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Attorneys for Plaintiff, JOHNNY ELIJAH STINSON, as an aggrieved employee, and on behalf of all other aggrieved employees

[*Additional counsel on following page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JOHNNY ELIJA STINSON, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

v.

PERFECT 85 DEGREES C, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24CV070989

[Assigned for all purposes to the Hon. Keith Fong in Dept 517]

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

[Filed concurrently with Declarations of David D. Bibiyan, Keaton Mendoza, Arsiné Grigoryan, Plaintiffs, and Sean Hartranft; [Proposed] Order; and [Proposed] Judgment]

HEARING INFORMATION:

DATE: January 7, 2027
TIME: 2:30 p.m.
DEPT: 517
Reservation No. 160112906879

Action Filed: April 9, 2024
Trial Date: None Set

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Attorneys for Plaintiff, ARTURO GANDARA, as an aggrieved employee, and on behalf of all other aggrieved employees

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 7, 2027, at 2:30 p.m., or soon thereafter Plaintiff Johnny Elija Stinson ("Plaintiff Stinson") and Arturo Gandara ("Plaintiff Gandara" together referred to as "Plaintiffs") may be heard in Department 517 of the Alameda County Superior Court of California, Plaintiffs will, and hereby does move for this Court for entry of an order approving the PAGA Settlement Agreement ("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 the one hand; and defendant Perfect 85 Degrees C, Inc. ("Perfect 85" or "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 David D. Bibiyan, Keaton Mendoza, Arsiné Grigoryan, Plaintiffs, and Sean Hartranft, exhibits attached thereto, the [Proposed] Order Granting Motion for Approval of the Representative Action Settlement, the [Proposed] Judgment and any other evidence or argument that may be presented at the hearing.

Dated: October 6, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

BY: _____

KEATON MENDOZA
Attorneys for Plaintiff, JOHNNY ELIJA STINSON, as an aggrieved employee, 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"). Plaintiff Johnny Elija Stinson, ("Plaintiff Stinson") and Plaintiff Arturo Gandara ("Plaintiff Gandara" together referred to as "Plaintiffs") on the one hand, and defendant Perfect 85 Degrees C, Inc. ("Perfect 85" or "Defendant") on the other hand (collectively the "Parties"), have agreed to settle Plaintiffs' PAGA claims, fully resolving this case pursuant to the PAGA Settlement Agreement[1] ("Settlement" or "Settlement Agreement" or "Agreement").

The approximately 426 "Aggrieved Employees" who are covered by the Settlement Agreement are all of Perfect 85's current and former non-exempt employees who worked for Perfect 85 in California during the period from September 15, 2022, to December 31, 2025 ("PAGA Period").

The Settlement Agreement provides that Defendant pays $210,000.00[2] as the Gross Settlement Amount. From this amount, Plaintiffs request an award of $5,430.00 in administration costs, attorneys' fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount, $87,500.00 (as the same may be escalated pursuant to the Settlement Agreement), reimbursement of not more than $30,000.00 in litigation costs (Plaintiffs' Counsel apply for reimbursement of $27,856.78 in litigation costs as more fully detailed in the Declarations of David D. Bibiyan and Arsiné Grigoryan filed herewith). Of the remaining sum (hereinafter, the "Net

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

[2] Perfect 85 represents that there are no more than 10,000 pay periods worked during the PAGA period. In the event the number of pay periods during the PAGA Period increases by more than 10%, or 1,000 pay periods, then the GSA shall be increased proportionally by the pay periods in excess of 11,000 multiplied by the pay periods value. The pay period value shall be calculated by dividing the GSA by 10,000. The Parties agree that the pay period value amounts to $21.00 per pay period ($210,000 / 10,000 pay periods). Thus, for example, should there be 12,000 pay periods in the PAGA Period, then the GSA shall be increased by $21,000. (12,000 pay periods – 11,000 pay periods x $21/pay period.)

Settlement Amount), and pursuant to the PAGA statute, seventy-five percent (75%) shall be paid to the California Labor and 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 also warrant approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Plaintiff Stinson was a non-exempt hourly paid employee employed by Defendant with duties that included, but were not limited to, baking bread and cookies, checking orders, sending orders on time, organizing the stuff, and shipping the cakes from approximately April 20, 2023 through approximately July 19, 2023.

Plaintiff Gandara was a non-exempt hourly employee employed by Defendant with duties that included, but were not limited to, shipping and receiving and transporting and warehousing Defendant's products from approximately September 2020 through approximately February 2, 2024.

Based on information provided by Defendant's counsel, Plaintiffs believe there are approximately 426 Aggrieved Employees in the Settlement Period.

B. Procedural History

On September 15, 2023, Plaintiff Stinson provided written notices pursuant to Labor Code section 2699.3 to the Labor and Workforce Development Agency ("LWDA") and to Defendant of various Labor Code violations ("Stinson PAGA Notice"). A true and correct copy of the PAGA Notice is attached to the Declaration of Keaton Mendoza as Exhibit "3."

Also on September 15, 2023, Plaintiff Stinson brought an individual and class action against Perfect 85, which is pending as *Johnny Elijah Stinson v. Perfect 85 Degrees C, Inc., et al.*, Superior Court of the State of California, County of Alameda Case No.: 23CV044101 (the "Individual Claim"). In the Individual Claim, Plaintiff Stinson asserts claims for numerous wage and hour violations including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage

statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; and (10) unfair competition.

On December 29, 2023, Plaintiff Stinson and Perfect 85 stipulated to the dismissal of Plaintiff Stinson's class action allegations, and he agreed to submit his remaining individual causes of action to arbitration. The Court issued an Order granting the stipulation on February 6, 2024.

On October 6, 2025, Plaintiff Stinson filed a demand for arbitration, which is pending as *Stinson, Johnny v. Perfect 85 Degrees C, Inc.*, JAMS Ref. No.: 5220011038 (the "Individual Claims Arbitration"). In the Individual Claims Arbitration, Plaintiff Stinson reasserts his individual claims for numerous wage and hour violations including: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; and (10) unfair competition.

On April 9, 2024, Plaintiff Stinson commenced the Stinson Action by filing a Complaint alleging causes of action against Perfect 85 for representative claims under PAGA on behalf of the State of California for violations suffered by all non-exempt employees of Perfect 85.

On May 21, 2024, Plaintiff Gandara provided written notices pursuant to Labor Code section 2699.3 to the Labor and Workforce Development Agency ("LWDA") and to Defendant of various Labor Code violations ("Gandara PAGA Notice").

On May 21, 2024, Plaintiff Gandara brought the Gandara Action. In the Gandara Action, Plaintiff Gandara asserts claims for numerous wage and hour violations including: (1) failure to pay minimum wages and for all hours worked; (2) failure to pay wages and overtime; (3) meal period liability; (4) rest break liability; (5) violation of Labor Code section 226(a); (6) violation of Labor Code section 221; (7) violation of Labor Code section 204; (8) violation of Labor Code section 203; (9) failure to maintain records required under Labor Code sections 1174 and 1174.5; (10) failure to reimburse necessary business expenses; (11) failure to maintain reasonable work area temperatures under the wage orders; and (12) violations of the Business and Professions Code section 17200, et seq.

On July 29, 2024, Plaintiff Gandara filed his First Amended Complaint adding a thirteenth

cause of action for penalties under PAGA.

On April 3, 2025, Plaintiff Gandara and Perfect 85 stipulated to the dismissal of Plaintiff Gandara's class action allegations, and he agreed to submit his remaining individual causes of action to arbitration. The County of Orange Superior Court issued an Order granting the stipulation on May 20, 2025.

On September 25, 2025, Plaintiff Gandara filed a demand for arbitration, which is pending as *Arturo Gandara v. Perfect 85 Degrees C, Inc.*, et al., JAMS Ref. No.: 5220010928 (the "Gandara Arbitration"). In the Gandara Arbitration, Plaintiff Gandara reasserts his individual claims for numerous wage and hour violations including: (1) failure to pay minimum wages and for all hours worked; (2) failure to pay wages and overtime; (3) meal period liability; (4) rest break liability; (5) violation of Labor Code section 226(a); (6) violation of Labor Code section 221; (7) violation of Labor Code section 204; (8) violation of Labor Code section 203; (9) failure to maintain records required under Labor Code sections 1174 and 1174.5; (10) failure to reimburse necessary business expenses; (11) failure to maintain reasonable work area temperatures under the wage orders; and (12) violations of the Business and Professions Code section 17200, et seq.

On September 19, 2025, counsel for Plaintiff Stinson and Perfect 85 participated in an all-day mediation presided over by Mediator Monique Ngo-Bonnici. Perfect 85 and Plaintiff Stinson did not come to a settlement agreement at the mediation.

Through continued negotiations, the Parties accepted a mediator's proposal to resolve all PAGA claims that were or could have been brought against Perfect 85, including the Gandara Action, so that this settlement agreement covers all potential PAGA claims described herein.

The Parties agreed to stipulate to filing a First Amended Complaint in the Stinson Action. On September 8, 2026, Plaintiffs filed a First Amended Complaint in this action which will be deemed the "Operative Complaint," and includes Plaintiffs Stinson and Gandara, all causes of action alleged in the Stinson Action, the Gandara Action, and the respective PAGA Notices.

C. Discovery and Investigation

In the leadup to mediation, Plaintiffs' Counsel[3] investigated Plaintiffs' claims, performed legal research regarding Defendant's defenses, and engaged in informal discovery.

The above information and sampling 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 average length of shifts for Aggrieved Employees, average rates of pay, detailed analyses of meal period and rest period violations, the number of Aggrieved Employees eligible for waiting time penalties and wage statement penalties, and the policies and practices in play during the PAGA Period. The documents and information produced enabled Plaintiffs' Counsel to analyze the law and facts relating to Plaintiffs' claims. Plaintiffs' Counsel also retained an expert 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 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.

Plaintiffs' 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 Plaintiff's allegations, and the substantial benefits to be received by the Aggrieved Employees.

Defendant denies each of the allegations and claims asserted against them in the Action. However, Defendant agreed to settle the Action for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation.

D. Mediation

[3] "Plaintiffs' Counsel," also referred to herein as "PAGA Counsel," means David D. Bibiyan, and Vedang J. Patel of Bibiyan Law Group, P.C.

On September 19, 2025, the Plaintiff Stinson and Defendant participated in an all-day mediation presided over by Mediator Monique Ngo-Bonnici. Although, parties failed to come to a settlement agreement at the mediation but through continued negotiations between Plaintiff Stinson and Defendant, they reached an agreement to resolve all PAGA claims that were or could have been brought against defendant, including the Gandara Action, so that settlement agreement covers all potential PAGA claims from both 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 their 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 Keaton Mendoza 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 of Perfect 85's current and former non-exempt employees who worked for Perfect 85 in California during the period from September 15, 2022, to December 31, 2025 ("PAGA Period"). Based on information provided by Defendant prior to mediation, Plaintiffs believe there are approximately 426 Aggrieved Employees in the PAGA Period.

B. Settlement Terms

The Settlement provides for a Gross Settlement Amount ("GSA") of $210,000.00, as the

same may be escalated pursuant to the Parties' Settlement Agreement, to be paid by Defendant. The GSA shall be allocated as follows:

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1. Net Settlement Amount

The amount of the GSA that remains after deducting the Settlement Administration Costs (5,430.00), Plaintiffs' Counsel's Attorneys' Fees ($87,500.00), and Plaintiffs' Counsel's Attorneys' Costs $27,856.78) will be designated as the Net Settlement Amount ("NSA"). If the Court approves those allocations, the total estimated amount of the Net Settlement Amount is $89,213.22 as the same may be escalated pursuant to the Settlement Agreement. Pursuant to the Settlement Agreement and Labor Code section 2699(i), 75% of the Net Settlement Amount, or $66,909.91 (as the same may be escalated pursuant to the Settlement Agreement) will be paid to the LWDA, and the remaining 25%, or $22,303.31 as the same may be escalated pursuant to the Settlement Agreement) of the Net Settlement Amount will be paid to the Aggrieved Employees on a *pro rata* basis using their respective number of Pay Periods worked during the Settlement Period. The estimate average payment to Aggrieved Employees is approximately $52.35 ($22,303.31 / 426 Aggrieved Employees).

2. Settlement Administrator and Costs of Administering the Settlement

The Parties have agreed that the Settlement Administrator will be Apex Class Action Administration ("Apex"). The cost of administering the Settlement, including but not limited to, mailing the Individual PAGA Payments[4] to the Aggrieved Employees, shall not exceed $5,430.00 and will be paid to the Settlement Administrator from the Gross Settlement Amount.

3. Plaintiffs' Counsel's Attorneys' Fees and Costs

An award of attorneys' fees is requested to Plaintiffs' Counsel in an amount of up to (35%) of the Gross Settlement Amount, which unless escalated pursuant to the Settlement Agreement, will be $87,500.00 as well as reimbursement of litigation costs reasonably incurred in an amount of

[4] "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Qualified Pay Periods the Aggrieved Employee worked during the PAGA Period.

$25,499.06. A fully detailed cost bifurcation is in the Declarations of David D. Bibiyan filed herewith.

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4. Settlement Administration

Within 14 days of the Effective Date[5], Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet and a declaration from Defendant's data expert attesting to the number of Pay Periods and the method by which the Pay Periods were determined for each Aggrieved Employee and all Aggrieved Employees in the aggregate. The "Aggrieved Employee Data" means Aggrieved Employee's identifying information in Perfect 85'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 fourteen (14) calendar days after the Effective Date. Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, Administration Expenses Payment, PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid, along with the PAGA Payment Letter, the substance of which is attached to the Mendoza Decl. as Exhibit "2."

The face of each check shall prominently state the date (not less than 180 days after the date

[5] "Effective Date" means the date the Court issues its Order approving this Settlement and entered Judgment thereon, if no objections are filed. If there are objections to the Settlement, "Effective Date" means the date when the later of the following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the settlement approval has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the settlement approval has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the settlement approval with no right by any appellant or objector to pursue further remedies or relief. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay the Gross Settlement Amount and for any release to become valid and enforceable.

of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Distribution of the Individual PAGA Payments shall be accompanied by the Notice of PAGA Settlement. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 3 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search.

5. Taxes

The Parties do not expect there to be any employer side taxes arising from this 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. Release

Upon the Effective Date, subject to the Court's continuing jurisdiction to monitor compliance by Perfect 85 with settlement terms, Plaintiff Stinson, Plaintiff Gandara, the State of California, and all Aggrieved Employees will release the Released Parties from any and all civil penalties claims that were alleged, or that reasonably could have been alleged, based on the facts alleged in the Operative Complaint and/or the PAGA Notices, including, but not limited to, any claims for civil penalties arising from Defendant's alleged violations of the California Labor Code, *et seq.* for, inter alia, failure to provide compliant meal periods and/or timely pay premiums; failure to provide rest periods and/or timely pay premiums; failure to timely pay all wages, including but not limited to minimum, regular, and overtime wages (including based on allegations of pre-shift/post-shift/meal period off-the-clock work claims; rounding; auto deducted time; and regular rate of pay issues); failure to provide separate rest period compensation for nonproductive work; failure to provide accurate itemized wage statements; failure to reimburse for business expenses; and failure to pay all wages due during and upon separation of employment, and including but not limited to PAGA claims predicated on or that could have been predicated on alleged violations of

Cal. Lab. Code sections 90.5, 96, 98.6, 200, 201, 202, 203, 204, 204b, 204.1, 205, 205.5, 210, 218.5, 218.6, 221, 223, 225.5, 226, 226.3, 226.4, 226.6, 226.7, 227.3, 232, 232.5, 245, et seq., 404, 432, 432.3, 432.7, 432.8, 510, 511, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 1527, 2698, et seq., 2802, 2810.5, 2926, 2927, 3366, 3457, 6400, et seq., 6720, 8397.4, Cal. Code Regs., title 8, section 11000, et seq., Business and Professions Code sections 16600, 16700, and 17200-17208, Government Code section 12952, and the provisions within the governing IWC Wage Order.

7. Escalator Provision

Perfect 85 represents that there are no more than 10,000 pay periods worked during the PAGA period. In the event the number of pay periods during the PAGA Period increases by more than 10%, or 1,000 pay periods, then the GSA shall be increased proportionally by the pay periods in excess of 11,000 multiplied by the pay periods value. The pay period value shall be calculated by dividing the GSA by 10,000. The Parties agree that the pay period value amounts to $21.00 per pay period ($210,000 / 10,000 pay periods). Thus, for example, should there be 12,000 pay periods in the PAGA Period, then the GSA shall be increased by $21,000. (12,000 pay periods – 11,000 pay periods x $21/pay period.)

8. Uncashed Checks

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall distribute the value of the uncashed check to the California State Controller's Office in the name of the Aggrieved Employee.

IV. ARGUMENT

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, Plaintiffs' Counsel believe the Settlement penalizes Defendant for its alleged violation of California's labor laws, provides a significant benefit of $66,909.91 (as the same may be escalated pursuant to the Settlement) 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 $210,000.00, as the same may be escalated pursuant to the Settlement Agreement, is significant enough to deter Defendant from future violations. 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 failure to pay overtime wages; failure to pay minimum wages; failure to provide meal periods; failure to provide rest periods; waiting time penalties; wage statement violations; failure to timely pay wages; failure to indemnify; failure to pay interest on deposits; and unfair competition.

Moreover, only initial violation rates were used in calculating 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 Defendants were provided notice that they were in violation of the Labor Code, initial violation rates were used to calculate penalties.

At the time of mediation and based on the records produced by Defendant, Plaintiffs understood there to be 10,000 pay periods through mediation. While Plaintiffs' Counsel is informed and believes that reasonable minds differ with regard to calculation of PAGA penalties, Plaintiffs' Counsel believes one reasonable calculation of Defendant's maximum exposure in PAGA penalties is as follows:

1. 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 of every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $1,000,000 (10,000 pay periods x $100).
2. Overtime 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 $500,000 (10,000 pay periods x $50).

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 $500,000 (10,000 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 $500,000 (10,000 pay periods x $50).

5. 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. Plaintiffs' Counsel contends that there were approximately 426 Aggrieved Employees separated from the company during the relevant time period. This amounts to a maximum exposure of $42,600 (426 Aggrieved Employees x $100).

6. 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 $1,000,000 (10,000 pay periods x $100).

In sum, Plaintiffs' 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, allow "stacking" of PAGA Penalties (i.e. multiple penalties for different Labor Code

violations in the same pay period), and not exercise its discretion to reduce any of those penalties to be $3,542,600.00.

On the other hand, Plaintiffs' Counsel understands 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 are vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked, specifically including penalties arising from violations of Labor Code sections 201-203, 204, and 226, 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 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 PAGA claims, making the claims unmanageable for trial. 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 successful or otherwise exercises 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. 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, Plaintiffs' Counsel believes a 25% valuation off of this theoretical maximum exposure, resulting in **$885,650.00** to be a reasonable estimate of the likelihood of what Plaintiffs may potentially recover at trial for PAGA penalties ($3,542,600 x 0.25). In all, Plaintiffs' Counsel obtained a Gross Settlement Amount of $210,000.00. *See also Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018) (upholding trial courts 90% reduction in maximum penalties, from $50 to $5 per initial violation).

Thus, when the risks of litigation, including, without limitation, the burdens of proof necessary to establish liability, and the mixed case law on manageability, that no recovery may have been possible whatsoever, 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 "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." (Lab. Code, § 2699, subd. (e)(2); *Iskanian,* 59 Cal.4th at 384.)

C. Plaintiffs' Counsel's Requested Fees and Costs Are Reasonable

Plaintiffs' Counsel is 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, Plaintiff's Counsel is 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 up to (35%) of the Gross Settlement Amount, which, unless and until escalated pursuant to the Parties' Settlement Agreement, amounts to $87,500.00, is reasonable, is well within the range of fees generally sought and approved in other class and representative cases and is also reasonable based on Plaintiffs' 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.,* up to thirty-five percent (35%) 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"].)

Here, the requested fee of thirty-five percent (35%) of the Gross Settlement Amount 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].)

Plaintiffs' Counsel invested time and resources into litigating this Action, with over $25,499.06 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, Plaintiffs' Counsel has advanced all expenses, and has 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. Plaintiffs' 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 Plaintiff's Counsels' lodestar. (*Laffitte*, 1 Cal.5th at 506; *see Privacy Cases*, 175 Cal.App.4th at 556-58.) Plaintiffs' Counsel's lodestar is based upon a total of 433.1 total hours at customary hourly rates.

To summarize Bibiyan Law Group, P.C.'s lodestar request, pursuant to the Declaration of David D. Bibiyan, Plaintiff's Counsel at Bibiyan Law Group, P.C., will have collectively worked approximately 309.4 hours. Bibiyan Law Group, P.C.'s hourly rate in this case for David D. Bibiyan is $1,200 per hour (approx. 7.4 hours); Sarah Cohen is $1,000 per hour (approx. 75 hours); Vedang J. Patel is $800 per hour (approx. 4.7 hours); Lizette Rodriguez is $750 per hour (approx. 35 hours); Randal Oakley is $700 per hour (approx. 14.4 hours); Keaton Mendoza is $450 per hour (approx. 21.8 hours); Michael Braud is $450 per hour (approx. 120 hours); Taylor Ballou is $425 per hour (approx. 2.5 hours); Paralegals are $200 per hour (approx. 16.9 hours); and Legal Assistants are $95 per hour (approx. 11.7 hours). This results in a lodestar of approximately $193,334.50 for Bibiyan Law Group, P.C.

As indicated in the declaration of Arsiné Grigoryan, Plaintiff's counsel at D. Law, Inc. will

have collectively worked approximately 123.7 hours, resulting in a total lodestar amounts to $148,302.20.

At Plaintiffs' Counsel's hourly rates, this results in a total lodestar amount of $341,636.70. Plaintiffs' Counsel requests a fee of thirty-five percent (35%) of the Gross Settlement Amount, which, unless and until escalated pursuant to the Parties' Settlement Agreement, amounts to $87,500.00.

3. Plaintiffs' 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"].)

Plaintiffs' Counsel at Bibiyan Law Group, P.C. has spent over 309 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 Plaintiffs' Counsel to achieve this result include, but are not limited to, the following:

- The investigation of the matter, including meeting with Plaintiff, reviewing policies provided by Plaintiff, review of documents in Plaintiff's possession, review and

analysis of Plaintiff's 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;
- Filing and serving pleadings in the Action;
- Compliance with prerequisites in connection with Plaintiff's cause of action under PAGA;
- Filing and serving of the PAGA Notice;
- Reviewing and analyzing Defendant's Answer to Plaintiff's initial complaint;
- Reviewing and analyzing Defendant's Notice of Related Case and filing Plaintiff's opposition thereto;
- Review and analysis of the Court's Minute Orders, attention to scheduling and delegation of actions in light thereof, drafting and filing Case Management Statements, and preparation for appearance at the Case Management Conferences;
- Meeting and conferring with counsel for Defendant, drafting and filing Joint Statements and Joint Reports in advance of the conferences and hearings held by the Court, and preparation and attendance of the same;
- Propounding of formal discovery, consisting of form interrogatories, special interrogatories, requests for admissions, and requests for production of documents, reviewing and analyzing Defendant's responses thereto, and meeting and conferring with Defendant's counsel for supplemental responses;
- Providing Plaintiff's responses to formal discovery, consisting of form interrogatories, special interrogatories, and requests for production of documents, meeting and conferring with Defendant's counsel for Plaintiff's supplemental responses, and providing supplemental responses to Defendant's discovery;

- Review and analysis of Defendant's purported arbitration agreement, extensive discussions with Defense counsel regarding enforceability of the purported arbitration agreement;
- Reviewing and analyzing Defendant's Motion to Compel Arbitration, drafting and filing Plaintiff's Opposition, and reviewing and analyzing Defendant's Reply;
- Preparing for and defending the full-day session of Defendant's deposition of Plaintiff;
- Obtaining and reviewing informal discovery from Defendant, including time and payroll records for a sampling of the Aggrieved Employees, Defendant's written policies, and other informal discovery produced for Plaintiff 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 various 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;
- Working with opposing counsel and consultants for the receipt of a representative sampling and analyzing the same with the aid of retained expert data consultants and Plaintiff to perform analyses of liability and exposure;
- Selecting a mediator and scheduling a mediation date;
- 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 mediation session by various attorneys;
- Extensive negotiation of the PAGA Settlement Agreement involving numerous drafts exchanged between counsel for the Parties;
- Drafting and reviewing the Payment Letter to be sent to by the Settlement Administrator to the Aggrieved Employees;
- Communicating with Plaintiff who requested updates or other information regarding this matter;

- Requesting bids from third-party settlement administrators for settlement administration;
- Preparing joint stipulation for leave as well as drafting of the First Amended Complaint in this matter;
- Preparing the Motion for Approval of PAGA Settlement and preparation and attendance at the Motion for Approval of PAGA Settlement hearing;
- Reviewing and analyzing the Settlement Administrator's final report to provide the information necessary for the Court's review of the Motion for Approval of PAGA Settlement; and
- Preparing the instant Motion for Approval of PAGA Settlement.

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

And, the over 433.1 total hours expended by the lawyers and staff members of both Bibiyan Law Group, P.C. and D. Law, Inc., in connection with this Action and more fully detailed in the Declarations of David D. Bibiyan and Arsiné Grigoryan filed herewith, 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, Plaintiffs' Counsel requests 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.). Here, Plaintiffs' Counsel has established by declaration testimony the over 433.1 hours spent in this case, which suffices for evidentiary purposes.

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.).

Plaintiffs' Counsel has been representing Plaintiffs for nearly three years, 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, Plaintiffs' Counsel assumed considerable risk given the uncertain outcome of PAGA actions.

In applying a 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 Plaintiffs' Counsel has incurred far more in attorneys' fees than Plaintiffs' Counsel requests in fees from the Gross Settlement Amount. The risk of nonpayment in this Action was particularly acute, too, because litigating a PAGA 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. Attorneys willing to undertake this risk deserve a high rate of recovery. Should a multiplier have been requested, it would have been warranted.

a. Plaintiffs 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

A multiplier to reach the fees requested by Plaintiffs' Counsel is more than justified to compensate Plaintiffs' Counsel at a rate reflecting the risk of nonpayment in this matter, as Plaintiffs' Counsel's representation of Plaintiffs were purely on a contingent basis. As set forth herein, the risk of nonpayment in this Action was particularly acute, too. This is because litigating a PAGA 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. 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 plaintiffs' 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, 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 plaintiffs' counsel's costs, let alone their time.

b. The Quality of Representation, the Novelty, and Complexity of the Issues and Results Obtained

Plaintiffs' 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 Plaintiffs' 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 Plaintiffs' Counsel that were traversed in reaching this Settlement pertaining to evolving case law regarding PAGA actions.

c. This Litigation Precluded Other Employment by Plaintiffs' Counsel

A practitioner can only properly litigate so many cases at one time. The requirements of this case were significant, requiring over 433 hours to be expended to date by Plaintiffs' 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. Plaintiffs' Counsel was also most definitely precluded from other employment. This factor must also be considered.

4. Plaintiffs' Counsel's Hourly Rates Are Reasonable

Bibiyan Law Group, P.C.'s hourly rates for attorneys are: $1200, $1,000, $800, $750, $700, $450, and $425, with paralegal and legal assistant's hourly rates of $200 and $95, respectively. D. Law's hourly rates for attorneys are: $1,687, $1,345, $1,325, $1,042, $1,019, $992, and $750.

At these requested rates, this results in a lodestar amount of $341,636.70. 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[6] 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 Plaintiff's Counsel regularly opposes in these class action cases. (*See* National Law Journal Survey, attached as Exhibit "4" to the Declaration of Keaton Mendoza). 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, Plaintiff's Counsel attaches 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 "5" to the Declaration of Keaton Mendoza). Mr. Pearl specializes in issues

[6] Adjusted for inflation, $450 in 1993 equals over $1,000 in 2026 per the U.S. Bureau of Labor Statistics.

related 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).

Plaintiffs' Counsel is experienced litigators who specialize in employment law, with a substantial PAGA and wage hour class action practice. Moreover, similar rates for the attorneys and staff of Plaintiffs' Counsel have been approved by various courts, including in Los Angeles Superior Court just this month. Given the skill and experience of Plaintiffs' Counsel in this case, and the excellent result achieved for the State and other Aggrieved Employees, the requested rates are reasonable.

5. Plaintiffs' Counsel's Litigation Expenses Are Reasonable

The Settlement provides for reimbursement of Plaintiffs' Counsel's reasonable litigation costs in an amount of not more than $30,000.00. Plaintiffs' Counsel requests only $27,856.78 in

total for costs incurred. Because these costs are reasonable, Plaintiffs' Counsel requests that the Court approve those costs.

6. The Settlement Administrator Costs Are Reasonable

The Settlement Administrator's request for costs of not more than $5,430.00 is reasonable, given the tasks to be performed by the Settlement Administrator, including but not limited to: receiving and processing the Aggrieved Employees data; establishing a settlement fund; calculating and mailing Individual PAGA Payments to the Aggrieved Employees along with the Notice of Settlement to Aggrieved Employees via First Class U.S. Mail, postage prepaid; providing the Parties' counsel reports regarding administration of the Settlement Agreement as needed or requested; if a Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment from the initial mailing is returned as undeliverable during the check-cashing period, the Settlement Administrator will attempt to obtain a current address for the Aggrieved Employee to whom the returned Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment had been mailed within three (3) calendar days of receipt of the returned Notice of Settlement to Aggrieved Employees and/or Individual PAGA Payment check, by: (a) contacting the Aggrieved Employee by phone, if possible, (b) undertaking all reasonable efforts to identify the Aggrieved Employee's correct address, and (c) undertaking skip tracing; if the Settlement Administrator is successful in obtaining a new address, it will promptly remail the Notice of Settlement to Aggrieved Employees and Individual PAGA Payment check to the Aggrieved Employee at his or her updated address within three (3) business days; providing necessary reports and declarations; and performing other such duties as the Parties and/or the Courts direct. Thus, 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: October 6, 2026

BIBIYAN LAW GROUP, P.C.

/s/ Keaton D. Mendoza

BY: _____

KEATON MENDOZA

Attorneys for Plaintiff, JOHNNY ELIJAH STINSON, as an aggrieved employee, and on behalf of all other aggrieved employees