumption of fairness. (*Wershba v. Apple Computer, Inc.*
2 (2001) 91 Cal.App.4th 224, 245.)

3 The settlement is presumptively fair because: (1) it is the product of adversarial non-
4 collusive, and arm’s-length negotiations with the assistance of an independent mediator
5 knowledgeable in complex employment matters; (2) it was negotiated by counsel with significant
6 experience in similar complex employment matters (e.g., class and PAGA representative actions);
7 and (3) it occurred after counsel for the Parties engaged in significant investigation to evaluate the
8 strengths and potential value of the PAGA claim, and risks and expenses of litigating this claim
9 through trial. (Orshansky Decl., *passim*.)

10 Based on all of the information available to the Parties, the Parties agree that this matter is
11 well-suited for settlement given the strengths and weaknesses of the PAGA claim and the facts and
12 circumstances of the case. (Orshansky Decl. ¶¶ 31-41.) PAGA Counsel have extensive experience
13 handling representative and class action wage-and-hour litigation and used that experience to
14 achieve a settlement recovery for Plaintiff, the State of California, and the PAGA Members. (*Id.* at
15 ¶¶ 5-15; Matavosian Decl. ¶¶ 2-8.) Therefore, the Court should give considerable weight to the
16 competency, experience, and opinion of counsel and the involvement of a neutral mediator in
17 assuring that the settlement is a product of arm’s-length bargaining. (See *Kirkorian v. Borelli*
18 (N.D.Cal. 1988) 695 F.Supp. 446, 451 [opinion of experienced counsel is entitled to considerable
19 weight]; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 616-17, 622 [recommendations
20 of plaintiffs’ counsel should be given a presumption of reasonableness]; see also *Satchell v. Fed.*
21 *Express Corp.* (N.D.Cal. Apr. 13, 2007) 2007 WL 1114010, at *4 [stating that the “assistance of an
22 experienced mediator in the settlement process confirms that the settlement is non-collusive”].)

23 **C. The Relative Strengths and Weaknesses of the PAGA Claim and the Range of**
24 **Possible Outcomes Strongly Favor Approval of the Settlement.**

25 In order for Plaintiff to prevail on the PAGA claim, he would have to prove that Defendants
26 engaged in the alleged Labor Code violations and demonstrate that Defendants’ conduct warrants
27 the imposition of penalties.

1 Defendants maintained several defenses to Plaintiff's allegations, which, if successfully
2 argued and proven, had the potential to eliminate or substantially reduce recovery. (Orshansky Decl.
3 ¶ 33.) Further, in addition to their strong arguments against the underlying claims, Defendants
4 maintained that it would be unjust to award the maximum potential PAGA penalties, given the
5 unsettled state of the law as it relates to PAGA penalties, and that the Court retains discretion to
6 lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
7 would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." (see Lab. Code,
8 § 2699, subd. (e)(2); see also *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
9 Cal.App.4th 1112, 1136 [holding that a court may reduce the amount of PAGA penalties awarded
10 to an employee based upon discretionary factors]). (Orshansky Decl. ¶ 35; see also Orshansky Decl.
11 ¶ 38 [collecting case law discussing the Court's broad discretion to reduce PAGA penalties
12 significantly, including down to \$5 per pay period as in the seminal case of *Carrington v. Starbucks*
13 *Corp.* (2018) 30 Cal.App.5th 504, 517, 529].)

14 Plaintiff's potential recovery under the PAGA is based on the number of pay periods
15 estimated by Defendants during the PAGA Period (i.e., 640). (Orshansky Decl. ¶ 39.) Multiplying
16 the number of pay periods by the \$200 heightened penalty for subsequent violations would bring
17 the potential recovery amount to \$128,000. (*Ibid.*) However, given the difficulty of being able to
18 prove Defendants' willfulness considering the lack of evidence thereof, using the \$100 initial
19 violation penalty would be more appropriate here, resulting in a potential recovery of \$64,000, of
20 which only 25%, or \$16,000, would be recoverable by the aggrieved employees. (*Ibid.*)

21 For a more detailed discussion of the relative strengths and weaknesses of the PAGA claim
22 and range of possible outcomes in the litigation, see the Orshansky Decl. ¶¶ 31-41.

23 **D. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.**

24 Courts favor voluntary conciliation and settlement of complex litigation. (*Class Plaintiffs v.*
25 *City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.) Generally, unless the settlement is clearly
26 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with
27 uncertain results. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D.Cal. Jan. 5, 2004) 221
28 F.R.D. 523, 526.)

1 Prior to reaching the settlement, the Parties investigated the veracity, strength, and scope of
2 the PAGA claim and allegations and considered a significant amount of information, documents,
3 and data relevant to Plaintiff's claim and Defendants' defenses thereto. (Orshansky Decl. ¶ 28.) The
4 Parties thoroughly and sufficiently evaluated the PAGA claim and related allegations, including,
5 and not limited to, calculating the potential monetary recovery under the PAGA. (*Id.* at ¶¶ 28-29;
6 31-41.) PAGA Counsel performed other work as well, which is discussed in further detail in the
7 concurrently filed Orshansky Decl. and Matavosian Decl. (Orshansky Decl. ¶¶ 28, 43; Matavosian
8 Decl. ¶¶ 14-16.)

9 Had the case not settled, the Parties would have conducted additional discovery, including
10 taking multiple depositions of party and percipient witnesses to prepare the case for trial. From the
11 inception of this litigation, Defendants indicated that they would aggressively litigate this case.
12 (Orshansky Decl. ¶ 33.) Even if Defendants failed on their defenses, litigating a complex PAGA
13 action is inherently expensive, and the litigation could continue beyond entry of judgment if either
14 side were to appeal an adverse ruling. (*Id.* at ¶ 41.) Additionally, there is a real possibility that
15 Plaintiff could recover nothing, either for himself or on behalf of the State of California or other
16 PAGA Members after years of costly and labor-intensive litigation. Avoiding these risks and the
17 likelihood of future contentious litigation, which would involve significant costs, favors settlement.

18 **E. The Settlement is Fair, Reasonable, and Adequate.**

19 The settlement provides significant benefits to the State of California and the PAGA
20 Members, and falls well within the range of acceptable settlements under the circumstances. "[T]he
21 very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest
22 hopes.'" (*Officers for Justice v. Civil Service Comm'n* (9th Cir. 1981) 688 F.2d 615, 624, citations
23 omitted.) "The proposed settlement is not to be judged against a hypothetical or speculative measure
24 of what might have been achieved by the negotiators." (*Id.* at p. 625.)

25 The settlement is a compromise of highly disputed claims. Plaintiff and PAGA Counsel
26 recognize the expense and length of continued proceedings necessary to pursue the matter through
27 trial and any possible appeals. (Orshansky Decl. ¶¶ 29-30.) Plaintiff and PAGA Counsel have also
28 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties

1 and delays inherent in such litigation. (*Id.* at ¶ 29.) Plaintiff and PAGA Counsel are also aware of
2 the burdens of proof necessary to establish liability, both generally and in response to Defendants’
3 defenses thereto, and the difficulties in establishing Defendants’ liability for, and the right to
4 recover, penalties on behalf of Plaintiff, the State of California, and other PAGA Members. (*Id.* at
5 ¶ 31.) Plaintiff and his counsel have also taken into account Defendants’ agreement to enter into a
6 settlement that confers significant relief upon the PAGA Members and the State of California. (*Id.*
7 at ¶ 41.) Considering all of the facts in this case, Plaintiff and his counsel have determined that the
8 settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is
9 in the best interests of the PAGA Members and the State of California. (*Ibid.*)

10 The result achieved in this case, and the monetary recovery provided by this settlement, are
11 well within the range of an acceptable settlement, especially when compared to trial court penalty
12 assessments in contested cases and the settlement of PAGA claims in other cases. Here, the value
13 obtained for settlement of the PAGA claim is significant, and it will be distributed in accordance
14 with and in fulfillment of the objectives of the PAGA statute.

15 **F. PAGA Counsel’s Experience and Views Favor Settlement Approval.**

16 PAGA Counsel are highly experienced in complex representative and class action wage-
17 and-hour cases. (Orshansky Decl. ¶¶ 5-15; Matavosian Decl. ¶¶ 2-8.) In PAGA Counsel’s view, the
18 benefits conferred by the settlement are eminently fair and reasonable, and in the best interests of
19 the State of California and the PAGA Members in light of the risk, delay, and uncertainty of
20 continued litigation and the settlement’s monetary benefits. (Orshansky Decl. ¶¶ 40-41.)
21 Furthermore, courts have acknowledged that “the interests of plaintiff, counsel and other potentially
22 aggrieved employees are largely aligned. All stand to gain from proving as convincingly as possible
23 as many Labor Code violations as the evidence will sustain[.]” (*Williams, supra*, 3 Cal.5th at p. 548,
24 citing Lab. Code, § 2699, subd. (g)(1)(i).)

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1 **V. THE REQUESTED ATTORNEYS' FEES AWARD SHOULD BE APPROVED**

2 **A. A Fee Award as a Percentage of the Settlement Is Appropriate.**

3 PAGA Counsel seek attorneys' fees in the amount of \$45,000, which represents 35% of the
4 Gross PAGA Settlement Amount, as provided by the Settlement Agreement. (Settlement Agreement
5 ¶ 31.) PAGA Counsel have agreed to split any attorney's fee award as follows: 50% to CounselOne,
6 PC, and 50% to Lawyers *for* Justice, PC. (Orshansky Decl. ¶ 53.) Plaintiff was informed of and
7 consented to this arrangement in writing. (*Ibid.*)

8 The requested attorneys' fees award is commensurate with: (1) the risk that PAGA took in
9 bringing and litigating the case, (2) the time, effort, and expense dedicated to the case, (3) the skill
10 and determination that PAGA Counsel have shown, (4) the results that PAGA Counsel have
11 achieved in the case, (5) the value that PAGA Counsel have achieved in the case, and (6) the other
12 cases that PAGA Counsel have turned down in order to work on this matter. (Orshansky Decl. ¶ 42.)

13 PAGA Counsel are entitled to recover reasonable attorneys' fees and costs as a matter of
14 right under PAGA. (See Lab. Code, § 2699, subd. (g)(1) ["Any employee who prevails in any
15 [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs".]) PAGA
16 Counsel are also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the
17 instant PAGA action is by definition "for the benefit" of others and secures monetary recovery for
18 a large number of allegedly aggrieved employees, as well as the State of California. (See *Estrada v.*
19 *FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17 [recognizing that recovery
20 obtained on behalf of 209 individuals satisfies the "significant benefit," "public interest," and "large
21 class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's
22 personal motivation].) The settlement will also provide funds to the state labor agency, to enhance
23 enforcement of labor laws and education of "employers and employees about their rights and
24 responsibilities under [the California Labor Code]." (Lab. Code, § 2699, subd. (i).)

25 Courts may calculate and award attorneys' fees as a percentage of a monetary fund that has,
26 by litigation, been preserved or recovered for the benefit of others. (*Laffitte v. Robert Half Int'l, Inc.*
27 (2016) 1 Cal.5th 480, 486, 506.) Trial courts "retain the discretion to forgo a lodestar cross-check
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1 and [may] use other means to evaluate the reasonableness of a requested percentage fee.” (*Ibid.*,
2 internal quotes omitted; see also *Wershba, supra*, 91 Cal.App.4th at p. 253.)

3 Courts award fees as an economic incentive for lawyers to pursue litigation that will enhance
4 and facilitate access to the judicial system for meritorious claims, deter wrongdoing, and address
5 multiple similar alleged wrongs that would not be economically feasible to pursue individually, such
6 as here.

7 The percentage method is particularly appropriate where a monetary settlement has been
8 recovered and “the benefit [recovered can be] easily quantified.” (*Jones v. GN Netcom, Inc. (In re*
9 *Bluetooth Headset Prods. Liab. Litig.)* (9th Cir. 2011) 654 F.3d 935, 942.) Where the amount of a
10 settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’
11 fees as a reasonable percentage of the settlement created. (*Dunk v. Ford Motor Co.* (1996) 48
12 Cal.App.4th 1794, 1808.)

13 The percentage fee method is preferred in representative actions because “it better
14 approximates the workings of the marketplace than the lodestar approach.” (*Lealao v. Beneficial*
15 *California, Inc.* (2000) 82 Cal.App.4th 19, 49.) California law provides that the award for attorneys’
16 fees should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable
17 litigation based on the result achieved and risk incurred. (*Id.* at pp. 47-50; *Laffitte, supra*, 1 Cal.5th
18 at p. 503.) In cases where the settlement agreement provides that the defendant will pay the
19 plaintiff’s attorneys a percentage of the fund created by the settlement, use of that percentage method
20 is appropriate. (*Lealao, supra*, 82 Cal.App.4th at p. 32.) Fee awards that are too small will “chill the
21 private enforcement essential to the vindication of many legal rights and obstruct the representative
22 actions that often relieve the courts of the need to separately adjudicate numerous claims.” (*Id.* at
23 p. 53.) Therefore, fees in representative actions should approximate the probable terms of a
24 contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation.
25 (*Id.* at p. 48.) “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for
26 their efforts, irrespective of the method of calculation.” (*Consumer Privacy Cases* (2009) 175
27 Cal.App.4th 545, 557-58, quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th,
28 1253, 1270.)

PAGA Counsel's requested attorneys' fees award is well within the range of reasonableness in light of the facts and circumstances surrounding the case. In fact, historically, courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re Ampicillin Antitrust Litig.* (1981) 526 F.Supp. 494 [awarding attorneys' fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately 53% of the settlement as attorneys' fees].) California courts routinely approve attorneys' fees awards "average[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [lower court found the range of contingency fees in marketplace to be up to 40 percent and determined such a percentage fee was appropriate].) Additionally, the requested fees are justified as a percentage of the settlement amount, given that recovery akin to a common fund for the benefit of others was achieved. The following list shows PAGA actions and mixed PAGA/class action cases where attorney's fees were awarded on a common fund basis in a range between 35% and 40%:

- *Banda v. Verizon California, Inc.*, L.A. Cty. Super. Court Case No. BC434587 (35% fee awarded on \$15,000,000 settlement of mixed PAGA/class claims);
- *Birch v. Office Depot*, U.S. District Court, S.D. Cal. Case No. CV06-1690-DMS (40% fee awarded on \$16,000,000 settlement of mixed PAGA/class claims);
- *Zelada v. Majestic Terminal Services*, San Bernardino Cty. Super. Court Case No. CIVDS1916968 (38% fee awarded on \$1,800,000 settlement of a PAGA only case).

PAGA Counsel have performed significant work in this matter, as discussed in the Orshansky Decl. and Matavosian Decl., with the very real possibility of an unsuccessful outcome and no fee recovery of any kind. (Orshansky Decl. ¶¶ 42-43, 48-49; Matavosian Decl. ¶¶ 16-18, 21.) PAGA Counsel have borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. (Orshansky Decl. ¶¶ 42-43, 53; Matavosian Decl. ¶ 17.) PAGA Counsel is experienced in complex wage-and-hour class and representative action litigation and used that experience to obtain a significant settlement recovery for Plaintiff, PAGA Members, and the State of California. Considering the amount of fees requested, work performed, risks

1 incurred, results obtained, and experience of PAGA Counsel in handling similar matters, Plaintiff
2 maintains that the requested attorneys' fees are reasonable and should be awarded.

3 **B. The Requested Fee Award Is Reasonable.**

4 Courts consider the following factors in determining reasonable fee awards, all of which
5 support the fee award requested here: the time and labor required; the novelty and difficulty of the
6 questions involved; the skill requisite to properly perform the legal services; the preclusion of other
7 employment by the attorney due to the acceptance of the case; the customary fee; whether the fee is
8 fixed or contingent; the time limitation imposed by the client or the circumstances; the amount
9 involved and results obtained; the experience, reputation, and ability of the attorney; the
10 undesirability of the case; the nature and length of the professional relationship with the client; and
11 awards in similar cases. (*Camden I Condominium Ass'n v. Dunkel* (11th Cir. 1991) 946 F.2d 768,
12 772.) These factors are addressed below.

13 The percentage fee award sought is commensurate with the time, effort, and expense
14 dedicated to the case, the contingent nature of PAGA Counsel's representation and the risks taken
15 in this case, the skill and determination required, the results that PAGA Counsel have achieved, and
16 the value of the settlement that PAGA Counsel have obtained on behalf of Plaintiff, PAGA
17 Members, and the State of California. For the reasons discussed herein, the requested award of
18 attorneys' fees is reasonable.

19 **1. Time and Labor.**

20 PAGA Counsel have used their experience and skills in litigating complex wage-and-hour
21 actions to bring this matter to a successful conclusion. These tasks included (1) regular discussions
22 with Plaintiff; (2) thorough pre-litigation investigation of facts; (3) investigation of Defendants'
23 organizational and corporate structures, and executive reporting structures as they relate to the
24 employment and management of employees; (4) comparative analysis and cross-checking of all
25 available job postings by Defendants in order to determine any variation and identify job duties and
26 responsibilities that would be susceptible to being performed off the clock or during meal or rest
27 breaks; (5) research and investigation regarding staffing models and levels; (6) drafting the PAGA
28 notice to the LWDA; (7) drafting the Complaint; (8) drafting other documents for the litigation;

(9) legal research and analysis into substantive law; (10) developing and executing litigation strategies; (11) conducting discovery; (12) ongoing meet and confer efforts with defense counsel; (13) interviewing PAGA Members; (14) reviewing Defendants' policies and procedures regarding payment of wages, provision and tracking of meal and rest breaks, and timekeeping protocol, including recording hours, issuance of wage statements, and providing all wages at separation; (15) research and investigation regarding various software programs Defendants use to conduct everyday business, including timekeeping software, with a focus on what documents (both paper and electronic) are created in the normal course of business relating to overtime worked, such as off-the-clock time worked pre-/post-shift, and time worked during meal periods; (16) examining PAGA Members' time/pay records and wage statements in conjunction with PAGA Member interviews to determine Defendants' degree of liability; (17) engaging a consultant; (18) building a comprehensive damages model; (19) preparing a mediation brief; (20) preparing for and attending mediation; (21) negotiating and preparing the long-form Settlement Agreement and related documents; and (22) and preparing this Motion and supporting documents. (Orshansky Decl. ¶ 43.)

PAGA Counsel dedicated the full extent of staffing and monetary resources necessary to prosecute the case with maximum efficiency and have fully and actively participated in the litigation process. Details of the hours spent by PAGA Counsel performing tasks in this matter are simultaneously provided herewith. (See Orshansky Decl. ¶ 43; Matavosian Decl. ¶ 19, Exh. 2.) These hours were required to bring the case to its successful conclusion. In light of the value of time expended and the carrying of costs involved in this litigation, the requested attorneys' fees award is fair, adequate, and reasonable.

With an aggregate lodestar amount between the two firms of \$152,660.50, a multiplier is not required to yield the requested fees. The lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate this case is evident not only in the results achieved, but in the steps necessary to reach the same. Defendants retained highly respected counsel to represent their defenses. PAGA Counsel's effort and skill were used to, among other things, investigate the

1 allegations and gather facts; research the legal issues; and analyze data, documents, and information
2 obtained from Defendants, Plaintiff, and through other sources to evaluate the PAGA claim and
3 negotiate the settlement. Despite all of the obstacles that had to be overcome, PAGA Counsel used
4 their extensive experience and skill in the handling of complex employment matters to advocate for
5 and obtain a recovery now, with maximum efficiency, as opposed to the possibility of recovery in
6 the future, after significant expense and time.

7 **3. Contingent Fee.**

8 PAGA Counsel have provided representation on a contingency basis, have borne all risks
9 and costs of litigation, and will not receive any compensation until recovery is obtained. (Orshansky
10 Decl. ¶ 48.) If PAGA Counsel had not been successful, the time devoted to litigating the case would
11 have been for naught and no fees or costs would be recovered. PAGA Counsel are well-experienced
12 in complex wage-and-hour litigation and used their experience to obtain a great result. (*Id.* at ¶¶ 5-
13 15; Matavosian Decl. ¶¶ 2-8.) The skill and determination PAGA Counsel have shown throughout
14 prosecution of this case justifies the requested attorneys' fees and costs.

15 **4. The Amount Involved and the Results Achieved.**

16 The settlement represents an excellent resolution of this lawsuit, given the uncertainty and
17 risks of further litigation. (Orshansky Decl. ¶ 52; see *Vizcaino v. Microsoft Corp.* (9th Cir. 2002)
18 290 F.3d 1043, 1048-51 [finding that exceptional results in a contingency case, significant risk, and
19 the absence of supporting precedents are proper considerations in awarding attorneys' fees].) Had
20 the case not settled, Defendants would have vigorously defended the case, and would have
21 challenged manageability and liability, and also sought a reduction in the amount assessed as civil
22 penalties. Defendants, however, faced risks as well, including and not limited to, the risk of trial and
23 the risk of having the Court assess civil penalties. Additionally, preparing for trial would have been
24 extraordinarily expensive for the Parties. At this stage, the settlement is preferred over continued
25 litigation because such resolution saves time and money that would otherwise go to litigation. The
26 risks and expenses of further litigation outweighed any benefit that might have been gained
27 otherwise. The settlement provides an immediate recovery and avoids an uncertain result in the
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1 future and additional risk, expense, and delay (e.g., prolonged expert discovery, trial preparation,
2 and appellate review of those proceedings).

3 The results achieved, in light of the difficulties inherent in similar cases and the specific
4 difficulties faced in this case, are considerable. (Orshansky Decl. ¶¶ 31-41.)

5 **5. The Reputation and Ability of the Attorneys.**

6 PAGA Counsel are recognized class action and complex litigation law firms, and their
7 attorneys employed their knowledge, skill, and experience to bring the case to a successful
8 conclusion. PAGA Counsel have years of wage-and-hour class action and complex litigation
9 experience, have recovered millions of dollars on behalf of thousands of individuals in California,
10 and have successfully handled numerous significant wage-and-hour class action and representative
11 action cases. (Orshansky Decl. ¶¶ 5-15; Matavosian Decl. ¶¶ 2-8.)

12 **VI. THE REQUESTED LITIGATION COSTS REIMBURSEMENT TO PAGA**
13 **COUNSEL SHOULD BE APPROVED**

14 The settlement provides for reimbursement of litigation costs up to \$20,000. As set forth in
15 the concurrently filed Orshansky Decl. and Matavosian Decl., PAGA Counsel seek reimbursement
16 of a total of \$16,953.63 in litigation costs and expenses (e.g., \$16,552.51 for CounselOne, PC, and
17 \$401.12 for Lawyers *for* Justice, PC). (Orshansky Decl. ¶¶ 54-55; Matavosian Decl. ¶ 21, Exh. 3.)
18 These expenses were reasonable and necessary in the prosecution of this matter and to obtain the
19 settlement. Accordingly, Plaintiff requests that the Court award reimbursement of litigation costs to
20 PAGA Counsel in the amount of \$16,953.63.

21 **VII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
22 **APPROVED**

23 The Parties have agreed to retain CPT to handle the administration of the settlement. The
24 Settlement Agreement provides for payment to CPT of up to \$10,000 as reimbursement for costs
25 and expenses incurred in administration of the settlement. These costs include, but are not limited
26 to, expenses for preparing, printing, mailing, and if necessary, re-mailing, the Settlement Notice and
27 individual settlement checks to the PAGA Members, performing skip-tracing; and handling
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1 inquiries from PAGA Members regarding the settlement, among other things. Thus, the Court
2 should grant approval of settlement administration costs in the amount of up to \$10,000 to CPT.

3 **VIII. THE REQUESTED ENHANCEMENT AWARD SHOULD BE APPROVED**

4 The settlement provides for an enhancement award to be paid to Plaintiff in the amount of
5 \$5,000 for his services as the PAGA Representative. (Settlement Agreement ¶ 32.) The PAGA
6 statute recognizes that a plaintiff employee may pursue or recover other remedies and relief
7 available to the plaintiff employee under state or federal law through an action under PAGA. (See
8 Lab. Code, § 2699, subd. (k)(1).)⁵ As such, it is appropriate for Plaintiff to receive payment for his
9 service to the State of California and to the PAGA Members as a PAGA Representative.

10 It is reasonable and just for Plaintiff to receive this payment. Plaintiff contributed
11 considerable time and effort to the litigation of this case in order to enforce the Labor Code on behalf
12 of the State of California and for the benefit of PAGA Members. Plaintiff spent a significant amount
13 of time assisting PAGA Counsel with the prosecution of this action, including (1) regularly speaking
14 with his attorneys; (2) providing relevant legal and factual information; (3) evaluating and producing
15 relevant documents; (4) identifying potential witnesses; (5) participating in and being available
16 during the mediation process; (6) reviewing, discussing, evaluating the terms of, and signing the
17 Settlement Agreement; and (7) regularly requesting updates on the status of the case. (Declaration
18 of Roger Sheer, *passim*.)

19 **IX. CONCLUSION**

20 For the reasons discussed above and in the accompanying declarations, Plaintiff respectfully
21 requests that the Court approve the Settlement Agreement, including amounts for attorneys' fees
22 and costs, enhancement award to Plaintiff, and settlement administration costs to CPT, and order
23 the funding and distribution of payments from the Gross Settlement Amount and Net PAGA Fund
24 as requested herein including payment to PAGA Members, and enter judgment thereon.

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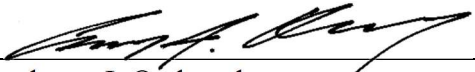
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28 ⁵ (Formerly Lab. Code, § 2699, subd. (g)(1).)

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Dated: March 27, 2026

Respectfully submitted,
COUNSELONE, PC

By: 
Anthony J. Orshansky
P. Bartholomew Quintans

Attorneys for Plaintiff and PAGA Members