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JUDICIAL COUNCIL OF CALIFORNIA

CHAIR OF THE JUDICIAL COUNCIL

JAIDYN HOLMES, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SPIRIT HALLOWEEN SUPERSTORES LLC; SPENCER GIFTS LLC; and DOES 1 through 20, inclusive,

Defendants.

VANESSA RUELAS SIERRA, as an individual and on behalf of all others similarly situated,

Plaintiff,

vs.

SPENCER GIFTS LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive,

Defendants.

Case No. JCCP5401

NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT UNDER CALIFORNIA LABOR CODE §§ 2698 ET SEQ.; MEMORANDUM OF POINTS AND AUTHORITIES

Date: December 8, 2026
Time: 11:00 a.m.
Dept: 6

Los Angeles County Superior Court Case No.: 24STCV09324 (filed April 15, 2024)

Kern County Superior Court Case No.: BCV-23-101673 (filed May 30, 2023)

RICHARD GONZALEZ, on behalf of himself and current and former aggrieved employees Plaintiff, v. SPIRIT HALLOWEEN SUPERSTORES LLC; and DOES 1 to 100, inclusive, Defendants.	Los Angeles County Superior Court Case No.: 24STCV04406 (filed February 22, 2024)
ELISA HILAIRE, individually and on behalf of all similarly situated individuals, Plaintiff, v. SPENCER GIFTS, LLC, a Delaware Limited Liability Company; SPIRIT HALLOWEEN SUPERSTORES, LLC, a Delaware Limited Liability Company; BARRY SUSSON, an individual; and Does 1-10, inclusive; Defendants.	San Diego County Superior Court Case No.: 37-2024-00019642 (filed April 26, 2024)
THOMAS WHALEN, individually and on behalf of all others similarly situated; Plaintiff, v. SPIRIT HALLOWEEN SUPERSTORES LLC, a Delaware limited liability company; and DOES 1 through 50, Defendants.	Los Angeles County Superior Court Case No.: 23STCV21612 (filed September 7, 2023

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TO THE COURT AND DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 8, 2026, at 11:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Elihu M. Berle, Judge presiding in Department 6 of the above-referenced Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Vanessa Ruelas Sierra ("Plaintiff Sierra"), Thomas Whalen ("Plaintiff Whalen"), the Estate of Richard Gonzalez ("Plaintiff Gonzalez"), and Elisa Hilaire ("Plaintiff Hilaire") (collectively, "Plaintiffs"), on behalf of themselves, the State of California, and all aggrieved employees, will and hereby do move this Court pursuant to California Labor Code section 2698 *et seq*. for an order approving the PAGA Settlement Agreement ("Agreement" or "Settlement") between Plaintiffs and Defendants Spencer Gifts, LLC ("Spencer Gifts") and Spirit Halloween Superstores LLC ("Spirit") (collectively, "Defendants") (Plaintiffs and Defendants collectively, the "Parties").

This motion will be based on this notice of motion, the attached memorandum of points and authorities, the accompanying declarations of Kristen M. Agnew, William C. Sung, Navid Barahmand, Elliot J. Siegel, Eric J. Naessig, Plaintiff Sierra, Plaintiff Whalen, Anastasia Marie Shepherd (on behalf of the estate of Plaintiff Gonzalez), Plaintiff Hilaire, and Jodey Lawrence (Phoenix Class Action Administration Solutions), the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

DATED: November 2, 2026

DIVERSITY LAW GROUP, P.C.

By: /s/ Kristen M. Agnew
Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff Vanessa Ruelas and the Aggrieved Employees

DATED: November 2, 2026

JUSTICE FOR WORKERS, P.C.

By: /s/ William C. Sung
William C. Sung
Attorneys for Plaintiff Thomas Whalen

DATED: November 2, 2026

BARAHMAND LAW GROUP
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By: /s/ Navid Barahmand
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Attorneys for Plaintiff Elisa Hilaire

DATED: November 2, 2026

LAVI & EBRAHIMIAN, LLP

By: */s/ Eric J. Naessig*
Joseph Lavi
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TABLE OF CONTENTS

	Page
I. INTRODUCTION	9
II. STATEMENT OF FACTS & PROCEDURAL HISTORY	10
A. The Parties	10
B. The *Sierra* Action	10
C. The *Whalen* Action	10
D. The *Gonzalez* Action	11
E. The *Hilaire* Action	11
F. The Parties Reached a Settlement Following Informed, Arm's-Length Mediation	12
G. The Coordinated Actions	12
III. THE SETTLEMENT TERMS AND STRUCTURE	13
A. The Aggrieved Employees	13
B. The Gross Settlement Amount	13
C. Payment to the LWDA and Aggrieved Employees	14
D. Attorneys' Fees and Reimbursement for Litigation Costs	14
E. The Administrator Expenses	15
F. Scope of the Released Claims	15
IV. ARGUMENT	16
A. The Settlement Is Fair, Reasonable, and Adequate.	16
B. Maximum Potential PAGA Exposure	18
C. Defendants' Defenses and the Risks of Continued Litigation	18
1. Off-the-Clock Work	18
2. Regular Rate Violations	19
3. Meal and Rest Period Violations	20
4. Failure to Reimburse Necessary Business Expenses	21
5. Derivative Penalty Claims	21
D. The Court's Discretion to Reduce Civil Penalties	22
V. REQUEST FOR ATTORNEYS' FEES AND COSTS	23
A. The Court Should Approve PAGA Counsel's Requested Attorneys' Fees	23
B. The PAGA Counsel Litigation Expenses Payment	25
VI. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION	26
VII. NOTICE TO THE LWDA HAS BEEN PROVIDED	26
VIII. CONCLUSION	26

TABLE OF AUTHORITIES

Page(s)

State Cases

Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1213 (2008) 22

Amaro v. Anaheim Arena Management, LLC, 69 Cal.App.5th 521 (2021) 24

Arias v. Superior Court, 46 Cal.4th 969, 980-986 (2009) 16, 17

Augustus v. ABM Security Services, Inc., 2 Cal.5th 257, 269–270 (2016) 20

Brinker Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1051–1052 (2012) 18, 20

Carrington v. Starbucks Corp., 30 Cal.App.5th 504, 517, 539 (2018) 22

Chavez v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008) 24

Cochran v. Schwan's Home Service, Inc., 228 Cal.App.4th 1137, 1144–1145 (2014) 21

Consumer Advocacy Group, Inc. v. Kintetsu, 141 Cal. App. 4th 46, 62-63 (2006) 17

Donohue v. AMN Services, LLC, 11 Cal.5th 58, 76–77 (2021) 20

Ferra v. Loews Hollywood Hotel, LLC, 11 Cal.5th 858, 863 (2021) 19

Frlekin v. Apple Inc., Cal.5th 1038, 1058 (2020) 19

Huerta v. CSI Electrical Contractors, 15 Cal.5th 908, 915 (2024) 19

Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-36 24

Laffitte v. Robert Half Int'l Inc., 1 Cal.5th 480, 503 (2016) 23

Martinez v. Sierra Lifestar, Inc., 119 Cal.App.5th 1303, 1313 (2026) 19

Moniz v. Adecco USA, Inc., 72 Cal.App.5th 56, 77 (2021) 16, 17

Munoz v. Chipotle Mexican Grill, Inc., 238 Cal.App.4th 291, 310–311 (2015) 19

Norman v. Strateman 112 Cal. App. 5th 92, 103 n.2 (2025) 17

Raines v. Coastal Pacific Food Distributors, Inc., 23 Cal.App.5th 667, 681 (2018) 22, 23

Serrano v. Priest, 20 Cal.3d 25, 48 (1977) 23, 24

Thayer v. Wells Fargo Bank (2001) 92 Cal. App. 4th 819, 834 24

Thurman v. Bayshore Transit Management, Inc., (2012) 203 Cal.App.4th 1112, 1136 22

Turrieta v. Lyft, Inc., 16 Cal.5th 664, 712–16 (2024) 16

Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 254 (2001) 23

Federal Cases

Kang v. Wells Fargo Bank, N.A., 2021 WL 5826230, at *15 (N.D. Cal. Dec. 8, 2021) 16

Martin v. AmeriPride Servs., 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. 2011) 24

Statutes

Labor Code section 246(l)(1)–(2) 19

Labor Code section 2699(e)(2) 22

Labor Code section 1194 15

Labor Code section 1197 15

Labor Code section 1197.1 15

Labor Code section 201 ..... 15, 16

Labor Code section 202 ..... 15, 16

Labor Code section 203 ..... 15, 16

Labor Code section 204 16

Labor Code section 226(a) 16, 21

Labor Code section 226.7 16

Labor Code section 246 15

Labor Code section 2699 (e)(2) 22

Labor Code section 2699 (s)(2) 16

Labor Code section 2802 ..... 16, 21

Labor Code section 510 15

Labor Code section 512 16

Labor Code section 558 15

Rules

29 C.F.R. § 778.211(a)–(c) 19, 20

I. INTRODUCTION

Through this Motion, Plaintiffs Vanessa Ruelas Sierra ("Plaintiff Sierra"), Thomas Whalen ("Plaintiff Whalen"), Richard Gonzalez ("Plaintiff Gonzalez"), and Elisa Hilaire ("Plaintiff Hilaire") (collectively, "Plaintiffs") request that the Court enter an order approving the non-reversionary settlement with Defendants Spencer Gifts, LLC ("Spencer Gifts") and Spirit Halloween Superstores LLC ("Spirit") (collectively, "Defendants") as set forth in the concurrently filed PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"). Plaintiffs seek civil penalties under the Private Attorneys General Act ("PAGA") in separate, coordinated actions. Their claims arise from Defendants' alleged failures to: compensate employees for all time worked; provide compliant, off-duty meal periods; provide compliant rest periods; use the proper regular rate of pay when calculating overtime wages, paid sick leave, and meal period premiums; provide accurate itemized wage statements; reimburse necessary business expenses; provide suitable seating; failure to timely pay earned wages during employment; and timely pay final wages upon separation of employment. Following substantial investigation, formal discovery, and an arm's-length, full-day mediation, Plaintiffs and Defendants (collectively, the "Parties") reached the Settlement now presented for the Court's approval.

Under the Settlement, Defendants will pay a non-reversionary Gross Settlement Amount of $1,600,000.00. This amount includes $979,248.06 allocated to PAGA civil penalties for distribution to aggrieved employees and the California Labor and Workforce Development Agency ("LWDA"). The Settlement provides a meaningful and certain recovery while avoiding the considerable expense, delay, and uncertainty of continued litigation. In light of the disputed legal and factual issues, the risks of further litigation, and the results achieved, Plaintiffs and their respective counsel believe the Settlement is fair, reasonable, and consistent with PAGA's purposes and the interests of the aggrieved employees and the State of California. Accordingly, Plaintiffs respectfully request that the Court approve the Settlement, direct the Parties and the Settlement Administrator to carry out its terms, and enter final judgment.

II. STATEMENT OF FACTS & PROCEDURAL HISTORY

A. The Parties

Spencer Gifts and Spirit are affiliated retailers. Spencer Gifts operates stores selling gifts, novelty merchandise, apparel, and accessories. Spirit operates seasonal stores selling Halloween costumes, decorations, and accessories. Plaintiffs Sierra, Whalen, Gonzalez, and Hilaire were employed as non-exempt Store Managers or Assistant Store Managers by Spencer Gifts, Spirit, or both. *See* Shepherd Decl. ¶ 2; Hilaire Decl. ¶ 5; Sierra Decl. ¶ 3; Whalen Decl. ¶ 2.

B. The *Sierra* Action

On May 22, 2023, Plaintiff Sierra submitted a notice to the LWDA pursuant to Labor Code section 2699.3 (the "Sierra PAGA Notice"). Agnew Decl. ¶ 3; Ex. 2. The Sierra PAGA Notice alleged that Spencer Gifts failed to include all nondiscretionary incentive wages in the regular rate of pay used to calculate overtime wages, meal and rest period premiums, and sick pay, and failed to provide accurate itemized wage statements, in violation of Labor Code section 226. *See id.*

On May 30, 2023, Plaintiff Sierra commenced *Vanessa Ruelas Sierra v. Spencer Gifts LLC*, Kern County Superior Court Case No. BCV-23-101673 ("*Sierra* Action"), against Spencer Gifts. Agnew Decl. ¶ 4. In the operative First Amended Complaint, Plaintiff Sierra alleges representative PAGA claims predicated on the same Labor Code violations identified in the Sierra PAGA Notice. *Id*. at ¶ 4; Ex. 3. On November 7, 2023, the Court compelled Plaintiff Sierra's individual claims to arbitration and stayed her representative PAGA claims pending completion of arbitration. *Id*. at ¶ 5. On January 3, 2024, Plaintiff Sierra submitted a demand for arbitration with the National Arbitration and Mediation (NAM) (the "*Sierra* Arbitration"). *Id*. at ¶ 6. Plaintiff Sierra and Spencer Gifts stipulated to the dismissal *without* prejudice of the *Sierra* Arbitration, pending Court approval of the PAGA Settlement Agreement. *Id.* at ¶ 13.

C. The *Whalen* Action

On September 5, 2023, Plaintiff Whalen submitted a PAGA letter to the LWDA and gave notice to Spirit. Sung Decl. ¶ 2, Ex. 1. On September 7, 2023, Plaintiff Whalen commenced *Thomas Whalen v. Spirit Halloween Superstores LLC*, Los Angeles Superior Court Case No. 23STCV21612

("*Whalen* Action"). *Id.* at ¶ 3. In the operative First Amended Complaint, Plaintiff Whalen alleges causes of action for (1) Minimum Wage Violations; (2) Overtime Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Necessary Business Expenses; (8) Unfair Competition; and (9) Civil Penalties under the PAGA. *Id.* at ¶ 4, Ex. 2. Similar to the *Sierra* Action, the *Whalen* Action was compelled into arbitration and Plaintiff Whalen's arbitration proceeding is pending with NAM and currently stayed pending approval of this settlement. *Id.* at ¶ 5.

D. The *Gonzalez* Action

On December 18, 2023, Plaintiff Gonzalez submitted a PAGA notice to the LWDA and gave notice to Spirit. Naessig Decl. ¶ 3, Ex. 1. On February 22, 2024, Plaintiff Gonzalez commenced *Richard Gonzalez v. Spirit Halloween Superstores LLC*, Los Angeles Superior Court Case No. 24STCV04406 ("*Gonzalez* Action"). *Id.* at ¶ 4. In the complaint for the *Gonzalez* Action, Plaintiff Gonzalez alleged civil penalties under PAGA for: (1) failure to pay wages for all hours worked at the legal minimum wage; (2) failure to pay wages for overtime hours worked at the overtime rate of pay; (3) failure to pay meal period premiums at the regular rate of pay; (4) failure to pay rest period premiums at the regular rate of pay; (5) failure to timely pay earned wages during employment; (6) failure to provide complete and accurate wage statements; and (7) failure to pay employees all wages due at time of termination/resignation. *Id.*, Ex. 2. The *Gonzalez* Action is one of the Coordinated Actions included in Spencer Gifts Wage and Hour Cases, JCCP No. 5401, and is stayed with the other Coordinated Actions. *Id.*

E. The *Hilaire* Action

On April 26, 2024, Plaintiff Hilaire submitted a PAGA notice to the LWDA and gave notice to Defendants. Siegel Decl. ¶ 10, Ex. 1. On April 26, 2024, Plaintiff Hilaire commenced *Elisa Hilaire v. Spencer Gifts, LLC, et al., San Diego County Superior Court Case No.* 37-2024-00019642 ("*Hilaire* Action"). *Id.* at ¶ 11. In the operative Class Action Complaint, Plaintiff Hilaire alleges the following: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide and maintain complete

and accurate wage statements; (6) failure to reimburse necessary business expenses; (7) PAGA penalties; and (8) unfair business practices. The Hilaire Action is one of the Coordinated Actions included in Spencer Gifts Wage and Hour Cases, JCCP No. 5401, and is stayed with the other Coordinated Actions. Prior to the Order coordinating the cases, Defendants had filed a motion to compel arbitration, which had been granted as to Plaintiff Hilaire's individual labor code claims, the PAGA representative claims stayed pending such arbitration, and the alleged class action claims dismissed without prejudice. *Id.* at ¶ 12, Ex. 2.

F. The Parties Reached a Settlement Following Informed, Arm's-Length Mediation

The Parties agreed to participate in a global mediation of the *Sierra* Action, *Whalen* Action, *Gonzalez* Action, and *Hilaire* Action (collectively, the "Actions"). Agnew Decl. ¶ 9. Prior to mediation, Plaintiffs obtained and analyzed documents and information sufficient to evaluate the alleged violations and potential PAGA exposure. *Id.* at ¶ 10. Spirit and Spencer Gifts produced time and payroll records for 3,171 and 653 aggrieved employees, respectively. *Id.* The data for Spirit covered the period of September 5, 2022 through December 14, 2024. *Id.* The data for Spencer Gifts covered the period of May 22, 2022, through February 1, 2025. *Id.* Plaintiffs retained an expert data scientist with prior class action litigation experience to analyze the time and payroll data. *Id.* Extrapolation of the data through July 21, 2025, yielded an estimated 121,868 pay periods. *Id.*

On July 21, 2025, the Parties participated in a full day of mediation with Jason Marsili, a respected wage and hour mediator. Agnew Decl. ¶ 11. Although the Actions did not resolve that day, the Parties continued settlement negotiations through Mr. Marsili. *Id.* On September 16, 2025, the Parties accepted a mediator's proposal to resolve the Actions. *Id.* The Parties thereafter negotiated and finalized the terms of the PAGA Settlement Agreement, which was fully executed on February 17, 2026. *Id.* at ¶ 12. These negotiations were conducted at arm's length and informed by the formal and informal discovery exchanged by the Parties. *Id.*

G. The Coordinated Actions

On December 31, 2025, the Chair of the Judicial Council granted plaintiff Jaidyn Holmes' uncontested Petition to Coordinate the matters of: (i) *Jaidyn Holmes v. Spirit Halloween Superstores*

LLC, Los Angeles County Superior Court Case No. 24STCV09324 ("*Holmes* Action"); (ii) the *Sierra* Action; (iii) the *Whalen* Action; (iv) the *Gonzalez* Action; and (v) the *Hilaire* Action (collectively, "Coordinated Actions").[1] Agnew Decl. ¶ 14. The Coordinated Actions were immediately stayed pending assignment of a coordination trial judge in Los Angeles County Superior Court. *Id.*

III. THE SETTLEMENT TERMS AND STRUCTURE

The material terms of the Settlement are described below and set forth in detail in the concurrently filed PAGA Settlement Agreement (the "Agreement"), which is attached to the Declaration of Kristen M. Agnew as Exhibit 1.

A. The Aggrieved Employees

For purposes of the Settlement, "Aggrieved Employees" are defined as "all current and former nonexempt employees employed by Defendants in California during the PAGA Period." Agreement at § 1.4. The PAGA Period is May 22, 2022 through July 21, 2025. *Id*. at § 1.21.[2] Based on information provided by Defendants, approximately 3,900 Aggrieved Employees collectively worked approximately 121,868 PAGA Pay Periods——that is a pay period during which an Aggrieved Employee worked for at least one day during the PAGA Period. *Id*. at §§ 1.20, 9; Agnew Decl. ¶ 16.

B. The Gross Settlement Amount

Pursuant to the Settlement Agreement, Defendants will pay the Gross Settlement Amount of $1,600,000.00 on a non-reversionary basis. Agreement at §§ 1.9, 4.1. Pending Court approval, the Gross Settlement Amount encompasses: (1) attorneys' fees of 35% of the Gross Settlement Amount which is $560,000.00 ("PAGA Counsel Fees"); (2) actual litigation costs incurred in this matter in the amount of $46,751.94 ("PAGA Counsel Expenses")[3]; and (3) settlement administration costs in the amount of $14,000.00 to be paid to the Settlement Administrator, Phoenix Class Action

---

[1] The PAGA Settlement Agreement does not call for judgment to be entered in *Holmes*. Agnew Decl. ¶ 15.

[2] Under the Agreement's escalator provision, if the total number of PAGA Pay Periods exceeds 134,055, the Gross Settlement Amount increases pro rata, unless Defendants elect to end the PAGA Period on the date the count reaches 134,055. Agreement at § 9.

[3] The Agreement provides for reimbursement of actual litigation costs up to $50,000.

Administration Solutions, for sending notices and for calculating Individual PAGA Payments and preparing all checks and mailings ("Administrator Expenses"). *See id*. at § 4.2.[4]

Using Defendants' estimate of 121,868 PAGA Pay Periods, the $1,600,000 Gross Settlement Amount represents approximately $13.13 per PAGA Pay Period. *See* Agnew Decl. ¶ 17.

C. Payment to the LWDA and Aggrieved Employees

The balance of the Gross Settlement Amount remaining after deduction of the approved PAGA Counsel Fees, PAGA Counsel Expenses, and Administrator Expenses (the "Net Settlement Amount"), will be available for distribution to the LWDA and Aggrieved Employees. Agreement at §§ 1.14, 4.2(d). Assuming that the Court awards the requested amounts, the Net Settlement Amount will total $979,248.06. Agnew Decl. ¶ 20. Seventy-five percent (75%) of the Net Settlement Amount, or approximately $734,436.05, will be paid to the LWDA for PAGA penalties ("LWDA PAGA Payment"). Agreement at §§ 1.13, 4.2(d); Agnew Decl. ¶ 21. The remaining twenty-five percent (25%), or approximately $244,812.01, will be distributed to Aggrieved Employees on a pro rata basis based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period. Agreement at § 4.2(d); Agnew Decl. ¶ 21.

Individual PAGA Payment checks will remain negotiable for 180 days after issuance. Agreement at § 7.6. After that period, the Administrator will remit any funds from uncashed checks to the cy pres recipient, Legal Aid at Work. Legal Aid at Work is a nonprofit that provides free legal services to low-wage workers, which aligns its mission with the interests of the aggrieved employees and the purposes of PAGA. Neither Defendant, Plaintiffs, nor their counsel have any relationship with Legal Aid at Work. *See* Hilaire Decl. ¶ 31; Sierra Decl. ¶11; Agnew Decl. ¶ 23; Barahmand Decl. ¶ 11; Naessig Decl. ¶ 18; Siegel Decl. ¶¶ 37-38; Sung Decl. ¶ 6.

D. Attorneys' Fees and Reimbursement for Litigation Costs

PAGA Counsel requests attorneys' fees in the amount of $560,000.00 (*i.e.* 35% of the Gross

[4] The Settlement Agreement does not provide for service awards to Plaintiffs. Plaintiffs each entered into a separate Confidential Settlement Agreement and Release. Under their respective agreements, each Plaintiff will receive $25,000.00 in exchange for a release of their respective individual claims. *See* Agnew Decl. ¶¶ 13, 48.

Settlement Amount), and reimbursement for actual litigation costs in the amount of $46,751.94, subject to Court approval, consisting of $10,715.89 incurred by Diversity Law Group, P.C., $10,341.20 incurred by Justice for Workers, $16,770.83 incurred by Lavi & Ebrahimian, $5,776.52 incurred by King & Siegel LLP; and $3,147.50 incurred by Barahmand Law Group. Agreement at § 4.2(a); Agnew Decl. ¶¶ 18, 44, Ex. 5; Barahmand Decl. ¶ 6, Ex. 1; Naessig Decl. ¶ 17, Ex. 3; Siegel Decl. ¶ 35, Appx. 1, Ex. 7; Sung Decl. ¶ 7, Ex. 3. Any portion of the PAGA Counsel Expenses and/or Fees that is not approved by the Court shall become part of the Net Settlement Amount. Agreement at § 4.2(a).

E. The Administrator Expenses

The Settlement Administrator, Phoenix Class Action Administration Solutions, will be responsible for preparing and mailing Settlement Notices, computing Individual PAGA Payments, and issuing checks and required tax reports.[5] Agreement at §§ 1.2, 1.3, 6.3. The Administrator Expenses are estimated to be $14,000.00. Admin. Decl. ¶ 16, Ex. B. Any portion of the Administrator Expenses that is not approved by the Court shall become part of the Net Settlement Amount. Agreement at § 4.2(b).

F. Scope of the Released Claims

Upon Defendants payment of the Gross Settlement Amount, Plaintiff, Aggrieved Employees, the State of California, and the LWDA are deemed to release the Released PAGA Claims against Defendants and other released parties. Agreement at § 8. As defined in the Settlement, the term "Released PAGA Claims" means:

> [T]he PAGA claims alleged in the operative complaints in the Actions, or that reasonably could have been based on the facts stated in the operative complaints in the Actions and in the PAGA Notices, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, in violation of Labor Code sections 510, 558, 1194, 1197 and 1197.1, (3) failure to pay sick pay wages at the regular rate of pay, in violation of Labor Code sections 201, 202, 203, 246; (4) failure to provide meal

[5] Based on the composition of the workforce, Defendants have determined that a Spanish translation of the notice will not be required.

> and rest periods or pay premiums in lieu thereof at the regular rate of pay, in violation of Labor Code sections 226.7 and 512; (5) failure to provide accurate itemized wage statements, in violation of Labor Code section 226(a), (6) failure to timely pay all earned wages during employment, in violation of Labor Code section 204, (7) failure to timely pay all earned wage at time of separation, in violation of Labor Code sections 201, 202 and 203, and (8) failure to reimburse necessary business expenses in violation of Labor Code section 2802.

Id. at § 1.23. The applicable time period for the Released PAGA Claims shall be the PAGA Period. *Id.* at § 8. The release is expressly limited to civil penalties under PAGA and does not affect any individual claims that Aggrieved Employees may have. *Id.*

IV. ARGUMENT

A. The Settlement Is Fair, Reasonable, and Adequate.

Unlike a class action settlement, approval of a PAGA settlement is governed by Labor Code section 2699 (s)(2), which provides that "[t]he court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." Although PAGA does not prescribe a detailed approval procedure comparable to the two-step process used in class actions, California courts have made clear that a trial court must independently evaluate whether a proposed PAGA settlement is fair, reasonable, and adequate in light of PAGA's purposes. *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021).

That inquiry is necessarily different from the inquiry applicable to class settlements. A PAGA action is not a class action. It is a representative enforcement action in which the aggrieved employee acts as the proxy of the State to recover civil penalties for Labor Code violations. *Arias v. Superior Court*, 46 Cal.4th 969, 980-986 (2009). For that reason, plaintiffs pursuing PAGA claims "need not meet class action requirements," and the Court's focus is not whether the settlement mirrors the procedures or standards applicable to absent class members.[6] *Id.* at 987. Instead, the Court's task is to determine whether the proposed settlement is fair, reasonable, and adequate in view of PAGA's public purposes—namely, "to remediate present labor law violations, deter future ones, and to

[6] Unnamed aggrieved employees are not class members and therefore are not entitled to opt out of the action or object in the same manner as absent class members in a class action settlement. *Turrieta v. Lyft, Inc*., 16 Cal.5th 664, 712–16 (2024).

maximize enforcement of state labor laws." *Moniz*, 72 Cal.App.5th at 77; *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *15 (N.D. Cal. Dec. 8, 2021) (evaluating whether the settlement was "fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals"). In conducting that review, courts may consider factors commonly used in evaluating settlements more generally, including the strength of the claims, the risks and expense of continued litigation, the stage of the proceedings, and the amount of the settlement, so long as those factors are assessed through the lens of PAGA's enforcement objectives. *Moniz*, 72 Cal.App.5th at 76-77; *see also Norman v. Strateman* 112 Cal. App. 5th 92, 103 n.2 (2025).

The Settlement satisfies that standard here. This was not a quick or uninformed compromise. Rather, the Settlement was reached only after substantial discovery and arm's-length negotiations in contested and overlapping PAGA actions. Agnew Decl. at ¶¶ 7-10. Counsel evaluated the strengths of the alleged Labor Code violations, the available defenses, and the uncertainty, delay, and expense that continued litigation would entail. Agnew Decl. ¶¶24-33. Against that backdrop, the Settlement secures a substantial seven-figure recovery and provides an immediate, certain, and meaningful result in lieu of years of additional contested proceedings.

Just as important, the Settlement serves PAGA's deterrent and enforcement purposes. PAGA is "fundamentally a law enforcement action designed to protect the public," not merely a vehicle for private recovery. *Moniz*, 72 Cal.App.5th at 77; *Arias*, 46 Cal.4th at 980. The Gross Settlement Amount here is significant. It reflects a real economic consequence for the alleged wage and hour violations, promotes future compliance with California labor laws, and secures penalties now rather than risking a lesser recovery—or no recovery at all—after further motion practice, appeals, and trial. In these circumstances, the Settlement is fair, reasonable, and adequate under the Labor Code.[7]

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[7] The Settlement is also consistent with the State's public policy favoring resolution of disputes. *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) ("California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement").

B. Maximum Potential PAGA Exposure

Defendants estimate that there were 121,868 pay periods in which an Aggrieved Employee worked for at least one day during the PAGA Period. Settlement Agreement at §§ 1.20, 9. Based on that estimate, PAGA Counsel calculated that—provided Plaintiff prevailed on the merits and the default penalty of $100 per pay period applied—Defendants' maximum potential exposure was approximately $12,186,800. Agnew Decl. ¶ 24. The $1,600,000 Gross Settlement Amount represents approximately 13.1% of that theoretical maximum and provides a substantial recovery in light of the significant risks, uncertainties, expense, and delay associated with continued litigation.

C. Defendants' Defenses and the Risks of Continued Litigation

1. Off-the-Clock Work

Plaintiffs Whalen and Gonzalez alleged that, as non-exempt Store Managers, they regularly performed unpaid work to set up the store before it opened and manage the store and store staff once it opened, including being on duty and on-premises during meal and rest breaks, and Plaintiffs Whalen and Gonzalez were the only managerial staff at their respective stores for the first six hours and they were required to watch the store, troubleshoot customer issues, and supervise employees. Sung Decl. ¶ 8. Defendants deny these allegations and rely on written policies requiring Store Managers to record all hours worked. *Id*. Defendants also contend that they neither knew nor should have known of any unrecorded work. *Id.* Employer knowledge is central to liability for such work. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1051–1052 (2012). Plaintiffs would have relied substantially on testimony and circumstantial evidence to establish when the unpaid work occurred and Defendants' actual or constructive knowledge. Sung Decl. ¶ 8. Defendants could counter that evidence with their written policies, employees' time records, and contrary testimony, creating credibility disputes concerning the extent of provable violations. *Id*.

Plaintiffs Whalen, Gonzalez, and Hilaire further alleged that Defendants required non-exempt employees to submit to "pocket checks" or bag checks before leaving their stores, including when leaving for meal periods. Sung Decl. ¶ 9; Siegel Decl. ¶ 14. Time spent waiting for and undergoing mandatory exit searches is compensable as hours worked. *See Frlekin v. Apple Inc.*, Cal.5th 1038,

1058 (2020); *Huerta v. CSI Electrical Contractors*, 15 Cal.5th 908, 915 (2024). Defendants contend, however, that checks occurred while employees remained on the clock. Sung Decl. ¶ 9. Even if Plaintiffs established liability, Defendants would dispute the frequency and duration of unpaid work and whether Plaintiffs' experiences reflected practices at other stores. *Id.* Because PAGA penalties are assessed per aggrieved employee per pay period, proving the frequency and scope of violations would be critical to establishing the recoverable penalties. *Id.; see also Munoz v. Chipotle Mexican Grill, Inc.*, 238 Cal.App.4th 291, 310–311 (2015). Evidence that violations were confined to particular employees, stores, or pay periods could materially reduce the penalties attributable to these claims, supporting a negotiated resolution. Sung Decl. ¶ 9.

2. Regular Rate Violations

Plaintiffs Sierra and Gonzalez alleged that Spencer Gifts systematically underpaid overtime wages, meal and rest period premiums, and paid sick leave by excluding nondiscretionary incentives, including the Monthly Store Manager Incentive, from the applicable pay calculations. Agnew Decl. ¶ 27. Nondiscretionary incentives must be included in the regular rate used to calculate overtime wages and meal and rest period premiums. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 863 (2021); *Martinez v. Sierra Lifestar, Inc.*, 119 Cal.App.5th 1303, 1313 (2026). Paid sick leave for nonexempt employees must be calculated using either the regular rate for the workweek in which leave is taken or the statutory formula based on wages and hours worked during the preceding 90 days. *See* Lab. Code § 246(l)(1)–(2). Plaintiffs' theory therefore depended on establishing that the incentives were nondiscretionary and improperly excluded from the applicable calculations

Spencer Gifts disputes that characterization, arguing that incentive payments were contingent on employees satisfying eligibility requirements and that it retained authority to modify the program, make final decisions concerning its administration, and adjust amounts otherwise calculated under predetermined schedules when unusual circumstances arose. Agnew Decl. ¶ 28. To qualify for the discretionary-bonus exclusion, however, an employer must retain discretion over both whether to make a payment and its amount until at or near the end of the relevant period, without a prior promise creating an expectation of payment. *See* 29 C.F.R. § 778.211(a)–(c). Plaintiffs would counter that preannounced formulas and eligibility conditions created an expectation of payment, and that a

reservation of authority to modify the program or adjust payouts did not, by itself, establish the discretion required for exclusion. *See id*. at § 778.211(b)–(c). Nevertheless, determining whether the plan's terms and actual administration left Spencer Gifts with genuine discretion over both the fact and amount of payment would have required further factual development, creating uncertainty concerning liability and the resulting PAGA recovery. Agnew Decl. ¶ 28.

3. Meal and Rest Period Violations

Plaintiffs Whalen and Hilaire allege that Defendants failed to provide compliant meal and rest periods, including by requiring Store Managers to remain on duty and on the premises during their breaks. Sung Decl. ¶ 10. Plaintiff Hilaire further alleges that non-exempt employees were required to skip or interrupt their breaks to serve customers, cut their meal and rest periods short to undergo security or bag checks, and remain on the premises during rest periods. Siegel Decl. ¶ 15. To evaluate the frequency and extent of the alleged violations, Plaintiffs retained an expert to analyze Defendants' time and payroll records. *Id.* After accounting for meal period premiums already paid, the expert estimated a meal period violation rate of 13.3% for Spirit and a 58% violation rate for Spencer Gifts. *Id.* Because Defendants also required employees to record their rest breaks, the expert separately analyzed those records and, after accounting for rest period premiums already paid, estimated rest period violation rates of 69.6% for Spirit and 38.3% for Spencer Gifts. *Id.*

These findings supported Plaintiffs Whalen and Hilaire's claims that employees were not consistently provided breaks free from work duties and employer control. *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012); *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269–270 (2016). Nevertheless, Defendants could challenge whether particular entries reflected actual violations. Although records showing missed, short, or late meal periods without proper compensation raise a rebuttable presumption of liability, Defendants could attempt to rebut that presumption with evidence that employees received compliant meal period opportunities but voluntarily chose to shorten, delay, or skip them. Sung Decl. ¶ 11; *see also Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 76–77 (2021). Defendants could also contend that some rest breaks were taken but inaccurately recorded, and dispute the extent to which the alleged on-duty requirements affected

employees across different stores and pay periods. Sung Decl. ¶ 11. These disputes created a risk that the Court would find fewer violations than the expert's analysis suggested, reducing the number of affected employees and pay periods and the resulting PAGA recovery. *Id.*

4. Failure to Reimburse Necessary Business Expenses

Plaintiff Whalen alleges that he was required to use his personal cellphone to communicate with his managers, who called him directly on that phone, and that he received no reimbursement for this work-related use. Sung Decl. ¶ 12. Plaintiff Hilaire likewise alleges that Defendants required non-exempt employees to use their personal cellphones to communicate with supervisors, including while on breaks, and to use their personal vehicles for work-related purposes, without reimbursement. Siegel Decl. ¶ 16. Labor Code section 2802 requires employers to reimburse a reasonable portion of employees' cellphone expenses when personal cellphone use is required for work, even if that use does not increase their monthly bills. *Cochran v. Schwan's Home Service, Inc*., 228 Cal.App.4th 1137, 1144–1145 (2014). Nevertheless, Defendants could argue that personal cellphone use was optional rather than required, dispute whether Plaintiff Whalen's experience reflected a broader practice affecting other aggrieved employees, and challenge the number of pay periods involving required, unreimbursed use. Sung Decl. ¶ 12. These disputes created uncertainty concerning the number of employees and pay periods for which PAGA penalties could be recovered and supported compromising the claim through settlement. *Id.*

5. Derivative Penalty Claims

Plaintiffs allege that Defendants' failure to compensate employees for all hours worked, calculate wages at the proper regular rate, and pay required meal and rest period premiums resulted in inaccurate itemized wage statements in violation of Labor Code section 226(a). Agnew Decl. ¶ 31; Sung Decl. ¶ 13; Siegel Decl. ¶ 17. Plaintiffs also assert derivative Labor Code sections 201–203 claims on behalf of aggrieved employees who separated from employment. Agnew Decl. ¶ 31; Sung Decl. ¶ 13; Siegel Decl. ¶ 17. Because both theories derive from the underlying wage violations, they rise and fall with them. Every risk discussed above applies equally here, including proof of Defendants' knowledge, the frequency of unpaid work, and the discretionary nature of the incentives.

Agnew Decl. ¶ 31; Sung Decl. ¶ 13.

D. The Court's Discretion to Reduce Civil Penalties

Even if Plaintiffs prevailed on the merits, the Court would retain discretion under Labor Code section 2699 (e)(2), to reduce any penalty award it found "unjust, arbitrary and oppressive, or confiscatory." Although "PAGA penalties…are mandatory, not discretionary" in the sense that penalties must be awarded upon a showing of a Labor Code violation, the amount awarded remains subject to reduction based on the facts and circumstances of the case. *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1213 (2008); Lab. Code, § 2699(e)(2).

California courts have repeatedly recognized and applied that discretion. In *Carrington v. Starbucks Corp.*, for example, the plaintiff prevailed on his PAGA claim at trial, yet the trial court reduced the maximum penalty amount by 90 percent based on the employer's good-faith efforts to comply with the law, and the Court of Appeal affirmed. 30 Cal.App.5th 504, 517, 539 (2018). Similarly, in *Raines v. Coastal Pacific Food Distributors, Inc.*, the Court of Appeal recognized that trial courts may reduce PAGA penalties for technical or inadvertent violations, particularly where the violations caused little or no injury. 23 Cal.App.5th 667, 681 (2018). And in *Thurman v. Bayshore Transit Management, Inc.*, the Court of Appeal upheld a substantial reduction in PAGA penalties where the employer was not initially on notice of the violations and took steps to come into compliance once made aware of them, contrasting those circumstances with cases in which full penalties may be warranted because the employer acted with a "cavalier approach" to its obligations or with reckless disregard. (2012) 203 Cal.App.4th 1112, 1136.

Here, several case-specific considerations created a meaningful risk that the Court would decline to impose the maximum statutory penalties. *First*, Defendants would point to their written policies requiring employees to record all time worked, and to their payment for all recorded time, as evidence of good-faith compliance efforts. They would argue that any off-the-clock work occurred despite those policies and without their knowledge. *See Carrington*, 30 Cal.App.5th at 529 (affirming reduced penalties based on the employer's good faith compliance efforts and the limited nature of the violations). *Second*, Defendants would argue that the incentive plan's express reservation of authority to modify the program and adjust payouts gave them a reasonable basis to exclude the incentive from

the regular rate, even if that position ultimately failed. *Third*, Defendants would characterize the alleged violations as limited in scale. The regular rate shortfalls were incremental, the exit searches were brief, and the derivative wage statement violations caused little harm beyond the underlying underpayments. *See Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 681 (2018) (recognizing discretion to reduce penalties for technical violations causing no injury). Taken together, these considerations created a substantial risk that, even if Plaintiffs established liability, the Court would award substantially less than the theoretical maximum.

V. REQUEST FOR ATTORNEYS' FEES AND COSTS

A. The Court Should Approve PAGA Counsel's Requested Attorneys' Fees

Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys' fees in the amount of $560,000.00, broken down as follows: $189,280 to Diversity Law Group; $50,960.00 to King & Siegel LLP; $50,960.00 Barahmand Law Group; $134,400 to Justice for Workers, P.C.; and $134,400 to Lavi & Ebrahimian. *See* Agnew Decl. ¶¶ 46, 47. Labor Code section 2699(g)(1) provides for the recovery of attorneys' fees and costs in any successful action brought under PAGA.

Although this is not a class action, courts evaluating fee requests in representative wage and hour settlements have recognized that the percentage-of-the-benefit method provides a useful and appropriate framework for determining a reasonable fee. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 503 (2016). Under that approach, the Court's objective is to award a fee that approximates the market rate for contingent representation and fairly compensates counsel for the result achieved. *See Laffitte*, 1 Cal.5th at 503; *Serrano v. Priest*, 20 Cal.3d 25, 48 (1977).

Here, the requested fee award of thirty-five percent of the Gross Settlement Amount is reasonable and consistent with the market rate commonly approved in wage and hour representative actions. Courts have repeatedly recognized that one-third of the common fund falls within the range of reasonable fee awards, particularly where counsel undertook the matter on a fully contingent basis and achieved a substantial result without proceeding through trial. *See Amaro v. Anaheim Arena*

Management, LLC, 69 Cal.App.5th 521 (2021) ("Fee awards in class actions average around one-third of the recovery regardless of whether the percentage method or the lodestar method is used"); *Chavez v. Netflix, Inc*., 162 Cal.App.4th 43, 66 (2008) ("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"); *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. 2011) (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million").

That percentage is especially appropriate here given the risks assumed by PAGA Counsel. Counsel undertook the representation on a wholly contingent basis, advanced substantial time and expense with no guarantee of recovery, and faced the risks inherent in complex representative wage and hour litigation, including contested liability, manageability issues, and the prospect of extended proceedings against a sophisticated corporate defendant. Agnew Decl. ¶ 45; Naessig Decl. ¶ 19-27; Siegel Decl. ¶ 34; Sung Decl. ¶ 14. Under these circumstances, the requested fee fairly compensates PAGA Counsel for the risks undertaken and the result achieved, and should therefore be approved.

PAGA Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then may enhance this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id*. at 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 834 ("[t]here is no…rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

Here, PAGA Counsel establish their hours and hourly rates as follows:

Counsel	**Anticipated Total Hours**	**Hourly Rates**	**Lodestar**
Diversity Law Group	Kristen Agnew – 95.20	Kristen Agnew - $900	$85,680
Justice for Workers	William Sung – 117.70	William Sung - $900	$143,825

Counsel	Anticipated Total Hours	Hourly Rates	Lodestar
	Tiffany Luu – 68.90	Tiffany Luu - $550	
Lavi & Ebrahimian	Joseph Lavi – 22.0 Vincent Granberry – 28.0 Cassandra Castro – 14.0 Jovahn Wiggins – 39.4 Daniel Frydman – 12.0 Eric Naessig – 6.0	Joseph Lavi – $1,000.00 Vincent Granberry – $750.0 Cassandra Castro – $675 Jovahn Wiggins – $675 Daniel Frydman – $675 Eric Naessig – $675	$91,195
King & Siegel	Elliot Siegel – 52.1 Marisol Contreras (Paralegal) – 12.6	Elliot Siegel – $900 Marisol Contreras (Paralegal) – $250	$50,040
Barahmand Law Group	Navid Barahmand – 87	Navid Barahmand – $425	$36,975
TOTAL	**544.90**		**$407,715**

Agnew Decl. ¶¶ 42-43; Barahmand Decl. ¶ 8; Naessig Decl. ¶ 8; Siegel Decl. ¶ 28; Sung Decl. ¶¶ 15-19. The requested fee award of $560,000.00 represents a multiplier of approximately 1.37 on PAGA Counsel's lodestar of $407,715. That multiplier falls well within the range California courts routinely approve. The lodestar cross-check therefore confirms the reasonableness of the requested fee. PAGA Counsel respectfully request that the Court approve an award of $560,000.00 in attorneys' fees.

B. The PAGA Counsel Litigation Expenses Payment

Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of litigation costs in the amount of $46,751.94, subject to Court approval, consisting of $10,715.89 incurred by Diversity Law Group, P.C., $10,341.20 incurred by Justice for Workers, $16,770.83 incurred by Lavi & Ebrahimian, $5,776.52 incurred by King & Siegel LLP; and $3,147.50 incurred by Barahmand Law Group. Agreement at § 4.2(a); Agnew Decl. ¶ 44, Ex. 5; Barahmand Decl. ¶ 6, Ex. 1; Naessig Decl. ¶ 17, Ex. 3; Siegel Decl. ¶ 35, Appx. 1; Sung Decl. ¶ 7, Ex. 3. As set forth in counsel's

declarations, the costs were all directly incurred in the prosecution of the Action, including but not limited to filing fees, service of process costs, postage costs, and mediation fees. *Id.*

VI. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The Parties agreed to use Phoenix Class Action Administration Solutions as the third-party settlement administrator in this case. Agreement at § 1.2. Phoenix will be responsible for updating the addresses for the Aggrieved Employees (including conducting a National Change of Address search), mailing the Settlement Notices, calculating the Individual PAGA Payments based on PAGA Pay Periods, issuing settlement checks to Aggrieved Employees and the LWDA, issuing required tax forms (IRS Form 1099), establishing a Qualified Settlement Fund, and handling returned mail and re-mailings, among other duties. *See id.* at §§ 6.2 and 6.3. Phoenix capped its fees at $14,000 for administering the Settlement. *See* Admin. Decl. ¶ 16, Ex. B. Based on PAGA Counsel's experience in other class and PAGA settlements, Phoenix's costs for administering this Settlement are competitive, standard for the scope of work required, and fair and reasonable. Agnew Decl. ¶ 19. Approval of these costs is necessary for the Settlement to be implemented.

VII. NOTICE TO THE LWDA HAS BEEN PROVIDED

Concurrent with the filing of this Motion, Plaintiffs uploaded the instant motion to the LWDA's website. Agnew Decl. ¶ 49, Ex. 6.

VIII. CONCLUSION

Plaintiffs and PAGA Counsel submit that the proposed Settlement as documented in the Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Aggrieved Employees and the State of California. Plaintiffs respectfully request that the Court approve the Settlement Agreement, approve the requested PAGA Counsel Fees, PAGA Counsel Expenses, and Administrator Expenses, and order the Parties and Administrator to carry out the Settlement according to the terms of the Settlement Agreement and enter the concurrently filed [Proposed] Order Granting Approval and Judgment to that end.

DATED: November 2, 2026

DIVERSITY LAW GROUP, P.C.

By: /s/ Kristen M. Agnew
Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff Vanessa Ruelas and the Aggrieved Employees

DATED: November 2, 2026

JUSTICE FOR WORKERS, P.C.

By: /s/ William C. Sung
William C. Sung
Attorneys for Plaintiff Thomas Whalen

DATED: November 2, 2026

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