Arrash T. Fattahi (SBN 333676)
arrash.fattahi@wilshirelawfirm.com
Arman A. Salehi (SBN 351112)
arman.salehi@wilshirelawfirm.com
Emily Borman (SBN 303180)
emily.borman@wilshirelawfirm.com
Alan A. Wilcox (SBN 287476)
alan.wilcox@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DONJUAN FUTRELL, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

KREATION JUICERY, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV30930

PAGA REPRESENTATIVE ACTION

[Assigned for all purposes to: ______________________ (previously assigned to Hon. David S. Cunningham III, Dept. 11).]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Approval of PAGA Settlement Hearing:
Date: July 13, 2026
Time: 11:00 a.m.
Dept: 11

Complaint filed: December 19, 2023

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

PLEASE TAKE NOTICE that on July 13, 2026, at 11:00 a.m., or as soon thereafter as it may be heard, in Department 11 of the Superior Court of California, County of Los Angeles, Spring Street Courthouse, located 312 N. Spring Street, Los Angeles, California 90012, pursuant to Labor Code § 2699(l), Plaintiff Donjuan Futrell ("Plaintiff") will and hereby does move for an order approving the proposed Private Attorneys General Act ("PAGA") settlement (the "Motion") entered into by and between Plaintiff and Defendant Kreation Juicery, Inc. ("Defendant"). Plaintiff further moves the Court for an Order:

1. Granting approval of the Memorandum of Understanding (the "Settlement" or "Settlement Agreement");
2. Appointing Plaintiff Donjuan Futrell as PAGA Representative for settlement purposes;
3. Appointing Plaintiffs' Counsel, Arrash T. Fattahi, Arman A. Salehi, Emily K. Borman, and Alan A. Wilcox of Wilshire Law Firm, PLC ("WLF"), as "PAGA Counsel" for settlement purposes; and
4. Appointing ILYM Group, Inc. as the "Settlement Administrator".

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declarations of Arrash T. Fattahi and Donjuan Futrell, filed concurrently herewith, as well as the records on file in this action and any other further argument the Court is presented with at the time of the hearing.

Respectfully submitted,

Dated: June 15, 2026

WILSHIRE LAW FIRM, PLC

By: ______________________________

Arrash T. Fattahi
Arman A. Salehi
Emily B. Borman
Alan Wilcox
Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff Donjuan Futrell ("Plaintiff") seeks approval of a proposed $300,000.00 non-reversionary, Private Attorneys General Act ("PAGA") action settlement (the "Maximum Settlement Amount") with Defendant Kreation Juicery, Inc. ("Defendant"). The Settlement will provide substantial monetary payments to approximately 600 "Aggrieved Employees" (each an "Aggrieved Employee"), defined as all persons who worked for Defendant in California as an hourly-paid or non-exempt employee from January 16, 2023 through October 18, 2024 (the "PAGA Period"). And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. Accordingly, Plaintiff requests that the Court approve the proposed Settlement, approve the proposed Settlement Notice and distribution procedure, and enter judgment consistent with the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

This is a Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) representative action.

Defendant is a juice shop with numerous locations throughout the State of California. (Fattahi Decl., ¶ 3.) Plaintiff worked for Defendant in California as an hourly-paid non-exempt employee from approximately February 2023 to approximately October 2023. (*Id.*)

Plaintiff's PAGA claim is based on his allegation that Defendant failed to pay for all hours worked (minimum, straight time, and overtime wages), failed to provide meal periods, failed to authorize and permit rest periods, failed to timely pay wages during employment, failed to maintain accurate records of hours worked and meal periods, failed to timely pay final wages, failed to furnish accurate wage statements, and failed to indemnify for necessary expenditures. (Fattahi Decl., ¶ 4.)

On December 19, 2023, Plaintiff commenced this Action by filing a Class Action Complaint against Defendant for (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Final Wages at Termination; (6) Failure to Provide

Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Expenditures; and (8) Unfair Business Practices (Los Angeles County Superior Court, Case No. 23STCV30930) (the "Operative Complaint"). (Fattahi Decl., ¶ 5.)

On January 16, 2024, Plaintiff provided notice to the LWDA and Defendant of the alleged violations described above, as required by Labor Code § 2699.3(a)(1)(A). (Fattahi Decl., ¶ 6, Ex. 1.) Pursuant to Labor Code § 2699.3(a)(2)(A), and the LWDA had 65 calendar days to notify Plaintiff and Defendant whether it intended to investigate the alleged violations. (*Id.*) However, the LWDA did not do so. (*Id.*) On July 11, 2024, after exhausting the requisite pre-filing notice period pursuant to PAGA, Plaintiff filed a separate representative action complaint against Defendant for civil penalties under PAGA (Los Angeles County Superior Court, Case No. 24NNCV02839). (*Id.*)

After Plaintiff filed the Operative Complaint, the Parties engaged in extensive settlement discussions. (Fattahi Decl., ¶ 7.) To facilitate settlement, Defendant provided Plaintiff with timekeeping and payroll data for a sampling of the aggrieved employees, and the applicable policies in effect during the relevant time period. (*Id.*) Thereafter, the Parties engaged in extensive discussions about the factual and legal strengths (and weaknesses) of the claims and defenses. (*Id.*)

On June 27, 2024, the Parties and their counsel participated in private mediation with Monique Ngo-Bonnici, Esq. (Fattahi Decl., ¶ 8.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their own position through trial and appeal if a settlement had not been reached. (*Id.*)

Although the Parties did not reach a settlement at mediation, they continued negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses. (Fattahi Decl., ¶ 9.) Ultimately, the Parties agreed to settle the PAGA claim for $300,000.00, the scope of which includes all persons employed by Defendant in California and classified as non-exempt or hourly-paid employees who worked for Defendant during the period from January 16, 2023 to October 18, 2024 (the "PAGA Period"). (*Id.*) There are approximately

600 aggrieved employees covered by the settlement. (*Id.*)

On November 22, 2024, the Parties executed a Memorandum of Understanding (the "Settlement") setting forth the proposed terms of the Settlement. (Fattahi Decl., ¶ 10, Ex. 2.). Plaintiff submitted the Settlement to the LWDA pursuant to Labor Code § 2699(s)(2). (*Id.*, Ex. 3.)

On June 9, 2025, Plaintiff's Counsel sent defense counsel, Jesse Caryl, Esq., an email attaching a draft long-form PAGA settlement agreement along with a draft PAGA Settlement Notice (the "Settlement Notice") to be sent to the aggrieved employees with payment after the Court enters a Judgment on its Order Approving the PAGA Settlement. (Fattahi Decl., ¶ 11, Ex. 5.)

On June 14, 2025, Mr. Caryl emailed a copy of the draft long-form settlement agreement to Plaintiff's Counsel with edits. (Fattahi Decl., ¶ 12, Ex. 5.) The next day, on June 15, Plaintiff's Counsel emailed defense counsel to request he circulate a finalized PDF of the long-form settlement agreement for signatures. (*Id.*) Mr. Caryl emailed a PDF copy of the agreement to Plaintiff's Counsel that same day. (*Id.*) On June 19, 2025, Plaintiff's Counsel provided Mr. Caryl with a copy of the settlement agreement executed by Plaintiff. (*Id.*) On June 20, 2025, Mr. Caryl represented that he was following up with his client (presumably to obtain Defendant's signatures). (*Id.*) Plaintiff's Counsel followed up with Mr. Caryl numerous times from June 20, 2025 through February 4, 2026 to obtain a copy of the signed settlement agreement. (*Id.*) He did not respond to Plaintiff's Counsel's requests. (*Id.*)

On March 15, 2026, Plaintiff's Counsel sent an email to Mr. Caryl stating: "[s]ince we haven't heard back from you, we are going to proceed moving for approval with the MOU." (Fattahi Decl., ¶ 13, Ex. 5.) Again, Mr. Caryl did not respond. (*Id.*)

On March 16, 2026, Plaintiff's Counsel provided the final Settlement Notice to Defense Counsel. (Fattahi Decl., ¶ 14, Ex. 5-6.). That same day, Defense Counsel sent an email acknowledging receipt of the Settlement Notice and did not provide any further edits. (*Id.*)

On March 16, 2026, Plaintiff's Counsel also emailed Mr. Caryl a copy of the administrator bids in this matter and indicated that ILYM Group, Inc. had the lowest bid. (Fattahi Decl., ¶ 15, Ex. 5.) Mr. Caryl responded: "Good morning. ILYM is fine." (*Id.*)

To date, ***Defendant has <u>not</u> provided an executed copy of the agreement***. (*Id*. at ¶ 16.)

III. <u>ARGUMENT</u>

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer's alleged violations of the Labor Code. (Cal. Lab. Code § 2699(a).) Under the statute, of the amount paid to settle a claim for PAGA penalties for PAGA notices provided before June 19, 2024, twenty-five (25%) is payable to the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. (Cal. Lab. Code §§ 2699(m), 2699.3(v).)

A. <u>The Terms of the PAGA Settlement</u>

The Settlement Agreement captures the material terms to which the Parties agreed and is therefore binding.

California Code of Civil Procedure Section 664.6 "created a summary, expedited procedure to enforce settlement agreements." (*Levy v. Superior Court,* (1995) 10 Cal.4th 578, 585.) C.C.P. Section 664.6 states that if parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. (C.C.P. 664.6(a).) "In acting upon a section 664.6 motion, the trial court must determine whether the parties entered into a valid and binding settlement…. In making this determination trial judges, in the sound exercise of their discretion, may receive oral testimony or ***may determine the motion upon declarations alone"*** (emphasis added) (*Corkland v. Boscoe* (Ct. App. 1984) 156 Cal. App. 3d 989, 994, 203 Cal. Rptr. 356, 359.)

By way of example, in *Provost v. Regents of University of California* (2011) the parties entered into a short-form settlement agreement containing the material terms of the settlement and decided to later execute a long-form settlement agreement. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1302.) One party prepared the long-form settlement agreement and the other party then refused to sign the long-form settlement agreement and claimed the short-form settlement agreement was not binding due to it not containing every contract term. (*Id.*) The court stated that "neither law nor equity requires that every term and condition of an agreement be set forth in the contract." (*Id.* citing *Elite Show Services, Inc. v. Staffpro, Inc.* (2004) 119 Cal.App.4th 263, 269.)

The Court in *Provost* upheld the enforcement of the short-form agreement and stated "A settlement is enforceable so long as it is "sufficiently certain to make the precise act which is to be done clearly ascertainable." (*Provost* at 1301, 1306.; *see also Ersa Grae Corp. v. Fluor Corp.* (1991) 1 Cal.App.4th 613, 623 stating "Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations… Stated otherwise, the contract will be enforced if it is possible to reach a fair and just result even if, in the process, the court is required to fill in some gaps.") Furthermore, where the material terms of a contract are captured, but not each and every term is written, Courts have long held that they may look at what is customary and fill in those gaps with similar terms. (*Larwin-Southern California, Inc. v. JGB Investment Co.* (1979) 101 Cal.App.3d 626, 641 stating: "(t)he modern trend of the law is to favor the enforcement of contracts, to lean against their unenforceability because of uncertainty, and to carry out the intentions of the parties if this can feasibly be done … The usual and reasonable terms found in similar contracts can be looked to, unexpressed provisions of the contract may be inferred from the writing, external facts may be relied upon, and custom and usage may be resorted to in an effort to supply a deficiency if it does not alter or vary the terms of the agreement.")

Here, not unlike the case in *Provost*, the Parties entered into a short-form Settlement Agreement that contained the material terms of the Settlement and was signed by all parties and their counsel. Section 3 of the Settlement states:

> The Parties intend to enter into a more formal "long form" agreement whose terms are not inconsistent with the terms of this MOU, but ***if they fail to execute a more formal agreement, this agreement will be final, binding and enforceable pursuant to California Code of Civil Procedure section 664.6***. In the event that the Parties do not complete that "long form" agreement, ***either party may move for approval of this PAGA settlement on the basis of the terms set forth in this MOU***. In that event, the party moving for approval will propose customary terms and procedures for the notice process and settlement administration.

(Settlement, § 3, emphasis added)

After executing the short-form Settlement, Defendant refused to execute the long-form settlement agreement. For this reason, Plaintiff's Counsel requests that the Court approve the fully executed short-form Settlement and respectfully asks that this Court fill in any gaps in terms using the Los Angeles Superior Court's latest revision of the Model Class Action and PAGA Settlement Agreement and Class Notice LASC Form CIV 296, Rev. 11/25 (the "Model Agreement"). (*see Larwin* at 641.) A true and correct copy of the Model Agreement is attached as **Exhibit 4** to the Fattahi Declaration submitted concurrently with this Motion.

As such, the Settlement's key terms include:

1. Aggrieved Employees: "are all persons who worked for Defendant in California as an hourly paid or non-exempt employee during the PAGA Period." (Settlement, § 7.)

2. PAGA Period: "starts on January 16, 2023 and shall end on October 18, 2024." (Settlement, § 8.)

3. Individual PAGA Payment: "means the Aggrieved Employee's pro rata share 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period." (Model Agreement, § 1.23.)

4. LWDA PAGA Payment: "means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i)." (Model Agreement, § 1.26)

5. Maximum Settlement Amount: "Defendant shall pay a maximum amount of $300,000.00, which sum includes all attorneys' fees and costs, administration costs, enhancement award to the Plaintiff, and payment to the California Labor & Workforce Development Agency ('LWDA'). No money will revert to Defendant. The balance after deduction of attorneys' fees and costs, administration costs, enhancement award, and payment to the LWDA will be the Net Settlement Amount (which will be paid to the Aggrieved Employees)." (Settlement, § 4.)

6. Uncashed Checks: "For any Aggrieved Employee whose 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." (Settlement, § 12.)

7. Release by Aggrieved Employees: "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 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice." (Settlement, § 6.)

8. No Reversion: "No money will revert to Defendant." (Settlement, § 4.)

9. Net Settlement Amount: "The balance after deduction of attorneys' fees and costs, administration costs, enhancement award, and payment to the LWDA will be the Net Settlement Amount (which will be paid to the Aggrieved Employees)." (Settlement, § 4.)

10. Distribution Formula: "The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of Aggrieved Employees' 25% share of PAGA Penalties ($38,383.92) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employees' PAGA Period Pay Periods." (Model Agreement, § 3.2.5.1.)

11. PAGA Representative Enhancement Payment: "Defendant will not oppose a request by Plaintiff to be appointed the PAGA Representative and for an enhancement payment of up to $10,000.00, in exchange for his service as the PAGA Representative. This amount is paid from the Maximum Settlement Amount and is in addition to the payment to which Plaintiff is entitled as an Aggrieved Employee. Even in the event that the Court reduces or does not approve the requested PAGA Representative's enhancement payment, Plaintiff shall not have the right to revoke this MOU or this settlement, and it will remain binding." (Settlement, § 9.)

12. Attorneys' Fees and Costs: "Defendant will not oppose an application for an award of attorneys' fees to counsel for Plaintiff, from the Maximum Settlement Amount, of up to 35% the Maximum Settlement Amount ($105,000), plus actual costs and expenses up to $30,000.00 as supported by declaration. Even in the event that the Court reduces or does not approve the requested award to Plaintiff's counsel for attorneys' fees and costs, Plaintiff's counsel shall not have the right to revoke this MOU or this settlement, and it will remain binding." (Settlement, § 10.)

13. Settlement Administrator: "Defendant will not oppose an application of up to $15,000.00 of the Maximum Settlement Amount to the Settlement Administrator for

administration costs and fees. Fees of the Settlement Administrator shall be paid out of the Maximum Settlement Amount." (Settlement, § 11.)

B. The Terms of the PAGA Settlement Are Fair and Should Be Approved

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." (*See* Cal. Lab. Code § 2699(s).) As with any settlement, the Court must be mindful in conducting its inquiry that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, *9.) Indeed, "the very essence of a settlement is … 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*See Officers for Justice v. Civil Service Com*. (9th Cir. 1982) 688 F.2d 615, 624-25.) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.*)

Although the operative PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, "a PAGA claim asserted on a non-class representative basis…is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action]." (*See Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, *13; *Mendez v. Tween Brands, Inc.* (E.D. Cal. July 1, 2010) 2010 WL 2650571, *4.) Based thereon, a court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval of a class action settlement under Code of Civil Procedure § 382 and California Rules of Court (Cal. Rule), Rule 3.769.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount(s) that "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages." (*Mendez, supra*, 2010 WL 2650571 at *4.) "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, *4.) Moreover, while a PAGA action "is … designed to protect the public and penalize the employer for past illegal conduct," a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages. (*Mendez*, *supra,* 2010 WL 2650571 at p. *4) As such, the Court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (*See Ochoa-Hernandez,* 2010 WL 1340777 at p. *4.)

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (*See Ochoa-Hernandez, supra,* 2010 WL 1340777 at p. *4.) This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval process" required under Federal Rules of Civil Procedure ("FRCP"), Rule 23(e) and Cal. Rule 3.769.2.

Finally, unlike a class action settlement under FRCP 23(e) and Cal. Rule 3.769, the scope of release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding…the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*See Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986-87.) Thus, with the exception of the named Plaintiff, the scope of a release in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint, and claims that were or could have been alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished as a result of this Settlement, with the exception of Plaintiff's much broader release against Defendant.

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action settlements (and representative PAGA settlements) involve a court approval process that exists to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. Of Governors v. Super. Ct.* (1980) 103 Cal.App.3d 573, 578-79.) In the class action context, there is a presumption of fairness of a class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action settlement, a trial court must develop an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.)

The proposed settlement meets all these factors.

1. The Settlement Was Reached Through Arms-Length Bargaining

The Parties reached the Settlement after an all-day mediation presided over by Monique Ngo-Bonnici, Esq. (Fattahi Decl., ¶¶ 8-9.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 8.) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

2. The Settlement Is Based on Sufficient Investigation and Discovery

Before the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in informal discovery. (Fattahi Decl., ¶ 8) Based upon the information obtained through informal discovery, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

3. Plaintiff's Counsel Has Extensive Experience in PAGA Actions

Highly capable and experienced counsel conducted the settlement negotiations. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and effective advocacy for their clients, and they are experienced in handling complex wage and hour class action litigation and PAGA actions. (Fattahi Decl., ¶¶ 34-49.) While Plaintiff and counsel were prepared to litigate the claims in this action, they support the proposed Settlement as being in the best interests of the State of California and the aggrieved employees. (*Id*. at ¶ 10.)

4. Assessing the Amount in Controversy and the Risks of Trial

Plaintiff and his counsel remain confident of the merits of Plaintiff's claims. (Fattahi Decl., ¶ 17.) However, Plaintiff does acknowledge that his position includes risk and uncertainty, as described in more detail below. For instance, Plaintiff's allegation that Defendant failed to pay Plaintiff and the aggrieved employees all of their owed wages is based on Defendant's failure to pay employees for work performed "off-the-clock." (*Id.*) With respect to the meal period allegation, Plaintiff contends that employees, including himself, were not provided with California-compliant meal periods during the PAGA Period. (*Id.*) Although Plaintiff contends that this allegation is meritorious, there is risk with this underlying claim, particularly because Defendant implemented meal period waivers throughout the covered period and the violation rate is low. (*Id.*) With respect to the rest period allegation, Plaintiff alleges that Defendant lacked compliant policies providing rest periods and that Defendant failed to provide its employees with legally compliant rest periods. (*Id.*) Again, despite Plaintiff's contention that this allegation is credible, proving rest period allegations is particularly difficult because rest periods do not have to be recorded and Defendant can argue that the aggrieved employees chose to voluntarily forego their rest periods. (*Id.*) With respect to the unreimbursed business expenses allegation, Plaintiff alleges that Defendant required him and the other aggrieved employees to (1) use their personal cell phones for work-related purposes, including communicating with supervisors (as outlined above); and (2) purchase work attire (e.g., non-slip shoes, company-branded clothing, etc.), without reimbursement from Defendant. (*Id.*) Defendant disputes this claim. (*Id.*) Lastly, with regard to

Plaintiff's wage statement claim, Defendant argues that the wage statements issued to employees meet the requirement of Labor Code § 226(a). (*Id.*)

Additionally, Plaintiff faced a significant risk that even if the Court did award PAGA penalties, the Court could drastically reduce the penalties based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In any action by an aggrieved employee…, a court may award a lesser amount than the maximum civil penalty amount specified by this part…"). Specifically, Plaintiff believed there was a legitimate risk of the Court significantly reducing penalties given the technical nature of the alleged violations. (Fattahi Decl., ¶ 18.)

Without this settlement, the Parties face preparation for trial, as well as extensive formal discovery efforts and depositions. (Fattahi Decl., ¶ 18.) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) This settlement avoids those risks and the accompanying expense. Thus, this factor favors settlement approval. (*Id.*)

As described above, the proposed Settlement provides a fair and reasonable monetary recovery for the aggrieved employees and the LWDA in the face of the contested claims.

The Settlement provides a $300,000.00 Maximum Settlement Amount to be distributed among the 600 Aggrieved Employees (Fattahi Decl., ¶ 19). The Maximum Settlement Amount will be used to pay PAGA Counsel's attorneys' fees and costs, Plaintiff's Enhancement Award, and ILYM Group, Inc. ("ILYM") for its administration of the Settlement Notice and settlement funds. (*Id.*) After all deductions are made, the Net Settlement Amount will be $153,535.68 [1], which will be distributed to Aggrieved Employees according to the number of pay period they worked for Defendant during the PAGA Period. (*Id.*) Twenty-five percent (25%) of the Net Settlement Amount will go to the Aggrieved Employees ($38,383.92) and seventy-five percent (75%) will go to the LWDA ($115,151.76). (*Id.*) As a result, the average recovery for each Aggrieved Employee is approximately $63.97. (*Id.*) In reality, the amount provided to each aggrieved employee will vary depending on the length of their employment with Defendant and

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[1] The Net Settlement Amount of $153,535.68 was calculated using the following arithmetic: $300,000.00 minus $105,000.00 for Plaintiff's Counsel's attorneys' fees, minus $25,014.32 for Plaintiff's Counsel litigation expenses, minus $6,450.00 for administration costs, and minus $10,000.00 for the Enhancement Award to Plaintiff.

the total number of aggrieved employees. (*Id.*)

Weighing the potential value of the PAGA claims against the risk and expense of trial, the Settlement provides sufficient relief in light of the potential risks associated with seeking a PAGA judgment. (Fattahi Decl., ¶ 20)

Plaintiff acknowledges that when evaluating Defendant's potential exposure, it is likely that the Court would impose only the initial $100 violation for all PAGA violations. (Fattahi Decl., ¶ 22; *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 [finding that the "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision].) Defendant has represented that there are approximately 9,500 pay periods during the PAGA Period (*Id.*). Applying the $100 "initial violation" penalty for each of the 9,500 pay periods, Defendant's potential PAGA exposure was $950,000.00 (based on 9,500 pay periods). (Fattahi Decl., ¶ 21.) However, Plaintiff discounted this maximum exposure by 90% to account for Defendant's contention that the underlying allegations lacked merit, Defendant's largely compliant policies, Defendant's issuance of meal period premiums to aggrieved employees, Defendant's implementation of meal period waivers throughout the liability period, the low violation rate for meal periods (**<u>under 16%</u>**), the risk of not prevailing on the merits, and the Court's discretion in reducing penalties. (*Id.*; *see also Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 [reducing PAGA penalties from $2.8 million to $500,000]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 [affirming trial court's finding that awarding maximum PAGA penalties would be unjust].) The estimated realistic total potential recovery is therefore $95,000.00 ($950,000.00 x 10%). (*Id.*)

The proposed Settlement of $300,000.00 therefore represents approximately **315.79%** of Plaintiff's reasonably forecasted total recovery ($300,000.00 / $95,000.00). (Fattahi Decl., ¶ 22.) In any event, "[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this case, continued litigation would delay payment to the LWDA and the aggrieved employees as they await trial and, potentially, appellate proceedings.

(Fattahi Decl., ¶ 23.) Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the predicate Labor Code violations. (*Id*.) The possibility that the Court finds no liability at the PAGA bench trial is also a risk. (*Id*.) In sum, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear the settlement amount is fair. Further, because of the proposed Settlement, the aggrieved employees will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id*.)

C. **The PAGA Representative Service Award Is Reasonable**

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements containing additional awards for the class representatives, which are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94 [citations omitted].)

The Settlement provides for an Enhancement Award to Plaintiff in an amount not to exceed $10,000.00. The requested enhancement award is intended to recognize: (1) the substantial time and effort that Plaintiff has expended on behalf of the State of California and aggrieved employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3) the fact that Plaintiff put the interests of the State of California and other aggrieved employees ahead of his own; and (4) the substantial benefit conferred upon the State of California and the aggrieved employees as a result of Plaintiff's actions. (Fattahi Decl., ¶ 23.) Plaintiff has spent numerous hours performing tasks for this case, including, but not limited to, the following: consulting with counsel over the telephone; searching for and producing relevant documents; reviewing documents produced by Defendant and settlement documents; keeping informed of the developments in the case; and participating in decisions concerning the case, including settlement. (Fattahi Decl., ¶ 24; Declaration of Plaintiff

Donjuan Futrell ["Futrell Decl.'], ¶¶ 6-9.) As a result of his efforts, the LWDA and about 600 aggrieved employees will receive compensation for civil penalties for underpaid wages and other wage and hour violations.

Plaintiff put himself at significant risk in pursuing this action on behalf of the State of California, as serving as a Plaintiff in a representative action could affect his prospects for future employment. (*Id*. at ¶ 25.) Plaintiff also placed himself at substantial risk because, if Defendant was to prevail in this action, Plaintiff could be liable for Defendant's costs and attorneys' fees. (*Id*.)

In short, this action would not have been possible without the aid of Plaintiff, who put his own time and effort into this litigation and placed himself at risk for the sake of the State of California and the aggrieved employees. (Fattahi Decl., ¶ 26.) Accordingly, the requested Enhancement Award is reasonable and should be approved by the Court.

D. The Requested Attorneys' Fees and Costs Are Reasonable

A prevailing party in a PAGA action is entitled to recover his attorneys' fees and costs for his claims. (Cal. Lab. Code § 2699(k) ["Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."].) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.)

Fee awards of roughly one third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions. "[F]ee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel's fee award should have been calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass'n* (Cal. Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 [approving attorneys' fees of one-third of settlement fund in representative PAGA settlement]; *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

The fee award requested here ($105,000.00, representing 35% of the $300,000.00 Gross Settlement Amount) is justified because Plaintiff's counsel achieved a significant monetary recovery for the aggrieved employees and the LWDA in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rates described above. Plaintiff's counsel expended significant time and resources in litigating this case, which resulted in a favorable result for the LWDA, Plaintiff, and the aggrieved employees. (Fattahi Decl., ¶¶ 27-28; 45-49.) Plaintiff's counsel elected to bear the contingency risk of this litigation for the benefit of the aggrieved employees, as well as for the State of California (which elected not to take the case after receiving the PAGA notice). (*Id*. at 44-48)

Critically, this settlement exceeds other PAGA awards approved by courts. (*See, e.g., Aguirre v. DSW, Inc.* (C.D. Cal. Nov. 29, 2012) 2012 WL 11875296, *3 [approving $10,000 PAGA payment]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, *7 ["GTI agrees to allocate $10,000 to Plaintiffs' PAGA claims, and will pay $7,500 to the LWDA, and $2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval of PAGA awards in other cases. [Citations.] Therefore, the Court will approve the allocation of the Settlement to Plaintiffs' PAGA claim."]; *Boyd v. Bank of America Corp.* (C.D. Cal. Nov. 18, 2014) 2014 WL 6473804, *8 [approving $18,750 PAGA payment]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, *14 [approving $10,000 PAGA payment]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, *1 [approving $10,000 PAGA payment]; *cf. Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 [holding that trial court did abuse its discretion in approving wage and hour class action settlement that involved PAGA claims even though no settlement money was allocated to the PAGA claims and paid to the LWDA].) The fact that Plaintiff's counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case carried substantial risk as to the merits as well as the potential of the Court drastically reducing penalties in the context of a contested trial or summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks in compensating Plaintiff's counsel. Since undertaking this representation, Plaintiff's counsel has dedicated substantial resources to this litigation, including at least $25,014.32 in costs, without receiving any compensation to date. (Fattahi Decl., ¶¶ 33.) Plaintiff's counsel conducted extensive legal research regarding the merits of Plaintiff's claims, his ability to recover penalties under the PAGA, and Defendant's potential defenses. (*Id.* at ¶ 8.) Plaintiff's counsel expended significant additional effort in preparing formal settlement documents and this Motion to Approve PAGA Settlement. (*Id.* at ¶ 28.) Given the considerable potential for adverse outcomes in this case, including, but not limited to, Defendant defeating Plaintiff's claims on the merits, and/or facing a drastic reduction to potential PAGA penalties, the contingent risk borne by Plaintiff's counsel was great. The quality of Plaintiff's counsel's work, and the efficiency and dedication with which it was performed, should be compensated.

Plaintiff's counsel's previous experience in litigating similar class and representative actions also supports the reasonableness of the fee request. Plaintiff's counsel brings extensive plaintiff-side wage and hour class, collective, and representative action experience. (*Id.* at ¶¶ 34-49.) They have been found to be adequate counsel in numerous cases alleging wage and hour claims. (*Id.*) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. Because it is reasonable to compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, a fee award of 35% of the Gross Settlement Amount is reasonable. Plaintiff's request for reimbursement of actual litigation costs of $25,014.32 [2] is also fair and reasonable. As the evidence submitted herewith shows, all of

[2] As of the drafting of this Motion, Plaintiff's Counsel has incurred $24,714.32 in expenses litigating this action. Additionally, Plaintiff's Counsel anticipates incurring $300.00 in anticipated future costs for filing fees, messenger costs, and copying costs following the Court's Order re: Plaintiff's Motion to Approve PAGA Settlement, and request reimbursement of such as well. Therefore, Plaintiff seeks to recover $25,014.32 for total costs. (Fattahi Decl., ¶33, Ex. 7)

Plaintiff's litigation costs are documented and reasonably incurred. (*See* Fattahi Decl., ¶ 33, Ex. 7.)

E. Settlement Administrator Costs Are Reasonable

The Settlement Administrator Costs in the amount of $6,450.00 are reasonable, given the tasks to be performed by the Settlement Administrator, including, but not limited to, the following duties: mailing and re-mailing (if necessary) checks to approximately 600 aggrieved employees and the LWDA; establishing a Qualified Settlement Fund; preparing and submitting to aggrieved employees and government entities all appropriate tax filings and forms; distributing the PAGA Representative Service Award and attorneys' fees and costs; keeping the Parties timely apprised of the performance of all obligations under the Settlement; and voiding uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed Property Fund. (*See* Fattahi Decl., ¶ 50, Ex. 8.) Plaintiff respectfully requests that the Court approve the requested costs.

IV. CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court grant this Motion and approve the Parties' PAGA Settlement.

Respectfully submitted,

Dated:

WILSHIRE LAW FIRM, PLC

By: ______________________________

Arrash T. Fattahi
Arman A. Salehi
Emily B. Borman
Alan Wilcox

Attorneys for Plaintiff