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individually, and on behalf of Aggrieved
Employees pursuant to the California Private
Attorneys General Act

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

BRANDON GESTON, individually, and on behalf
of Aggrieved Employees pursuant to the California
Private Attorneys General Act,

Plaintiffs,

vs.

FERTO LLC, a California Limited Liability
Company; FRGM LLC, a California Limited
Liability Company; and VWOC LLC, a California
Limited Liability Company; and DOES 1 through
25, inclusive,

Defendants.

Case No. 24CECG01292

Honorable Lisa Gamoian
Department 403

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AND AWARD OF PAGA COUNSEL FEES
PAYMENT, PAGA COUNSEL
LITIGATION EXPENSES PAYMENT,
AND ADMINISTRATION EXPENSES
PAYMENT**

Date: May 7, 2025

Time: 3:30 p.m.

Department: 403

Complaint Filed: March 25, 2024

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on May 7, 2025 at 3:30 p.m. in Department 403 of the
3 above-captioned Court located at the B.F. Sisk Courthouse, 1130 O Street, Fresno, California 93721,
4 Plaintiff Brandon Geston (“Plaintiff”) will and hereby does move the Court for an Order granting
5 approval of the California Labor Code Private Attorneys General Act of 2004, California Labor Code
6 sections 2698, *et seq.* (“PAGA”) settlement. Specifically, Plaintiff requests that the Court enter an
7 Order:

- 8 1. Granting approval pursuant to California Labor Code section 2699(1)(2) of the PAGA
9 Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) attached
10 as **Exhibit 3** to the Declaration of Alexandra Rose in Support of Plaintiff’s Motion for
11 Approval of PAGA Settlement and Award of PAGA Counsel Fees Payment, PAGA
12 Counsel Litigation Expenses Payment, and Administration Expenses Payment (“Rose
13 Decl.”);
- 14 2. Directing the distribution of the Gross Settlement Amount of Four Hundred Forty
15 Thousand Dollars and Zero Cents (\$440,000.00) pursuant to the terms of the Agreement;
- 16 3. Approving the Net Settlement Amount, estimated to be Two Hundred Sixty Thousand
17 Four Hundred Seventeen Dollars and Ninety-Seven Cents (\$260,417.97), of which
18 seventy-five percent (75%) will be distributed to the California Labor and Workforce
19 Development Agency (“LWDA”) and twenty-five percent (25%) of which will be
20 distributed to the Aggrieved Employees;
- 21 4. Approving an award of reasonable attorneys’ fees of One Hundred Fifty-Four Thousand
22 Dollars and Zero Cents (\$154,000.00) to PAGA Counsel;
- 23 5. Approving the amount of Nineteen Thousand Five Hundred Eighty-Two Dollars and
24 Three Cents (\$19,582.03) to PAGA Counsel for reimbursement of actual litigation costs
25 and expenses pursuant to California Labor Code section 2699(g)(1);
- 26 6. Appointing ILYM Group, Inc. as the Administrator; and
- 27 7. Approving an award not to exceed Six Thousand Dollars and Zero Cents (\$6,000.00) in
28 anticipated costs to ILYM Group, Inc. for its settlement administration services.

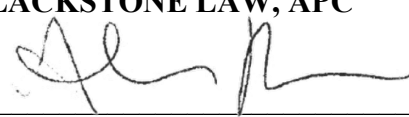
1 In accordance with California Labor Code sections 2699 *et. seq.*, a copy of the proposed
2 Settlement Agreement was submitted to the LWDA via online submission through the LWDA's
3 website on April 8, 2025. (Rose Decl., ¶ 22 & Exh. 4).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities,
5 the Declarations of Alexandra Rose, Plaintiff Brandon Geston, and the Administrator (Lisa Mullins of
6 ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and any other
7 further evidence or argument that the Court may properly receive at or before the hearing.

8 Respectfully submitted,

9 Dated: April 14, 2025

BLACKSTONE LAW, APC

10 By: 
11

Alexandra Rose
Attorneys for Plaintiff
BRANDON GESTON

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act, California Labor Code
4 sections 2698, *et seq.* (“PAGA”), Plaintiff Brandon Geston (“Plaintiff”) seeks approval of the PAGA
5 Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into with
6 Defendants FRGM LLC, FRT0 LLC, and CLVW LLC (collectively, “Defendants”) (collectively,
7 with Plaintiff, the “Parties”), which is attached as Exhibit 3 to the Declaration of Alexandra Rose in
8 Support of Plaintiff’s Motion for Approval of PAGA Settlement and of PAGA Counsel Fees Payment,
9 PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment (“Rose Decl.”).
10 The Agreement terms are outlined as follows:

- 11 • Gross Settlement Amount: Four Hundred Forty Thousand Dollars and Zero Cents
12 (\$440,000.00).
- 13 • PAGA Counsel Fees Payment: Thirty-five percent (35%) of the Gross Settlement
14 Amount, which is currently estimated to be One Hundred Fifty-Four Thousand Dollars
15 and Zero Cents (\$154,000.00), to be paid from the Gross Settlement Amount.
- 16 • PAGA Counsel Litigation Expenses Payment: Nineteen Thousand Five Hundred Eighty-
17 Two Dollars and Three Cents (\$19,582.03), to be paid from the Gross Settlement Amount.
- 18 • Administration Expenses Payment: Not to exceed Six Thousand Dollars and Zero Cents
19 (\$6,000.00), to be paid from the Gross Settlement Amount.
- 20 • Estimated Net Settlement Amount: Two Hundred Sixty Thousand Four Hundred
21 Seventeen Dollars and Ninety-Seven Cents (\$260,417.97), of which 75% (\$195,313.48)
22 will be paid to the California Labor and Workforce Development Agency (“LWDA”) and
23 the remaining 25% (\$65,104.49) will be paid to the Aggrieved Employees.

24 As set forth herein, the Settlement Agreement is the product of informed discovery, arms-
25 length negotiations, and provides a fair, adequate, and reasonable recovery for the State of California
26 and Aggrieved Employees. Plaintiff therefore respectfully requests that the Court grant approval of
27 the proposed Settlement Agreement, among other requested relief.

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II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants are a collection of car dealerships and a car collision center that are operated under Blackstone Automotive Group. (Rose Decl., ¶ 2). Plaintiff was employed by one or more of the Defendants as an hourly-paid and/or non-exempt Vehicle Salesperson from approximately June 2022 through December 2023. (Rose Decl., ¶ 2; Declaration of Brandon Geston in Support of Plaintiff's Motion for Approval of PAGA Settlement and PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administration Expenses Payment ["Geston Decl.,"] ¶ 2).

On January 16, 2024, Plaintiff provided written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendants, pursuant to California Labor Code § 2699.3, of the specific provisions of the California Labor Code alleged to have been violated by Defendants. (Rose Decl., ¶ 3 & Exh. 1).

On February 27, 2024, Plaintiff filed a Class Action Complaint in the action entitled *Brandon Geston v. FRTO LLC, et al.*, Fresno County Superior Court Case No. 24CECG00875 ("Class Action"), thereby commencing a putative class action against FRTO LLC, FRGM LLC, and VWOC LLC. (*Id.*, ¶ 4).

On March 25, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq* ("Operative Complaint") in the action entitled *Brandon Geston v. FRTO LLC, et al.*, Fresno County Superior Court Case No. 24CECG01292 ("Action"), thereby commencing a representative action under PAGA against FRTO LLC, FRGM LLC, and VWOC LLC. (*Id.*, ¶ 5).

On May 16, 2024, pursuant to Plaintiff's request, the court in the Class Action entered an Order, which named CLVW LLC dba Volkswagen of Clovis as DOE 1. (*Id.*, ¶ 6).

On May 30, 2024, Defendants filed a Motion to Compel Arbitration and supporting documents in the Class Action. (*Id.*, ¶ 7).

On June 4, 2024, Plaintiff provided an amended written notice by electronic submission to the LWDA and by U.S. Certified Mail to Defendants. (*Id.*, ¶ 8 & Exh. 2).

On June 12, 2024, pursuant to Plaintiff's request, the Court in the Action entered an Order, which named CLVW LLC dba Volkswagen of Clovis as DOE 1. (*Id.*, ¶ 9).

1 On June 27, 2024, Defendants filed a Motion to Compel Arbitration and supporting documents
2 in the Action. (*Id.*, ¶ 10).

3 On July 5, 2024, pursuant to Plaintiff's request, the Court in the Action entered an Order, which
4 dismissed VWOC LLC without prejudice. (*Id.*, ¶ 11).

5 On July 11, 2024, Defendants filed a Notice of Withdrawal of Defendants' Motion to Compel
6 Arbitration in the Class Action. (*Id.*, ¶ 12).

7 On July 18, 2024, pursuant to Plaintiff's request, the court in the Class Action entered an Order,
8 which dismissed VWOC LLC without prejudice and the class claims against Defendants without
9 prejudice. (*Id.*, ¶ 13).

10 On September 6, 2024, Plaintiff filed an Opposition to Defendants' Motion to Compel
11 Arbitration in the Action. (*Id.*, ¶ 14).

12 On December 4, 2024, the Parties participated in a formal mediation conducted by Tagore
13 Subramaniam, Esq., a neutral and respected mediator with extensive experience in complex wage and
14 hour matters, during which the Parties were able to reach an agreement to resolve the Action in its
15 entirety along with Plaintiff's individual claims alleged in the Class Action. (*Id.*, ¶ 15).

16 On February 24, 2025, pursuant to the Parties' joint stipulation, the Court in the Action took
17 Defendants' Motion to Compel Arbitration off calendar. (*Id.*, ¶ 16).

18 On April 7, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 17 & Exh. 3).

19 During the course of informal discovery in the Action, PAGA Counsel conducted an intense
20 investigation into the facts of the Action. (*Id.*, ¶ 18). This included obtaining data, information, and
21 documents relating to the underlying alleged violations, including, but not limited to, Plaintiff's
22 employee file, a sampling of the Aggrieved Employees' time and payroll data, relevant wage and hour
23 policies, and Aggrieved Employees' data points so that Plaintiff could assess the number of alleged
24 potential violations and value of the recoverable penalties, as well as evaluate the strengths and
25 weaknesses of his claims. (*Ibid.*).

26 Based on the data, information, and documents received, as well as thorough discussions with
27 Defendants' counsel, PAGA Counsel was able to (i) determine the total number of distinct individuals
28 falling within the definition of "Aggrieved Employees" for the relevant statutory period, (ii) the

1 number of affected pay periods at issue among them, and (iii) construct a damages model that
2 calculated the maximum realistic amount of PAGA penalties that could be levied against Defendants
3 within the relevant statutory period. (*Id.*, ¶ 19). Defendants, however, disputed Plaintiff's claims and
4 disputed both the existence of and extent of liability as alleged by Plaintiff, which allowed PAGA
5 Counsel to further assess the strength of Plaintiff's claims. (*Ibid.*). PAGA Counsel's experience in
6 litigating similar representative wage and hour claims, the degree of investigation that was conducted
7 here, and the amount of data, information, and documents that was obtained, was sufficient to
8 determine the potential value of the PAGA claims, and to evaluate the strength of these claims for
9 purposes of settlement. (*Ibid.*).

10 The Parties believe the Settlement Agreement is fair, reasonable, and adequate. (*Id.*, ¶ 20).
11 The Parties understand, acknowledge, and agree that the Settlement Agreement constitutes a
12 compromise of Plaintiff's PAGA claims, and that it is the desire and intention of the Parties to affect
13 a final and complete resolution of the Action. (*Ibid.*).

14 Defendants deny all of the claims in the Action, and do not waive, but rather expressly reserve,
15 all rights to challenge all such claims and allegations upon all legal, procedural, and factual grounds
16 should the Settlement Agreement not become final. (*Id.*, ¶ 21). The Settlement Agreement reflects a
17 compromise reached to end litigation in the Action. (*Ibid.*). Following significant investigation and
18 extensive settlement negotiations, Plaintiff now seeks approval of the proposed Settlement Agreement,
19 which will resolve all representative claims alleged in the Action. (*Ibid.*).

20 **III. THE SETTLEMENT TERMS**

21 **A. Definition of the Aggrieved Employees**

22 For purposes of settlement only, the Parties have agreed that the "Aggrieved Employees" shall
23 be defined as "all current and former hourly-paid and/or non-exempt employees who worked for
24 Defendants in the State of California at any time during the PAGA Period." (Rose Decl., ¶ 23;
25 Settlement Agreement, ¶ 1.4). The "PAGA Period" is the period from January 16, 2023 to January 3,
26 2025. (Rose Decl., ¶ 23; Settlement Agreement, ¶ 1.21). There are approximately five-hundred fifty-
27 two (552) Aggrieved Employees. (Rose Decl., ¶ 23).

28 ///

1 **B. Amount of Settlement**

2 The Parties have agreed to settle the PAGA claims at issue in the Action for a Gross Settlement
3 Amount of Four Hundred Forty Thousand Dollars and Zero Cents (\$440,000.00). (Rose Decl., ¶ 24;
4 Settlement Agreement, ¶ 1.12).

5 **C. Allocation and Funding of the Gross Settlement Amount**

6 The Gross Settlement Amount is a common fund and therefore includes all requested costs,
7 fees, and other allocations. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 1.12). The Gross Settlement
8 Amount includes: (1) PAGA Counsel’s fees in the amount of thirty-five percent (35%) of the Gross
9 Settlement Amount, currently estimated to be One Hundred Fifty-Four Thousand Dollars and Zero
10 Cents (\$154,000.00); (2) PAGA Counsel’s actual litigation costs and expenses in the amount of
11 Nineteen Thousand Five Hundred Eighty-Two Dollars and Three Cents (\$19,582.03); and (3) the
12 Administration Expenses Payment, not to exceed Six Thousand Dollars and Zero Cents (\$6,000.00).
13 (Rose Decl., ¶ 24; Settlement Agreement, ¶¶ 1.3 & 3.2.2).

14 After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net
15 Settlement Amount will amount to approximately Two Hundred Sixty Thousand Four Hundred
16 Seventeen Dollars and Ninety-Seven Cents (\$260,417.97), of which 75% (\$195,313.48) will be paid
17 to the LWDA (“LWDA PAGA Payment”) and the remaining 25% (\$65,104.49) will be distributed
18 and paid to Aggrieved Employees on a *pro rata* basis based on the number of pay periods they each
19 worked for Defendants during the PAGA Period (“Pay PAGA Periods”). (Rose Decl., ¶ 25; Settlement
20 Agreement ¶¶ 1.16, 1.20, , & 3.2.3).

21 Within or by fifteen (15) calendar days of the Effective Date, Defendants will simultaneously
22 deliver Aggrieved Employee identifying information in Defendants’ possession including each
23 Aggrieved Employee’s full name, last-known mailing address, Social Security number, and number
24 of PAGA Pay Periods (collectively, “Aggrieved Employee Data”). (Rose Decl., ¶ 26; Settlement
25 Agreement, ¶¶ 1.5 & 4.1).

26 No later than fifteen (15) calendar days after the Effective Date, Defendants will fully fund the
27 Gross Settlement Amount by transmitting the funds to the Administrator. (Rose Decl., ¶ 27;
28 Settlement Agreement, ¶ 4.2).

1 Within fifteen (15) calendar days after Defendants fund the Gross Settlement Amount, the
2 Administrator will distribute the Individual PAGA Payments (along with the Notice), the LWDA
3 PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the
4 PAGA Counsel Litigation Expenses Payment. (Rose Decl., ¶ 28; Settlement Agreement, ¶ 4.3).
5 Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment
6 shall not precede disbursement of Individual PAGA Payments. (Rose Decl., ¶ 28; Settlement
7 Agreement, ¶ 4.3).

8 The Individual PAGA Payment checks issued to Aggrieved Employees will remain valid and
9 negotiable for one hundred and eighty (180) calendar days, and thereafter, will be canceled. (Rose
10 Decl., ¶ 29; Settlement Agreement, ¶ 4.3.1). Any funds associated with such canceled checks will be
11 distributed to the State Controller’s Office Unclaimed Property Division in the name of the Aggrieved
12 Employee. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 4.3.3).

13 Defendants have represented that 529 Aggrieved Employees worked approximately 10,091
14 pay periods during the period January 16, 2023 to December 4, 2024. (Rose Decl., ¶ 30; Settlement
15 Agreement, ¶ 8). If the actual number of PAGA Pay Periods worked by the Aggrieved Employees
16 during the PAGA Period is more than ten percent (10%) above 10,091, the Gross Settlement Amount
17 will be increased on a *pro rata* basis equal to the percentage increase in the number of PAGA Pay
18 Periods worked by the Aggrieved Employees above 10%. (Rose Decl., ¶ 30; Settlement Agreement,
19 ¶ 8).

20 **IV. STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

21 The settlement of a PAGA claim requires court approval. (California Labor Code (“Lab.
22 Code”) § 2699(l)). The Court must be mindful that a “[s]ettlement is a compromise, which balances
23 the possible recovery against the risks inherent in litigating further.” (*In re TD Ameritrade Account*
24 *Holder Litig.*, 2011 U.S. Dist. LEXIS 103222 at *24 (N.D. Cal. Sep. 12, 2011)). “[T]he very essence
25 of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’” as “it is the very
26 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
27 consensual settlements.” (*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-26 (9th Cir.
28 1982)). As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial

1 on the merits,” or “judged against a hypothetical or speculative measure of what might have been
2 achieved.” (Ibid).

3 Although the California Labor Code does not set forth the criteria by which a PAGA settlement
4 is to be evaluated, it is presumed that a reviewing court may take into consideration some of the factors
5 that courts use when reviewing a class action settlement. However, “a PAGA claim asserted on a non-
6 class representative basis...is not considered a class action but a law enforcement action, and therefore
7 does not have to meet the requirements of [a class action].” (*Casida v. Sears Holdings Corp.*, 2012
8 U.S. Dist. LEXIS 9302 at *8 (E.D. Cal. Jan. 25, 2012)).

9 A court’s review of a PAGA settlement necessarily implicates the following unique features
10 that render the approval process distinct from approval of a class action settlement under Code of Civil
11 Procedure Section 382 and California Rules of Court Rule 3.769. First, in evaluating the adequacy of
12 the settlement amount, the Court’s focus is not concerned with the amount aggrieved employees are
13 to receive, but rather, must focus on the total settlement amount in achieving PAGA’s objective.
14 Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class
15 damages,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer
16 for past illegal conduct,” a reviewing court must be mindful of the fact that settlement of a PAGA
17 claim involves a compromise. (*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11
18 (E.D. Cal. June 30, 2010)). “Unlike class actions, these civil penalties are not meant to compensate
19 unnamed employees because the action is fundamentally a law enforcement action.” (*Ochoa-
20 Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court
21 should not lose sight of the fact that, “[u]nlike a class action seeking damages or injunctive relief for
22 injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
23 the government that otherwise may not have been assessed and collected by overburdened state
24 enforcement agencies.” (Ibid).

25 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
26 claim, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the
27 ability to opt-out of the representative PAGA claim.” (*Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS
28 32774 at *13). Indeed, “[PAGA] does not create property rights or any other substantive rights” as

1 “[i]t is simply a procedural statute allowing an aggrieved employees to recover civil penalties – for
2 Labor Code violations – that otherwise would be sought by state labor law enforcement agencies.”
3 (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009)). This
4 renders the approval process of a PAGA settlement distinct from a class action settlement, as there is
5 no need for the Court to employ the “two-step approval process” required under California Rules of
6 Court Rule 3.769.

7 Finally, unlike class action settlements, the scope of release permitted in a PAGA settlement
8 is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff
9 but also on government agencies and any aggrieved employee not a party to the proceeding...the
10 nonparty employees, because they were not given notice of the action or afforded any opportunity to
11 be heard, would not be bound by the judgment as to remedies other than civil penalties.” (*Arias v.*
12 *Sup. Ct.*, 46 Cal.4th 969, 985-87 (2009)). Thus, the scope of a release in a PAGA settlement is
13 confined to the PAGA penalties alleged in the complaint and/or the plaintiff’s notice to the LWDA
14 and to the claims that were, or could have been, alleged pursuant to PAGA based on the factual
15 allegations in the complaint and/or the plaintiff’s notice to the LWDA.

16 V. THE AGREEMENT IS FAIR AND SHOULD BE APPROVED

17 A. The Agreement is Presumed to Be Fair

18 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
19 reached through arm’s-length bargaining.” (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
20 245 (2001); *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009)). Here,
21 the Agreement is presumptively fair because: (1) it occurred after counsel for the Parties engaged in
22 significant investigation to evaluate the strength and potential value of the PAGA claims, and the risks
23 of litigating these claims through trial; and (2) it was negotiated at great length and effort by counsel
24 with significant experience in similar complex labor and employment matters. (Rose Decl., ¶ 31).

25 B. The Agreement is Fair, Adequate, and Reasonable in Light of the Parties’ Respective 26 Legal Positions and Recovery Risks

27 In deciding whether to approve a proposed settlement, a trial court has broad powers to
28 determine if it is fair given the circumstances of the case. (*Mallick v. Sup. Ct.*, 89 Cal.App.3d 434,

438 (1979)). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” (*Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted)). A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain one hundred percent of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.”¹ (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)). Even though a *Kullar* analysis is not required for approval of a PAGA settlement, a brief analysis is included to support approval of the Settlement Agreement. (*See* Rose Decl., ¶¶ 39-52).

These factors require balancing and are non-exhaustive. Trial courts should therefore tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” (*Dunk, supra*, 48 Cal. App. 4th at 1801).

1. Strength of Plaintiff’s Case

In order to prevail at trial, Plaintiff would have to prove violations of the California Labor Code underlying his PAGA claims, demonstrate that Aggrieved Employees suffered, and demonstrate that Defendants’ conduct gives rise to penalties. (*See Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) [“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff’s other claims fail as a matter of law, so does her PAGA claim.”]).

Here, Plaintiff’s core allegations are that Defendants systematically violated the California Labor Code by, *inter alia*, failing to properly pay wages for all hours worked, failing to pay overtime at the correct rate, failing to provide compliant meal and rest periods, failing to pay premiums at the correct rate of pay, failing to timely pay wages during employment and upon termination, failing to

¹ As this is not a class action, the *Kullar* factors pertaining to the risk of maintaining class action status through trial and the reaction of class members to the proposed settlement are inapplicable.

1 maintain accurate payroll records, failing to provide accurate wage statements, and failing to reimburse
2 necessary business expenses. (Rose Decl., ¶ 32).

3 Defendants maintained several defenses to Plaintiff's theories of liability, which, if
4 successfully argued and proven, had the potential to eliminate or substantially reduce recovery. (*Id.*,
5 ¶ 33). Throughout this litigation, Defendants maintained, and continue to maintain, that they had, and
6 continue to have, compliant employment policies and practices throughout the time period at issue.
7 (*Ibid.*). Defendants deny that they ever violated any provision of the California Labor Code, including,
8 but not limited to, those sections for which Plaintiff seeks penalties under PAGA. (*Ibid.*). Defendants
9 further denied, and continue to deny, that the lawsuit is appropriate for representative treatment for
10 any purpose other than settlement. (*Ibid.*). Defendants also challenged Plaintiff's standing as an
11 aggrieved employee and denied that any of Defendant's other employees whom Plaintiff seeks to
12 represent are aggrieved. (*Ibid.*).

13 Defendants also argued that an important feature of PAGA is that the Court retains discretion
14 to lower the penalties if, based on the facts and circumstances of the particular case, to do otherwise
15 would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." (*Ibid.*; Lab. Code
16 § 2699(e)(2); *see also Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136
17 (2012) [holding that a court may reduce the amount of PAGA penalties awarded to an employee based
18 upon discretionary factors]).

19 Even if violations of the California Labor Code occurred, which Defendants deny, Defendants
20 contended that said violations would only be considered "initial violations" and thus heightened
21 "subsequent violation" penalties were not warranted. (Rose Decl., ¶ 34; Lab. Code § 2699(f)(2); *see*
22 *also Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-09 (2008) ["Until the employer has
23 been notified that it is violating a Labor Code provision [...], the employer cannot be presumed to be
24 aware that its continuing underpayment of employees is a 'violation' subject to penalties."]).

25 Defendants also contended that, with respect to PAGA claims, the Court was unlikely to assess
26 cumulative penalties for the maximum number of possible, separate California Labor Code violations,
27 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct
28 may be regulated by multiple provisions of the California Labor Code that are interrelated and work

1 in tandem. (Rose Decl., ¶ 35). While the PAGA does provide the potential for a heightened penalty
2 for subsequent violations, courts are often hesitant to award a heightened penalty where there is no
3 prior citation by the Labor Commissioner, as is the case here. (*See Bernstein v. Virgin Am., Inc.*, 3
4 F.4th 1127, 1144 (9th Cir. 2021) (holding no heightened penalty where defendant was not notified by
5 Labor Commissioner or any court that it was subject to the California Labor Code)). The Ninth
6 Circuit’s holding in *Bernstein* also supports that a settlement valuation that does not “stack” penalties.
7 (Ibid).

8 While Plaintiff maintains that his PAGA claims have merit, in reaching the Agreement,
9 Plaintiff and his counsel took into account the strengths and weaknesses of each side’s position, and
10 the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon
11 appeal. (Rose Decl., ¶ 36). Based on these disputes, which had the potential to completely eliminate
12 Plaintiff’s recovery, the range of realistic “litigation outcomes” on Plaintiff’s PAGA claims was
13 defined by a “maximum possible liability” amount of approximately \$1,009,100 and a “risk-adjusted
14 realistic value” amount of approximately \$494,459 (*Id.*, ¶ 52). In light thereof, the Gross Settlement
15 Amount of \$440,000 is a significant settlement. (Ibid).

16 2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

17 Approval of the Settlement Agreement is also appropriate in light of the risk, expense, and
18 complexity of further litigation. As discussed above, the Settlement Agreement takes into
19 consideration the specific factual and legal hurdles faced by Plaintiff in establishing Defendants’
20 penalty-liability in this case, which may have resulted in a net-zero recovery. Any recovery on these
21 claims is not certain. And even when liability is found, PAGA claims are discretionary, such that the
22 Court could decline to award their full value. Some of Plaintiff’s claims are also derivative, and as
23 such, Plaintiff must prevail on his underlying California Labor Code claims in order to prevail on the
24 derivative claims. These risks – when balanced with the fact that the Agreement achieved a very
25 significant recovery (as demonstrated below), and that further litigation posed a risk of diminishing
26 such recovery by increasing litigation expenses – weigh strongly in favor of settlement approval.

27 ///

28 ///

1 3. The Benefits Conferred by the Agreement Balance in Favor of Approval

2 The Settlement Agreement provides a *significant* monetary benefit that falls well within the
3 range of an acceptable settlement under the circumstances, which is the standard on which the instant
4 Agreement must be judged. As held by the Ninth Circuit: “The proposed settlement is not to be judged
5 against a hypothetical or speculative measure of what might have been achieved by the negotiators.”
6 (*Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d at 625 (emphasis in original)). As the Second
7 Circuit has pointed out: “The fact that a proposed settlement may only amount to a fraction of the
8 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
9 and should be disapproved.” (*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir.
10 1974)).

11 The Net Settlement Amount is currently estimated to be Two Hundred Sixty Thousand Four
12 Hundred Seventeen Dollars and Ninety-Seven Cents (\$260,417.97). After all deductions are made
13 from the Gross Settlement Amount for the PAGA Counsel Fees Payment, PAGA Counsel Litigation
14 Expenses Payment, and Administration Expenses Payment, One Hundred Ninety-Five Thousand
15 Three Hundred Thirteen Dollars and Forty-Eight Cents (\$195,313.48) (i.e. 75% of the Net Settlement
16 Amount) will go to the LWDA, and Sixty-Five Thousand One Hundred Four Dollars and Forty-Nine
17 Cents (\$65,104.49) (i.e. 25% of the Net Settlement Amount) will go to the Aggrieved Employees, as
18 required by California Labor Code § 2699(i) in effect at the time of this matter (“civil penalties
19 recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and
20 Workforce Development Agency . . . and 25 percent to the aggrieved employees.”). (Rose Decl., ¶
21 53). There is no reason to doubt the fairness of the proposed plan of allocation of the Net Settlement
22 Amount as it fully complies with California Labor Code section 2699(i). (Ibid).

23 The Settlement Agreement is a compromise of highly disputed claims. (*Id.*, ¶ 54). Plaintiff
24 and his counsel recognize the expense and length of continued proceedings necessary to litigate the
25 matter through trial and any possible appeals. (Ibid). Plaintiff and his counsel have also taken into
26 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
27 inherent in such litigation. (Ibid). Plaintiff and his counsel are also aware of the burdens of proof
28 necessary to establish liability, both generally and in response to Defendants’ defenses thereto, and

1 the difficulties in establishing Defendants' liability for, and the right to recover, penalties on behalf of
2 Plaintiff, the State of California, and other Aggrieved Employees. (Ibid). Plaintiff and his counsel
3 have also taken into account Defendants' agreement to enter into a settlement that confers significant
4 relief upon the Aggrieved Employees and the State of California. (Ibid). Considering all of the facts
5 in this case, Plaintiff and his counsel have determined that the Agreement represents a fair, adequate,
6 and reasonable resolution of the PAGA claims, and that it is in the best interests of the Aggrieved
7 Employees and the State of California. (Ibid).

8 The result achieved in this case is well within the range of what is considered an acceptable
9 settlement under the circumstances, especially when compared to the settlement of PAGA claims in
10 other cases. (*Id.*, ¶ 55). (*See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court,
11 Case No. JCCP4833 (May 2017) [approving \$15,000 out of \$4 million toward settlement of PAGA
12 claims]; *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *9 (E.D. Cal. Oct. 29,
13 2012) [approving \$10,000 out of \$3.7 million toward settlement of PAGA claims]; *Schiller v. David's*
14 *Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, at *40 (E.D. Cal. June 11, 2012) [approving \$7,500 out of
15 \$518,245 toward settlement of PAGA claims]; *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist.
16 LEXIS 15821, at *4 (N.D. Cal. Feb. 15, 2011) (approving \$10,000 out of \$6.9 million toward
17 settlement of PAGA claims]; *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, at *14
18 (E.D. Cal. Nov. 27, 2021) [approving \$10,000 out of \$2.5 million toward settlement of PAGA
19 claims]). Here, the value obtained for settlement of the PAGA claims is significant, and it will be
20 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

21 4. The Scope of the Release is Narrowly Tailored

22 As discussed above, the California Supreme Court has concluded that in the context of PAGA
23 "the nonparty employees, because they were not given notice of the action or afforded any opportunity
24 to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*See Arias*,
25 46 Cal. 4th, at 987). Thus, the scope of the limited release provided in exchange for the foregoing
26 consideration is limited to the civil penalties asserted in the Operative Complaint and the PAGA
27 Notice, under California Labor Code §§ 2698 *et seq.* (*See Settlement Agreement*, at ¶ 5).

28 As such, this factor balances strongly in favor of approval of the Agreement.

1 5. Experience and Views of Counsel Favor Approval

2 PAGA Counsel is experienced in complex representative and class action wage-and-hour
3 litigation. (Rose Decl., ¶ 61). In the view of PAGA Counsel, the benefits conferred by the Agreement
4 are eminently fair and reasonable, and in the best interests of the State of California and the Aggrieved
5 Employees in light of the risk, delay, and uncertainty of continued litigation and the substantial
6 monetary benefits provided for by the Agreement. (*Id.*, ¶ 56). Furthermore, courts have acknowledged
7 that “the interests of a plaintiff, counsel, and other potentially aggrieved employees are largely aligned.
8 All stand to gain from proving as convincingly as possible as many Labor Code violations as the
9 evidence will sustain[.]” (*Williams v. Superior Court*, 3 Cal. 5th 531, 548 (2017) [citing Labor Code
10 § 2699(g)(1)(i)]).

11 6. The Extent of Discovery and Stage of Proceedings Favor Approval

12 In evaluating this element, the Court should be mindful that “‘formal discovery is not a
13 necessary ticket to the bargaining table’” [*Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239], as
14 the relevant consideration is “whether ‘the parties have sufficient information to make an informed
15 decision about settlement.’” (*See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist.
16 LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011)).

17 Here, the extent of informal discovery conducted was sufficient to enable PAGA Counsel to
18 evaluate the strength and value of the PAGA claims for purposes of settlement. (Rose Decl., ¶ 57).
19 Prior to mediation, Defendants provided Plaintiff with data, information, and documents relating to
20 the underlying alleged violations, including, but not limited to, Plaintiff’s employee file, a sampling
21 of Aggrieved Employees’ time and payroll data, relevant wage and hour policies, and Aggrieved
22 Employees’ data points. (*Id.*, ¶ 18). As discussed above, PAGA Counsel’s investigation was sufficient
23 to, among other things, tabulate with precision the total number of alleged California Labor Code
24 violations at issue during the relevant statutory period and identify the total number of individuals
25 falling within the definition of “Aggrieved Employees” for the relevant statutory period. (*Id.*, ¶ 19).

26 Based on PAGA Counsel’s experience litigating wage and hour claims, such investigation was
27 sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these
28 claims for purposes of settlement. (*Ibid.*).

1 **VI. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

2 As the prevailing party in settlement, Plaintiff is entitled to recover attorneys' fees and costs
3 for bringing his PAGA claims. (Lab. Code § 2699(k) ["Any employee who prevails in any action
4 shall be entitled to an award of reasonable attorney's fees and costs."]). PAGA Counsel is also entitled
5 to attorneys' fees pursuant to Code of Civil Procedure section 1021.5(a), as the instant action has
6 resulted in the enforcement of important rights benefitting the public and secures monetary recovery
7 for the State of California as well as the Aggrieved Employees. A fee award is justified where the
8 legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles*,
9 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
10 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ["when a number of persons
11 are entitled in common to a specific fund, and an action brought by a plaintiff ... for the benefit of all
12 results in the creation or preservation of that fund, such plaintiff ... may be awarded attorney's fees out
13 of the fund."]).

14 In *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), the California Supreme Court
15 confirmed that "[t]he percentage of fund method survives in California class action cases."
16 Specifically, the *Laffitte* Court held:

17 The recognized advantages of the percentage method-including relative ease of calculation,
18 alignment of incentives between counsel and the class, a better approximation of market
19 conditions in a contingency case, and the encouragement it provides counsel to seek an early
20 settlement and avoid unnecessarily prolonging the litigation-convince us the percentage
21 method is a valuable tool that should not be denied our trial courts.
22 (*Id.*, at 503 [internal citation omitted]).

23 While trial courts have discretion to apply either a lodestar method or percentage-of-the-fund
24 method, the California Supreme Court has taken the position that trial courts also "retain the discretion
25 to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested
26 percentage fee." (*Laffitte*, 1 Cal.5th at 506; *see also Wershba*, 91 Cal.App. 4th at 253). Courts award
27 fees to serve as an economic incentive for lawyers to undertake litigation, and thereby enhance and
28 facilitate access to the judicial system for adjudication of meritorious claims, and to deter wrongdoing.

1 This is especially true in situations where multiple similar alleged wrongs would not be economically
2 feasible to pursue individually, such as here. Trial courts have “wide latitude” in assessing the value
3 of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of
4 discretion.” (*Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000); *see also Laffitte*, 1 Cal.5th
5 at 506 [holding that “trial court did not abuse its discretion in using [the percentage of fund method],
6 in part to approve the fee request”]). Indeed, it is long settled that the “experienced trial judge is the
7 best judge of the value of professional services rendered in his court.” (*Ketchum v. Moses*, 24 Cal.4th
8 1122, 1132 (2001)).

9 The percentage method is particularly appropriate where a monetary settlement has been
10 recovered and “the benefit [recovered can be] easily quantified.” (*In re Bluetooth Headset Prods.*
11 *Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011)). Where the amount of a settlement is a “certain or
12 easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable
13 percentage of the settlement created. (Weil and Brown, California Practice Guide, *Civil Procedure*
14 *Before Trial*, Chapter 14, section 14:145; *Dunk, supra*, 48 Cal. App. 4th at 1808). The percentage fee
15 method is preferred in representative actions because “it better approximates the workings of the
16 marketplace than the lodestar approach.” (*Lealao, supra*, 82 Cal.App.4th at 49). California law
17 provides that the award for attorneys’ fees should be equivalent to fees freely negotiated in the legal
18 marketplace and paid in comparable litigation based on the result achieved and risk incurred. (*See*
19 *Lealao*, 82 Cal.App.4th at 47-50; *Laffitte*, 1 Cal.5th 480 at 503). In cases where the settlement
20 agreement provides that the defendant will pay the plaintiffs’ attorneys a percentage of the fund created
21 by the settlement, use of that percentage method is appropriate. (*Lealao*, 82 Cal.App.4th at 32). Fee
22 awards that are too small will “chill the private enforcement essential to the vindication of many legal
23 rights and obstruct the representative actions that often relieve the courts of the need to separately
24 adjudicate numerous claims.” (*Id.* at 53). Therefore, fees in representative actions should approximate
25 the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in
26 comparable litigation. (*Id.* at 48). “The ultimate goal ... is the award of a ‘reasonable’ fee to
27 compensate counsel for their efforts, irrespective of the method of calculation.” (*Consumer Privacy*
28 *Cases*, 175 Cal.App.4th 545, 557-58 (2009) [quoting *Apple Computer, Inc. v. Superior Court, supra*,

1 126 Cal.App.4th at 1270]).

2 PAGA Counsel's application for attorneys' fees in light of the facts and circumstances
3 surrounding the case is within the range of reasonableness. Historically, courts have awarded fees as
4 high as fifty percent (50%) of the settlement in complex actions, depending on the circumstances of
5 the case. (*See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) [awarding attorneys'
6 fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v.*
7 *Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) [awarding approximately 53%
8 of the settlement as attorneys' fees]).

9 Here, PAGA Counsel's fee request of thirty-five percent (35%) of the Gross Settlement
10 Amount (i.e., \$154,000.00) is fair and reasonable based on the percentage of the recovery method.
11 PAGA Counsel has vigorously litigated this matter since it was commenced, with the very real
12 possibility of an unsuccessful outcome and no fee recovery of any kind. (Rose Decl., ¶ 58). Counsel
13 for Plaintiff undertook significant investigation and invested a significant amount of time analyzing
14 relevant documents and data to evaluate the nature and extent of the alleged underlying California
15 Labor Code violations and calculation of the potential monetary recovery as they relate to Plaintiff's
16 PAGA claims under PAGA. (*Id.*, ¶ 62). PAGA Counsel possesses combined extensive experience
17 litigating wage and hour and other complex litigation matters. (Rose Decl., ¶ 61).

18 In the present case, PAGA Counsel has borne all of the risks and costs of litigation and will
19 not receive any compensation until recovery is obtained. (Rose Decl., ¶ 59). PAGA Counsel is
20 experienced in complex wage-and-hour litigation and used that experience to obtain a favorable result
21 for Plaintiff, the Aggrieved Employees, and the State of California. (*Ibid.*). Considering the amount
22 of fees requested, work performed, risks incurred, and experience of PAGA Counsel in handling
23 similar matters, Plaintiff maintains that the requested attorneys' fees of thirty-five percent (35%) of
24 the Gross Settlement Amount (i.e., \$154,00.00) are reasonable and should be awarded. (*Ibid.*).

25 **VII. THE REQUESTED ATTORNEYS' COSTS ARE FAIR AND REASONABLE**

26 The Agreement provides for reimbursement of actual litigation costs and expenses of not more
27 than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). (Rose Decl., ¶ 64; Settlement
28 Agreement, ¶ 3.2.1). PAGA Counsel only seeks reimbursement of a total of Nineteen Thousand Five

1 Hundred Eighty-Two Dollars and Three Cents (\$19,582.03) in litigation costs and expenses. (Rose
2 Decl., ¶ 64 & Exh. 6). Accordingly, PAGA Counsel respectfully requests that the Court reimburse it
3 for actual litigation costs and expenses in the amount of Nineteen Thousand Five Hundred Eighty-
4 Two Dollars and Three Cents (\$19,582.03).

5 **VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND**
6 **REASONABLE**

7 As set forth in the Settlement Agreement, the Parties have agreed to retain, subject to approval
8 by the Court, ILYM Group, Inc. to handle the administration of the Agreement. (Rose Decl., ¶ 65;
9 Settlement Agreement, ¶ 7.1). The fees and expenses of the Administrator are estimated not to exceed
10 Six Thousand Dollars and Zero Cents (\$6,000.00). (Rose Decl., ¶ 65; Settlement Agreement, ¶ 3.2.2).
11 These costs include, but are not limited to, expenses for preparing, printing, and mailing the Notice
12 and Individual PAGA Payment checks to the Aggrieved Employees, re-mailing the returned Individual
13 PAGA Payment checks to any new addresses obtained, and handling inquiries from Aggrieved
14 Employees regarding the Agreement, among other things. (Rose Decl., ¶ 65). Accordingly, the Court
15 should grant approval of the Administration Expenses Payment in the amount of *up to* Six Thousand
16 Dollars and Zero Cents (\$6,000.00) to ILYM Group, Inc., a necessary third-party for handling the
17 settlement process. (Ibid).

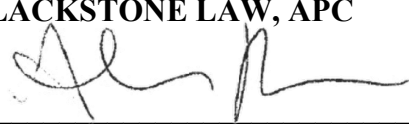
18 **IX. CONCLUSION**

19 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
20 Motion for Approval of PAGA Settlement and PAGA Counsel Fees Payment, PAGA Counsel
21 Litigation Expenses Payment, and Administration Expenses Payment and grant the relief requested
22 herein.

23 Respectfully submitted,

24 Dated: April 14, 2025

BLACKSTONE LAW, APC

25 By: 
26

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BRANDON GESTON