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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JUAN CARLOS RIVAS, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

UNIVERSAL WASTE SYSTEMS, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV31074

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT

[*Filed with (1) the Declaration of Kane Moon, (2) the Declaration of Lisa Mullins, (3) [Proposed] PAGA Approval Order, and (4) [Proposed] Judgment*]

PAGA APPROVAL HEARING:
Date: October 2, 2025
Time: 10:30 AM
Dept.: 1

Action Filed: December 20, 2023
Trial date: Not set

TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 2, 2025, at 10:30 a.m. in Department 1 of this Court located at the Spring Street Courthouse at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Candelaria Garcia ("Plaintiff") will, and hereby does, move the Court for an Order, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

1. Approving the PAGA Settlement Agreement ("PAGA Settlement") entered into by Plaintiff and Universal Waste Systems, Inc.;
2. Appointing Moon Law Group, PC as PAGA Counsel, and approving the requested PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment;
3. Appointing ILYM Group, Inc. as the Administrator and approving the Administration Expenses Payment;
4. Approving the released of the Released PAGA Claims by the LWDA and the Aggrieved Employees;
5. Directing consummation of the PAGA Settlement pursuant to its terms and provisions;
6. Dismissing the Action with prejudice and entering Judgment; and
7. Retaining jurisdiction over the Parties, Action, and the PAGA Settlement solely for purposes of (i) enforcing the PAGA Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

This Motion is based upon this notice, the attached Memorandum of Points and Authorities, the declarations and exhibits thereto that were filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

DATED: June 17, 2025

Respectfully submitted,

MOON LAW GROUP, PC

By: ____

Kane Moon
Allen Feghali
Hyunjin Kim

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Juan Carlos Rivas ("Plaintiff") seeks approval of a proposed non-reversionary $382,500 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq*. ("PAGA"). After a full day of mediation with experienced neutral mediator Lisa Klerman, Esq., and subsequent negotiations following mediation, Plaintiff has reached a settlement with Defendant Universal Waste Systems, Inc. ("Defendant" or "UWS") (together, the "Parties"). The Parties have executed a PAGA Settlement Agreement (the "PAGA Settlement"). (A true and correct copy of the PAGA Settlement is attached as **Exhibit 1** to the Declaration of Kane Moon in Support of Plaintiff's Motion for Approval of PAGA Settlement [hereinafter "Moon Decl."] submitted concurrently herewith.) Pursuant to Labor Code section 2699, subdivision (s)(2), Plaintiff now files this motion seeking an order approving the proposed PAGA Settlement.

The PAGA Settlement resolves Plaintiff's PAGA claims alleged in the First Amended Complaint filed in the above-captioned matter (the "Action"). The alleged PAGA claims were based on Defendant's alleged failure to pay all minimum and overtime wages, failure to provide meal, failure to authorize and permit rest breaks, failure to indemnify necessary business expenses, failure to timely pay final wages at termination, and failure to provide accurate itemized wage statements. The PAGA Settlement resolves these claims on behalf of the California Labor and Workforce Development Agency (the "LWDA") and person employed by Defendant in California and classified as an hourly-paid, non-exempt employee who worked for UWS during the period from December 16, 2022 to November 24, 2024. (PAGA Settlement, ¶¶ 1.4, 1.19.).

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed settlement, the primary issues to be decided is whether the settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA penalties to which the parties have agreed provide "genuine and meaningful" relief, "consistent with the underlying purpose of the statute to benefit the public," and whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

As set forth herein, the proposed PAGA Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as (1) it is the product of an arm's-length negotiation, (2) negotiated by attorneys experienced in wage and hour issues, (3) following sufficient investigation necessary to evaluate the relative strength and value of the PAGA claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

The value achieved by the PAGA Settlement may be gleaned from the fact that the LWDA and the estimated **531** Aggrieved Employees will, cumulatively, receive no less than **$231,148.43** pursuant to the operative statute for settlement of the PAGA claims, which shall be allocated as "75% to the [LWDA] and 25% to the aggrieved employees." (Lab. Code § 2699.[1]) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and the current state of the law. For these reasons, as set forth more fully herein, Plaintiff respectfully request this Court enter the proposed order and proposed judgment submitted herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Defendant is a waste and recycling service company. (Moon Decl., ¶ 3.) Plaintiff was classified as non-exempt and paid on an hourly basis throughout his employment. (*Id.*) Plaintiff contends he and his former coworkers were subjected to the same unlawful labor practices during their employment by

[1] On July 1, 2024, new legislation was enacted to amend PAGA in several respects, including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288), § 1, eff. Jul. 1, 2024).) As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved employee split. (Lab. Code § 2699(m).) However, because Plaintiff's respective PAGA matters were initiated prior to June 19, 2024, any civil penalties recovered in this action will be split 75% to the LWDA and 25% to AEs as the recent PAGA amendments do not apply retroactively. (Lab. Code § 2699(v)(1).)

Defendant, including failure to pay all wages. (*Id.*)

Plaintiff's claim for unpaid wages stems from allegations of Defendant requiring employees to work off-the-clock without compensation and Defendant failing to incorporate non-discretionary bonuses into Aggrieved Employees' regular rate of pay for purposes of paying overtime, sick pay, or meal period premiums. (*Id.* at ¶ 4.) Plaintiff's meal and rest period claims are based on allegations that due to the nature of his work and Defendant's employment practices, employees regularly experienced missed, untimely, or interrupted lunches and breaks. (*Id.*) Plaintiff also alleges he and other employees were not reimbursed for all necessary business expenses incurred in direct consequence of their job duties, including for the use of their personal cellphones for work related purposes. (*Id.*) Plaintiff further alleges he and other employees did not receive all wages owed at the time of termination nor accurate itemized wage statements. (*Id.*) Thus, Plaintiff alleges Defendant is liable for civil penalties under PAGA. (*Id.*)

Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on December 20, 2023, against Defendant for Failure to Pay Minimum Wages; Failure to Pay Overtime Compensation; Failure to Provide Meal Periods; Failure to Authorize and Permit Rest Breaks; Failure to Indemnify Necessary Business Expenses; Failure to Timely Pay Final Wages at Termination; Failure to Provide Accurate Itemized Wage Statements; and Unfair Business Practices. (*Id.* at ¶ 5.)

On February 23, 2024, Plaintiff filed a First Amended Complaint to add a ninth cause of action against Defendant under PAGA. (*Id.* at ¶ 6.) Plaintiff's Counsel subsequently submitted a conformed copy of the First Amended Complaint to the LWDA pursuant to Labor Code section 2699. (*Id.*)

Due to an arbitration agreement between the Parties, Plaintiff requested dismissal of Plaintiff's class action and individual claims against Defendant, without prejudice. (*Id.* at ¶ 7.) On April 2, 2024, the Court entered an Order granting Plaintiff's Request for Dismissal of Class Allegations without Prejudice, thereby dismissing the first through eighth causes of action in Plaintiff's First Amended Complaint and leaving a single cause of action pursuant to PAGA ("Order re FAC"). (*Id.*) The First Amended Complaint, subject to the Order re FAC, is the operative complaint in the Action (the "Operative Complaint"). (*Id.*)

Pursuant to California Labor Code section 2699.3(a), Plaintiff gave timely written notice of his allegations against Defendant by online submission of his PAGA Notice to the LWDA, with certified mail service on Defendant, and paying the required filing fee. (*Id.* at ¶ 8, Exh. 2.) Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate the allegations, and Plaintiff's complaint to add a PAGA claim was filed. (*Id.*)

UWS denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged. (*Id.*)

B. <u>Discovery and Investigation</u>

Following the filing of Plaintiff's complaint, Plaintiff met and conferred with Defendant regarding an agreement to mediate the action with Lisa Klerman, Esq., an experienced, neutral class action and PAGA mediator, and further, agreed to a protocol for an informal exchange of documents and information before mediation. (*Id.* at ¶ 10.) Prior to mediation, Plaintiff obtained, through informal discovery, information sufficient to meaningfully evaluate the claims at issue, including Plaintiff's personnel file, applicable written documents regarding Defendant's wage and hour policies and practices in effect during the PAGA Period, estimated numbers of Aggrieved Employees and PAGA Pay Periods, and a 15% sample of time and corresponding payroll records for the Aggrieved Employees. (*Id.*)

After reviewing and analyzing the documents regarding Defendant's wage and hour policies and practices, the sample time and pay records, and other information provided by Defendant and Plaintiff, Plaintiff's Counsel were able to evaluate the probability of success on the merits and Defendant's maximum and risk-adjusted monetary exposure. (*Id.* at ¶ 11.) Plaintiff's Counsel retained an expert to analyze the sample records produced and prepare a damage analysis prior to mediation. The sample records contained the pay records of 4,914 pay periods, representing approximately 15% of all pay periods in the PAGA Period, which allowed Plaintiff's expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and his Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the PAGA Settlement. (*Id.*)

C. Settlement Negotiations

Mediation occurred on October 9, 2024. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 12.) Counsel went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the PAGA Settlement. (*Id.*) The Parties recognized that the issues presented in the Actions are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and his Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this PAGA Settlement was the correct option. (*Id.*)

Specifically, Plaintiff's Counsel took into account the risk of not being able to proceed on a representative basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk that even if Plaintiff prevailed at trial, the damages would be limited due to the largely discretionary nature of the damages. (*Id*. at ¶ 29.) Indeed, pursuant to Labor Code section 2699, subdivision (e)(2), a Court may reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) In other words, were this matter to go to trial, any award would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 29.)

D. Key Terms of the Proposed PAGA Settlement

Under the PAGA Settlement, Defendant will pay an all-inclusive, non-reversionary Gross Settlement Amount of at least **$382,500**, to resolve this litigation. (PAGA Settlement, ¶ 3.1.) The Gross Settlement Amount will be used to pay the PAGA Payment, 75% of which will be paid to the LWDA and 25% to the Aggrieved Employees, the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (*Id.* at ¶ 3.2.) The PAGA Settlement's key terms include:

1. Aggrieved Employee: "a person employed by Defendant in California and classified as an hourly-paid, non-exempt employee who worked for UWS during the PAGA Period" (*Id.* at ¶ 1.4.) "PAGA Period" means "the period from December 16, 2022 to November 24, 2024." (*Id.* at ¶ 1.19.)
2. PAGA Penalties: The amount allocated as the PAGA Penalties is approximately **$231,148.43**. (Moon Decl., ¶ 27.) Of this amount, the LWDA will receive 75% (**$173,361.32**) and Aggrieved Employees will receive 25% (**$57,787.11**). (*Id.*) Plaintiff's Counsel have provided notice of the proposed PAGA Settlement to the LWDA, and to date the LWDA has not made any objections thereto. (Moon Decl., ¶ 13, Exh. 3.) Aggrieved Employees will receive a letter with their check explaining the proposed PAGA Settlement. (*See id.*, Exh. A.)
3. PAGA Counsel Fees Payment: Plaintiff's Counsel request an award of attorneys' fees in the amount of one-third of the Gross Settlement Amount (estimated to be **$127,500**). (*Id.* at ¶ 3.2.1.)
4. PAGA Counsel Litigation Expenses Payment: Plaintiff's Counsel seek reimbursement of actual litigation costs up to a maximum amount of $25,000.00. (*Id.*) Specifically, Plaintiff's Counsel request **$18,001.57**. (Moon Decl., ¶ 15, Exh. 4.)
5. Administration Expenses Payment: The Administrator will be paid an Administration Expenses Payment not to exceed $6,000.00 for its fees and expenses in administering this Settlement. (*Id.* at ¶ 3.2.2.) The Parties have jointly appointed ILYM Group, Inc. as the neutral entity to administer this Settlement. (*Id.* at ¶ 7.1.) ILYM Group, Inc. estimates costs will be $5,850 (Moon Decl., ¶ 16, Exh. 5.)
6. Funding: UWS shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (*Id.* at ¶ 4.3.) (*Id.*)
7. Uncashed Checks: For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such

checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (*Id.* at ¶¶ 4.4.1, 4.4.3.)

8. Released by Aggrieved Employees: Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, and all Aggrieved Employees, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties during the PAGA Period, that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice for alleged: Failure to pay wages (including minimum, regular, overtime, double time, paid sick leave, reporting time wages); Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to indemnify necessary business expenses; Failure to timely pay wages at termination; Failure to provide accurate itemized wage statements, including without limitation, alleged violation of the California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2699, and 2802, and applicable IWC Wage Orders. The express purpose of this Agreement and the Judgment to be entered by the Court following approval of this settlement is to forever bar Plaintiff, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA (including all Aggrieved Employees) from asserting any of the Released PAGA Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California or any Aggrieved Employee to bring a PAGA claim on behalf of the LWDA based on the Released PAGA Claims for the PAGA Period is completely and forever foreclosed. All Aggrieved Employees are to be bound by this Settlement upon its approval by the Court, regardless of whether he or she

negotiates (i.e. cashes or deposits) his or her Individual PAGA Payment (*Id.* at ¶ 5.2.)

9. Released Parties: UWS and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates. (*Id.* at ¶ 1.26.)

After extensive discovery and investigation, reviewing the facts, strengths, and weaknesses of the case, considering the risks and delays posed by further litigation, and based on Plaintiff's Counsel's own prior litigation experience, Plaintiff's Counsel believe the proposed recovery for the LWDA and each Aggrieved Employee is fair, reasonable, and adequate, taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Aggrieved Employee's claim to the settlement award he or she will receive. (Moon Decl., ¶¶ 19–30.) Further, Defendant vigorously contested liability and damages. (*Id.* at ¶¶ 9, 12.) Ultimately, based on the settlement negotiations, which were hard-fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating class and representative actions, the PAGA Settlement was the product of a non-collusive settlement process in Defendant were forced to make significant compromises in the interest of reaching a full and complete settlement of the Action. (*Id.* at ¶ 12.)

III. DISCUSSION

A. Availability of Civil Penalties

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action on behalf of him- or herself and other current or former employees." (Lab. Code § 2699(a).) Before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code section 2699.3, Plaintiff provided notice to the LWDA of his PAGA claims, and Plaintiff's administrative exhaustion period expired without the LWDA indicating its intent to investigate. (Moon Decl., ¶ 8.) Further, Plaintiff's complaint alleging civil penalties under PAGA was submitted to the LWDA. (*Id.*) Thus, Plaintiff may proceed as private attorneys general with respect to the alleged PAGA claims. (*Id.*)

B. The PAGA Settlement Warrants Approval

Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(s)(2).) Here, the circumstances weigh heavily in favor of approval, as explained below.

1. The Dual Statutory Purposes of Deterrence and Punishment

As a result of this litigation, Defendant has had to hire legal counsel, engage in extensive discovery, and participate in mediation. (Moon Decl., ¶¶ 10, 12.) Also, Defendant will have to pay civil penalties to the LWDA pursuant to the terms of the PAGA Settlement upon approval. (PAGA Settlement ¶ 3.2.3.) Not including its own attorneys' fees and costs, Defendant is paying at least $382,500 to resolve this matter, and the release obtained as a result of this PAGA Settlement does not preclude the Aggrieved Employees from seeking remedies based on any individual non-PAGA claims they may have against Defendant or the other Released Parties. (*Id.* at ¶ 5.2.)

2. The Relief is Genuine, Meaningful, and Consistent with the Underlying Purpose of the Statute to Benefit the Public

The provisions of the California Labor Code triggering PAGA penalties in this case include Labor Code sections 203 and 226(a). (Moon Decl., ¶ 4; *see* Lab. Code §§ 203, 226(a).) However, PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).) Accordingly, it is entirely possible that even if Plaintiff would be successful at trial, assuming he is able to defeat the manageability issues presented by the large number of Aggrieved Employees in this action, Plaintiff may still be awarded substantially less than what was obtained through this PAGA Settlement.

Plaintiff's Counsel have conducted a thorough investigation into the facts of this case. (Moon Decl., ¶ 28.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, the PAGA Settlement is in the best interests of the Aggrieved Employees and the State of California. (*Id.*) The PAGA Settlement avoids the significant risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 30.) Though the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in extensive formal discovery procedures such as depositions and expert discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties as well as the prospect of appeals in the wake of any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial, a lengthy process that could result in recovering fewer penalties than the Parties settled for. (*Id.*)

Based on Plaintiff's Counsel's analysis of the time, payroll, and additional records and information provided by Defendant, on Plaintiff's expert's analysis of the sample time and payroll records, and on information from Plaintiff, Plaintiff's Counsel evaluated Defendant's maximum and risk-adjusted potential exposure in preparation for mediation. (*Id.* at ¶ 19.) Although Plaintiff's expert's analysis revealed that the time and payroll records supported several violations by Defendant, the records themselves did not provide overwhelming evidence to support the case on a representative basis. (*Id.*) Indeed, the maximum exposure figures that were calculated for mediation were based on assumed high violation rates that would not likely be demonstrated at trial, as they assume either the participation of all Aggrieved Employees (which would be difficult given the size of this group), or alternatively, the use of surveys or statistical data as a surrogate (which would still require the participation of a majority of Aggrieved Employees to establish a sound representation of all non-exempt employees). (*Id.*) The reality is that many, if not all, employees would be unwilling to participate due to fear of retaliation. (*Id.*) Additionally, the likelihood that Defendant could assert viable legal defenses would likely further reduce its overall exposure. (*Id.*) Thus, the realistic exposure is far below the optimistic maximum estimate. (*Id.*)

Based on a review of its records to date, UWS estimated that as September 15, 2024, there were 531 Aggrieved Employees who worked a total 31,258 of PAGA Pay Periods. (PAGA Settlement, ¶ 4.1.) Prior to mediation, Plaintiff's expert analyzed the sample of time and corresponding payroll records Defendant produced and accordingly, was able to find support for some, but not all, of Plaintiff's allegations. (Moon Decl., ¶ 20.) For example, the records themselves do not provide evidence of off-the-clock work, as this claim is primarily testimony based, as are the rest period and unreimbursed expenses claims. (*Id.*) As to the regular rate claim, Defendant's exposure is dependent on the assumption that the bonuses were non-discretionary. (*Id.*) In other words, Plaintiff's expert's analysis revealed that certain claims were not as strong as originally believed. (*Id.*)

The records also did not provide strong support for Plaintiff's claim for unreimbursed business expenses, particularly as the business expenses claim is dependent on testimony from Plaintiff and other Aggrieved Employees. (*Id.* at ¶ 21.) Moreover, Plaintiff's claims for rest period violations and for unpaid wages based on off-the-clock work would need to be supported by declarations from the Aggrieved Employees regarding actual work performed off-the-clock as the records themselves cannot demonstrate what work, if any, was performed off-the-clock, and how many rest breaks were missed and why. (*Id.*) However, even assuming those employees would be willing to participate, obtaining such declarations would potentially reveal that each Aggrieved Employee had a different experience. (*Id.*) The individualized nature of employees' employment experience and the numerosity of employees affected present significant risk with manageability and proof on the merits. (*Id.*) Thus, based on PAGA Counsel's investigation and analysis, the maximum exposure did not comport with the reasonable exposure that Defendant faced. (*Id.*)

Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 22.) In particular, Defendant argued it paid employees for all hours worked, that it did not permit off-the-clock work, that it complied with all meal and rest period obligations, and that any missed lunches or breaks were solely the result of employees' voluntary choice. (*Id.*) Further, to the employees who received wage statements that were allegedly inaccurate, Defendant asserted employees suffered no actual damage or harm as a result. (*Id.*)

Additionally, for purposes of the settlement negotiations, Plaintiff's Counsel considered, as in any PAGA action, all PAGA awards are discretionary and can be reduced by the Court. (Lab. Code § 2699(e).) Plaintiff's Counsel took all foregoing issues and risks into consideration when valuing Defendant's realistic exposure had the Parties not reached a settlement. (Moon Decl., ¶ 23.)

Although Plaintiff believes there would be no persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and significantly reduce any award of penalties. (*Id.* at ¶ 24.) This wide range of potential recovery and additional delays and risks of trial provide justification to settle for a reasonable amount of recovery at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in preparation for mediation, the maximum exposure did not comport with the realistic exposure that Defendant faced. (*Id.*)

Accordingly, Plaintiff's Counsel estimated, based on an evaluation that assumes a $100 "catch-all" civil penalty per pay period (pursuant to PAGA provisions for civil penalties) for the total 31,528 estimated pay periods, Defendant's potential maximum exposure to be $3,125,800. (*Id.* at ¶ 25.) However, based on the discovery obtained, Defendant's arguments at mediation, and other important considerations discussed above, it is reasonable to assume a violation occurred in approximately one-fourth of all pay periods, which results in a realistic *risk-adjusted* exposure of **$781,450** ($3,125,800 / 4). (*Id.*) The Gross Settlement Amount of $382,500 is about **49%** of the realistic catch-all PAGA exposure. (*Id.*)

It is clear that the **$382,500** settlement is an excellent result and amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public." (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at *5; *see also O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (Moon Decl., ¶ 26.)

After the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment, the amount estimated as the PAGA Penalties for the LWDA and Aggrieved Employees will be approximately **$231,148.43**.[2] (*See* PAGA Settlement, ¶ 3.2.) The PAGA Penalties will be split with 75% going to the LWDA and 25% going to Aggrieved Employees on a pro rata basis in Individual PAGA Payments. (*Id.* at ¶ 3.2.3.) Accordingly, **$173,361.32** (75% * $231,148.43) will be available to the LWDA and **$57,787.11** (25% * $231,148.43) will be available to Aggrieved Employees. (Moon Decl., ¶ 27.) This results in an average Individual PAGA Payment of **$108.82** for each of the estimated 531 Aggrieved Employees, and a Pay Period value of **$1.85** for each of the 31,258 estimated Pay Periods. (*Id.*)

C. <u>The Requested Attorneys' Fees and Cost Award Should Be Approved</u>

Subject to the Court's approval, Plaintiff's Counsel seek attorneys' fees in amount up to one-third of the Gross Settlement Amount, and actual litigation costs up to $25,000.00. (PAGA Settlement, ¶ 3.2.1.) To date, Plaintiff's Counsel's has incurred $18,001.57 in actual litigation Costs. (Moon Decl., ¶ 15, Exh. 4.)

1. Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 50.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning

[2] $231,148.43 as the PAGA Penalties was calculated by deducting the following amounts from the Gross Settlement Amount ($382,500): $18,001.58 for the PAGA Counsel Litigation Expenses Payment, $127,500 for the PAGA Counsel Fees Payment, and $5,850 for the Administration Expenses Payment. (Moon Decl., ¶ 27, n.1.)

a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

> fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.):

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

> **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378–79.) California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

2. The Matter Involves a Fee and Cost Shifting Provision under PAGA

Labor Code section 2699 provides for the recovery reasonable attorney's fees as well as costs of suit. (Lab. Code § 2699(k)(1).) Specifically, it states: "Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs . . ." (*Id.*) Under this provision, Plaintiff would be permitted to recover his actual attorneys' fees, even if those fees were larger than the total recovery for the Aggrieved Employees at the conclusion of this case. (*Id.*) This fee/cost-shifting provision reflects the understanding that PAGA Counsel must accept significant risk of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that PAGA Counsel is not only permitted, but entitled, to recover reasonable attorneys' fees and costs if successful in litigating a PAGA claim.

The PAGA Settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel. (Moon Decl., ¶¶ 52–60.) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*) Once Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, placing their fiduciary duty to the PAGA group ahead of all other concerns. (*Id.* at ¶ 56.)

3. Counsel's Experience, Reputation, and Ability Support the Requested Fee Award

As demonstrated by their past experience in pursuing class and representative actions on behalf of employees, Plaintiff's Counsel possess considerable expertise in litigating class action and representative matters. (*Id*. at ¶¶ 31–47.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (Moon Decl., ¶¶ 31-47.) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, Plaintiff's Counsel's requested fee award is supported here. Plaintiff's Counsel's experience in wage and hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of this Settlement. (Moon Decl., ¶ 48.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 46.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 35, 40, 45.) Thus, the requested fee award is reasonable and fair.

4. While the Lodestar Method is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].)

Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.*) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at pp. 556–57.) Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.)

Moreover, the use of a multiplier is permitted in a PAGA action. PAGA 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(k)(1).) Although, PAGA does not provide a specific standard for evaluating attorneys' fees in connection with a settlement of PAGA claims, California Courts have employed a lodestar analysis and use of multipliers for this purpose. "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method. . . . To guard against an unreasonable result, the Ninth Circuit encourages district courts to "cross-check[] their calculations against a second method. . . . Accordingly, the Court calculates attorneys' fees in the instant case using the percentage-of-recovery method and then cross-checks its calculations against the lodestar method." (*Hermosillo v. Davey Tree Surgery Co.* (N.D. Cal. July 7, 2021) No. 18-CV-00393-LHK, 2021 WL 2826697, at *1 [quoting *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].)

Here, Plaintiff's Counsel lodestar is **$93,415.00** which is based on **121.2 hours** of attorney time at their customary hourly rates. (Moon Decl., ¶ 51.) These hours reflect work spent to-date as well as additional hours to obtain and monitor approval of the PAGA Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (Moon Decl., ¶ 52.) Accordingly, the fee request represents a e multiplier of roughly **1.36**. (*Id.* at ¶ 54(c).) The amount of fees requested under the PAGA Settlement is warranted based on the contingent risk that Plaintiff's Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the PAGA Settlement, and the skill displayed by Plaintiff's Counsel. (Moon Decl., ¶ 54.) Plaintiff's Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.* at ¶ 52.) Thus, the request for attorneys' fees satisfies a lodestar check.

5. Plaintiff's Counsel's Costs Are Reasonable and Actually Incurred

Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff's Counsel seek reimbursement of actual costs in the amount of $18,001.57. (Moon Decl., ¶ 15, Exh. 4.) These expenses were reasonably necessary to the litigation and were actually incurred. (Moon Decl., ¶ 59.) Therefore, costs should be reimbursed in full.

IV. CONCLUSION

The PAGA Penalties, Administration Expenses Payment, PAGA Counsel Fees Payment, and PAGA Counsel Litigation Expenses Payment are meaningful, reasonable, and lawful under Labor Code sections 2698, *et seq*. For this reason, Plaintiff respectfully requests that the Court grant approval of the PAGA Settlement and enter the [Proposed] PAGA Approval Order and [Proposed] Judgment submitted herewith.

DATED: June 17, 2025

Respectfully submitted,

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By: ______________________________

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