BIBIYAN LAW GROUP, P.C.
Vedang J. Patel (SBN 328647)
vedang@tomorrowlaw.com
Keaton D. Mendoza (SBN 321172)
kmendoza@tomorrowlaw.com
1460 Westwood Boulevard
Los Angeles, California 90024
Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiffs, on behalf of themselves and all others aggrieved

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAIME ZAMORA FIDEL, as an individual, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004,

Plaintiff,

v.

DICK BROWNING, INC., a California corporation; CERRITOS DODGE, INC., a California corporation; VICTORVILLE NISSAN, INC., a California corporation; HIGH DESERT AUTOS, I NC., a California corporation; DAV, INC., a California corporation; VAHI, INC., a California corporation; AUTO SQUARE AUTOS, INC., a California corporation; TRIANGLE MOTORS, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 24STCV11259

[Assigned for All Purposes to the Hon. Maurice A. Leiter in Dept. 54]

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

[Filed concurrently with Declarations of David D. Bibiyan, Vedang J. Patel, Plaintiffs, Shani O. Zakay, Jean-Claude Lapuyade, Kenneth Seligson and Anthony Rogers; [Proposed] Order; and [Proposed] Judgment]

<u>HEARING INFORMATION:</u>

DATE: June 29, 2026
TIME: 9:00 a.m.
DEPT: 54

Action Filed: May 6, 2024.
Trial Date: November 17, 2025.

ZAKAY LAW GROUP, APC
Shani O. Zakay
shani@zakaylaw.com
5440 Morehouse Drive Suite 3700
San Diego, California 92121

JCL LAW FIRM, APC.
Jean-Claude Lapuyade
jlapuyade@jcl-lawfirm.com
5440 Morehouse Drive Suite 3600
San Diego, California 92121

SELIGSON LAW P.C.
Kenneth Seligson
ken@seligsonlaw.com
Ross Tizes
ross@seligsonlaw.com
2219 Main Street Suite 710
Santa Monica, California 90405

Attorneys for Plaintiff, JESSY VARGAS

Nicole Golob (SBN 190444)
E-Mail: ngolob@fisherphillips.com
Hannah Sweiss (SBN 291804)
E-Mail: hsweiss@fisherphillips.com
FISHER & PHILLIPS LLP
21600 Oxnard Street, Suite 650
Woodland Hills, California 91367
Telephone: (818) 230-4250
Facsimile: (818) 230-4251

Harrison M. Thorne (SBN 313295)
E-Mail: hthorne@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, California 90071
Telephone: (213) 330-4500
Facsimile: (213) 230-4501

Attorneys for Defendants, DICK BROWNING, INC.,
CERRITOS DODGE, INC., VICTORVILLE NISSAN, INC.,
HIGH DESERT AUTOS, INC., DAV, INC., VAHI, INC.,
AUTO SQUARE AUTOS, INC., TRIANGLE MOTORS, INC.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 29, 2026, at 9:00 a.m., or soon thereafter Plaintiff Jaime Zamora Fidel ("Plaintiff Fidel") and plaintiff Jessy Vargas ("Plaintiff Vargas" and together with Plaintiff Fidel, the "Plaintiffs"), may be heard in Department 54 of the Los Angeles County Superior Court of California, will, and hereby do move for this Court for entry of an order approving the Joint Stipulation of PAGA Settlement ("Settlement Agreement"), under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA"), entered into by an between Plaintiffs, on the one hand; and defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville, Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., Triangle Motors, Inc., TOV Motors, Inc., and TOM Motors, Inc. (collectively, "Defendants") on the other hand; in the above-referenced action.

This motion is based upon this Notice, the attached Memorandum of Points and Authorities, the accompanying Declarations of David D. Bibiyan, Vedang J. Patel, Jean-Claude Lapuyade, Kenneth Seligson, Shani O. Zakay, Plaintiffs, Tony Rogers, exhibits attached thereto, the [Proposed] Order and Granting Approval of PAGA Settlement and Judgment and any other evidence or argument that may be presented at the hearing.

Dated: April 27, 2026

BIBIYAN LAW GROUP, P.C.

BY: */s/ Vedang J. Patel*

VEDANG J. PATEL
Attorneys for Plaintiffs, on behalf of themselves and all others aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Labor Code section 2699(l)(2) requires that the Superior Court review and approve any settlement of a civil action filed pursuant to the Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.*, ("PAGA"). Plaintiff Jaime Zamora Fidel ("Plaintiff Fidel") and plaintiff Jessy Vargas ("Plaintiff Vargas" and together with Plaintiff Fidel, the "Plaintiffs"), on the one hand, and defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville, Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, INC., Triangle Motors, Inc., TOV Motors, Inc. and TOM Motors, Inc. (collectively, "Defendants") on the other hand (collectively the "Parties"), have agreed to settle Plaintiff's PAGA claims, fully resolving this case pursuant to the Joint Stipulation of PAGA Settlement[1] ("Settlement" or "Settlement Agreement" or "Agreement").

The approximately 1,050 "PAGA Member(s)" or "Aggrieved Employees" who are covered by the Settlement Agreement are all individuals employed as non-exempt hourly employees by Defendants within the State of California during the period from February 23, 2023, through the Court's order granting approval of the Settlement ("PAGA Period").

The Settlement Agreement provides that Defendants pay $640,000.00[2] as the Maximum Settlement Amount. From this amount, Plaintiffs request Court approval of administration costs in the amount of $8,000.00; attorneys' fees in the amount of thirty-five percent (35%) of the Maximum Settlement Amount, $224,000.00 (as the same may be escalated pursuant to the Settlement Agreement), reimbursement of $26,363.83 in litigation costs, and PAGA Representative Service Payments to Plaintiffs in the amount of $10,000.00 to each Plaintiff, for a total of $20,000.00. Of the remaining sum (hereinafter, the "Net Settlement Amount), and pursuant to the PAGA statute,

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

[2] The Settlement is based on Defendants' representation that there are 40,000 pay periods worked during the PAGA Period. In the event the number of pay periods worked by PAGA Members during the PAGA Period exceeds 44,000 (i.e. an increase greater than 10% of the 40,000 estimated pay periods), Defendants may elect to either: (1) shorten the PAGA Period to a time frame where the number of pay periods does not exceed 44,000 pay periods, or (2) increase the Maximum Settlement Amount by multiplying the pay periods in excess of 44,000 by the Pro Rata Amount. The Pro Rata Amount shall be calculated by dividing the $640,000.00 by 40,000, which amounts to $16.00. Thus, for example, should there be 50,000 pay periods in the PAGA Period, then the Maximum Settlement Amount shall be increased by $96,000.00 ((50,000 pay periods – 44,000 pay periods) x $16.00 per Pay Period.).

seventy-five percent (75%) shall be paid to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which will be paid to Aggrieved Employees. These penalties are genuine and meaningful and fulfill PAGA's underlying purpose to benefit the public. Accordingly, Plaintiffs request that the Court approve the Settlement as such awards are reasonable and also warrant approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Plaintiff Fidel was a non-exempt hourly employee hired by Defendants from approximately November of 2022 through the present. Plaintiff Fidel specifically as "mechanic" with duties that included, but were not limited to, working on vehicles that have been in a collision and need repair, disassembling vehicles, welding and cutting body of vehicles, and other duties.

Plaintiff Vargas was a non-exempt, hourly employee hired by Defendants from approximately September 2019 through March 2022 in California.

Based on information and time and pay records produced by Defendants, Plaintiffs believe there are approximately 1,050 Aggrieved Employees in the PAGA Period.

B. Procedural History

On October 11, 2022, Plaintiff Vargas filed with the LWDA and served on Defendant Auto Square Autos, Inc. a notice under Labor Code section 2699.3 stating Plaintiff Vargas intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Vargas PAGA Notice").

On December 22, 2022, Plaintiff Vargas filed a PAGA action in the Superior Court of Los Angeles, Case No. 22NWCV01696 against Defendant Auto Square Autos, Inc., for violations of the Labor Code as alleged in his PAGA Notice ("Vargas PAGA Action").

On February 23, 2024, Plaintiff Fidel filed with the LWDA and served on Defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc., a notice under Labor Code section 2699.3 stating Plaintiff Fidel intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations ("Fidel PAGA Notice")[3].

On February 26, 2024, Plaintiff Fidel filed a wage and hour class action lawsuit against Defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc.in the Superior Court of Los Angeles, Case No. 24STCV04920, alleging: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) failure to indemnify; (9) failure to pay interest on deposits; (10) violation of labor code section 227.3; and (11) unfair competition (the "Class Action").

On May 6, 2024, Plaintiff Fidel filed a PAGA complaint in the Superior Court of California for the County of Los Angeles, on behalf of himself and all other aggrieved employees for the alleged violations in the PAGA Notice ("Fidel PAGA Action"). The Fidel PAGA Action complaint names as defendants Dick Browning, Inc., Cerritos Dodge, Inc., Victorville Nissan, Inc., High Desert Autos, Inc., Dav, Inc., Vahi, Inc., Auto Square Autos, Inc., and Triangle Motors, Inc. Plaintiff Fidel and Defendants agrees to further amend the PAGA Complaint, to add and/or consolidate all of the claims and entities negotiated as part of the mediation (i.e., all Defendants), as well as to add Plaintiff Vargas as a named plaintiff. The amended complaint is the "Operative Complaint" and has since been filed.

On June 25, 2024, the Class Action was dismissed. On October 17, 2024, the Parties participated in an all-day mediation on a PAGA-only basis presided over by Lynn Frank, which led to the present settlement of this case on a PAGA basis only.

Prior to mediation, Plaintiffs obtained, through informal discovery: (1) time and pay records for approximately 80% of Aggrieved Employees for the period from February 23, 2023 through June 15, 2024; (2) data points, including the number of Aggrieved Employees, the number of Aggrieved Employees separated from employment during the waiting time penalty period, the average hourly rate, and the number of Pay Periods and shifts during the period from February 23,

[3] A true and correct copy of the Fidel PAGA Notice is attached as Exhibit "2" to the Declaration of Vedang J. Patel.

2023 through June 15, 2024; (3) all relevant policy documents of Defendants; and (4) Plaintiffs' personnel files.

The Parties, PAGA Counsel and Defense Counsel, represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

C. Discovery and Investigation

In the lead-up to mediation, Plaintiffs' Counsel[4] investigated Plaintiffs' claims, performed legal research regarding Defendants' defenses, and engaged in informal discovery.

The above information and sampling yielded sufficient information to determine, for the PAGA Period, the total number of Aggrieved Employees, the total number of shifts and PAGA pay periods, the average length of shifts for Aggrieved Employees, average rates of pay, detailed analyses of meal period and rest period violations, the number of Aggrieved Employees eligible for waiting time penalties and wage statement penalties, and the policies and practices in play during the PAGA Period. The documents and information produced enabled Plaintiffs' Counsel to analyze the law and facts relating to Plaintiffs' claims. Plaintiffs' Counsel also retained an expert to review and analyze the time and payroll records and prepare a model setting forth Defendants' potential exposure for civil penalties for use in mediation. The documents and information shared also enabled Plaintiffs to evaluate the potential hurdles to recovery, including in connection with the merits of the claims and manageability. Based on this investigation and discovery, Plaintiffs were able to act intelligently and effectively in negotiating the proposed Settlement.

PAGA Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Aggrieved Employees, and, to the extent permitted by law, the State of California, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and

[4] "Plaintiffs' Counsel," also referred to herein as "PAGA Counsel," means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., Shani O. Zakay and Tesla Stone of Zakay Law Group, APC.; Jean-Claude Lapuyade of JCL Law Firm, APC.; and Kenneth Seligson and Ross Tizes of Seligson Law P.C.

costs of further litigation, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiffs' allegations, and the substantial benefits to be received by Aggrieved Employees.

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

D. Mediation

On October 17, 2024, the Parties participated in an all-day mediation presided over by mediator Lynn Frank, Esquire. The Parties did not reach a settlement at mediation. However, settlement discussions continued following the mediation with the assistance of the mediator and the Parties reached a settlement of the claims in the Action.

The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into mediation willing to explore the potential for a settlement of the Action, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. After several exchanges of draft settlement agreements, the Parties fully executed the Settlement Agreement, a copy of which is attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto ("Agmt").

Based on Plaintiffs' investigation, informal discovery, and evaluation of Plaintiffs' claims, Defendants' defenses regarding the merits of the claims and the manageability of a trial thereon, Defendants' potential exposure, the expense and time necessary to pursue this action through trial, the risks and costs of further prosecution of this action, the uncertainties of complex litigation and developing law, and the benefits that will accrue to the LWDA and the Aggrieved Employees, the Parties and their counsel believe that a settlement on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs, Aggrieved Employees, the LWDA, and Defendants.

III. SUMMARY OF SETTLEMENT

A. The Aggrieved Employees

The "Aggrieved Employees" who are covered by the Settlement Agreement are all individuals employed as non-exempt, hourly employees by Defendants within the State of

California during the period from February 23, 2023, through the date the Court grants approval of the Settlement ("PAGA Period"). Based on information provided by Defendants prior to mediation, Plaintiffs believe there are approximately 1,050 Aggrieved Employees in the PAGA Period.

B. Settlement Terms

The Settlement provides for a non-reversionary Gross Settlement Amount ("GSA") of $640,000.00.[5] The GSA shall be allocated as follows:

1. Net Settlement Amount

The amount of the GSA that remains after deducting the PAGA Representative Service Payment to Plaintiffs ($20,000.00), Settlement Administration Costs ($8,000.00), Plaintiffs' Counsel's Attorneys' Fees ($224,000.00), and Plaintiffs' Counsel's Attorneys' Costs ($26,363.83) will be designated as the Net Settlement Amount ("NSA"). If the Court approves those allocations, the total estimated amount of the Net Settlement Amount is $361,636.17 as the same may be escalated pursuant to the Settlement Agreement. Pursuant to the Settlement Agreement and Labor Code section 2699(i), 75% of the Net Settlement Amount, or $271,227.13 (as the same may be escalated pursuant to the Settlement Agreement) will be paid to the LWDA, and the remaining 25%, or $90,409.04 as the same may be escalated pursuant to the Settlement Agreement) of the Net Settlement Amount will be paid to the Aggrieved Employees on a *pro rata* basis using their respective number of Pay Periods worked during the Settlement Period. The estimate average payment to Aggrieved Employees is approximately $86.10 ($90,409.04 / 1,050 Aggrieved Employees).

2. Settlement Administrator and Costs of Administering the Settlement

The Parties have agreed that the Settlement Administrator will be ILYM Group, Inc. ("ILYM"). The cost of administering the Settlement, including but not limited to, mailing the Individual PAGA Award(s)[6] to the Aggrieved Employees, shall not exceed $8,000.00 and will be paid to the Settlement Administrator from the Maximum Settlement Amount.

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[5] To prevent dilution of the settlement, the Agreement provides that the NSA may be increased if the escalator clause is triggered.

[6] "Individual PAGA Award(s)" means Aggrieved Employees' pro-rata shares of twenty-five percent (25%) of the Net

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

An award of attorneys' fees is requested to Plaintiffs' Counsel in an amount of not more than thirty-five percent (35%) of the Maximum Settlement Amount, which unless escalated pursuant to the Settlement Agreement, will be $224,000.00 as well as reimbursement of litigation costs reasonably incurred in an amount of $26,363.83. (Declaration of David D. Bibiyan ¶¶ 3, 19; Declaration of Jean-Claude Lapuyade; Declaration of Shani O. Zakay; Declaration of Kenneth Seligson).

4. PAGA Representative Service Payments

A PAGA Representative Service Payment in the amount not to exceed $10,000.00 to each Plaintiff for a total of $20,000 to Plaintiffs (in addition to any Individual PAGA Payments they are entitled to receive as Aggrieved Employees), for their services on behalf of the State of California ("the State") and the Aggrieved Employees, which included assisting Plaintiffs' Counsel with the investigation, litigation, and settlement, participation in mediation, as well as for their full release of their individual claims, known and unknown, against Defendants, including waivers of Plaintiffs' rights under California Civil Code Section 1542.

5. Settlement Administration

Within 14 calendar days after the Effective Date[7], Defendants shall provide to the Administrator the Aggrieved Employee Data in the form of a Microsoft Excel spreadsheet. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendants' possession including the Aggrieved Employee's name, last-known mailing address, phone number, Social Security number, and hire dates, termination dates (as applicable) and re-hire dates (as applicable).

Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator within 15 business days of the Effective Date. Within 30 business days of the

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Settlement Amount. The pro-rata shares are calculated by dividing twenty-five percent of the Net Settlement Amount by the total number of pay periods all Aggrieved Employees worked during the PAGA Period and then multiplying by the number of pay periods each Aggrieved Employee worked during the PAGA Period.

[7] "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final on the day the Court enters Judgment.

Effective Date, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA counsel fees, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

6. Taxes

Because this is a settlement of a representative action for civil penalties only, the Administrator will issue IRS Forms 1099-MISC to Aggrieved Employees for their Individual PAGA Payments.

7. Release

Upon full execution of the Settlement Agreement, approval by the Court, and payment of the Gross Settlement Amount, 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 Notices, including violations of California Labor Code §§ 96, 98.6, 201, 201.3, 202, 203, 204, 210, 212, 213, 218.5, 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 245, et seq., 246, 404, 432, 432.3, 432.7, 432.8, 510, 511, 512, 516, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.14, 1197.5, 1198.5, 1199, 1527, 2802, 2804, 2810.5, 2699, 3366, 3457, 8397.4, Cal. Code Regs, title 8 § 110404, Cal. Code Regs, title 8 § 3395, the IWC Wage Orders, Business & Professions Code §§ 17200, et seq., 16600, 16700, and Government Code § 12952 as to the Aggrieved Employees . The time period for this release is the PAGA Period.

8. Escalator Provision

The Agreement is based on Defendants' representation that there are 40,000 pay periods from the start of the PAGA Period through the end of the PAGA Period increase by more than 10%, Defendants shall increase the Gross Settlement Amount by a proportionate amount or Defendants can unilaterally elect to modify the PAGA Period to end on the date the pay periods reach, but not exceed 44,000 pay periods. For example, if the number of pay periods during this period increases by 4%, the Gross Settlement Amount shall not increase. If the number of pay periods during this period increases by 16%, the Gross Settlement Amount shall increase by 6% or the PAGA Period will end on the date the pay periods reach 44,000. Defendants shall make their election no later than 7 calendar days after receiving sufficient information from the Settlement Administrator that the number of pay periods has exceeded 44,000.

9. Uncashed Checks

Upon the deadline (180 calendar days) to cash the settlement checks, any uncashed/undeliverable checks will automatically be cancelled by the Administrator if not cashed within that time and the funds associated with such cancelled checks will be transmitted to the California State Controller's Office's Unclaimed Property Division to be held as unclaimed funds in the Aggrieved Employee's name.

IV. ARGUMENT

A. The PAGA Penalties Secured By The Settlement Are Genuine And Meaningful And Fulfill PAGA's Underlying Purpose To Benefit The Public

The PAGA statute specifically provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." (Lab. Code, § 2699, subd. (l)(2).) The statute, however, does not require a two-step process or otherwise mimic the class action approval requirements when the parties reach a settlement only as to PAGA civil pen0alties. (*Salazar v. Sysco Central Cal., Inc.* (E.D. Cal. Feb. 2, 2017) 2017 WL 1135801, *2 [rejecting the application of class action settlement rules and procedures for PAGA settlement approval].). In the absence of an explicit statutory requirement, the LWDA has provided guidance, explaining that courts should evaluate settlements of PAGA claims based on whether "the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public." (*O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133.). Courts defer to the agency's interpretation of a statute where authority has been delegated to that agency. (*New Cingular Wireless PCS, LLC v. Pub. Utilities Comm'n* (2016) 246 Cal.App.4th 784, 807.) When evaluating a PAGA settlement, the Court should analyze whether the amount of civil penalties obtained is "genuine and meaningful" in light of the PAGA's statutory purpose.

The California Legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 383.). This statute authorizes an employee to bring an action for "civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." (*Id.* at 360.). An action under PAGA to recover civil penalties "is essentially a law enforcement action designed to protect the public and not benefit private parties." (*Id.* at 381.). Fundamentally, "a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer." (*Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 435.) "As the state's proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent employees [citation], just as the state could if it brought an enforcement action directly." (*Id.*)

Under the general provisions of the PAGA scheme, 75% of the civil penalties recovered go to the State, while the remaining amount is given to the aggrieved employees. (Lab. Code, § 2699, subd. (i).) The PAGA action is one of the "primary mechanisms for enforcing the Labor Code." (*Iskanian,* 59 Cal.4th at 383.) As the State's proxy or agent, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies- namely, recovery of civil penalties that otherwise would have been assessed by and collected by the [LWDA]." (*Id.*) "[A]n aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself." (*Id.*) The goal of PAGA is to impose civil penalties for Labor Code violations "significant enough to deter violations." (*Id.* at 379.)

Thus, a PAGA action is "fundamentally different from a class action." (*Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 ["These differences stem from the central nature of PAGA. PAGA plaintiff is private attorneys general who, stepping into the shoes of the LWDA, bring claims on behalf of the state agency."]. The PAGA statute expressly distinguishes and preserves the right of employees to separately (or concurrently) pursue their own causes of action against their employers and to recover other available federal and state remedies. (Lab. Code, § 2699, subd. (g)(l); *see Baumann,* 747 F.3d at 1123 [explaining the differences between the finality in class action judgments and the limited res judicata effect of PAGA judgments].) "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (*McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1233.) PAGA penalties do not seek damages that are compensatory in nature. (*ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188.)

Here, Plaintiffs' Counsel believes the Settlement penalizes Defendants for its alleged violation of California's labor laws, provides a significant benefit of $271,221.50 to the State and also provides relief to the Aggrieved Employees that is genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the Gross Settlement Amount of $640,000.00 is significant enough to deter Defendants from future violations. Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the public.

B. The Settlement Is Reasonable Given The Risks Of Further Litigation

In assessing whether the amount in civil penalties is genuine and meaningful, these Court may balance the amount in penalties with the risks of further litigation. Here, Plaintiffs obtained a meaningful amount in civil penalties despite facing significant challenges had the litigation continued.

The primary claims upon which Plaintiffs seek PAGA penalties are (1) unpaid overtime, (2) unpaid minimum wages for off-the-clock work, (3) meal periods and meal period premiums, (4) rest breaks and rest break premiums, (5) timely payment of wages, (6) wage statements, and (7) business expense reimbursement.

Moreover, only initial violation rates were used in calculating potential penalties as, until "notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties." (*Amaral v. Cintas Corp. No. 2 [Amaral] (2008)* 163 Cal. App. 4th 1157, 1209.) Thus, subsequent violations in the PAGA context means not just later in time but following notice to the employer that it is in violation of the Labor Code. (*Patel v. Nike Retail Servs., Inc.* (N.D. Cal. 2014) 58 F.Supp.3d 1032, 1042; *accord Amaral,* 163 Cal. App. 4th at 1209 [only "after the employer has learned its conduct violates the Labor Code, the employer is on notice that any future violations will be punished … at twice the rate of penalties … that were imposed for the initial violation"].) Because in this instance there was no evidence that Defendants were provided notice that they were in violation of the Labor Code, initial violation rates were used to calculate penalties.

At the time of mediation and based on the records produced by Defendants, Plaintiffs understood there to be 40,000 pay periods through mediation. While PAGA Counsel are informed and believes that reasonable minds differ with regard to calculation of PAGA penalties, Plaintiffs' Counsel believe one reasonable calculation of Defendants' maximum exposure in PAGA penalties is as follows:

1. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $4,000,000 (40,000 pay periods x $100).
2. Overtime Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $2,000,000 (40,000 pay periods x $50).
3. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $2,000,000 (40,000 pay periods x $100).
4. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt

employee in the PAGA Period, this amounts to a maximum exposure of $2,000,000 (40,000 pay periods x $50).

5. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employees in the PAGA Period, this amounts to a maximum exposure of $4,000,000 (40,000 pay periods x $100).

6. Waiting Time Penalties: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include be just one violation per employee. Plaintiffs' Counsel contends that there were approximately 55 Aggrieved Employees separated from the company during the relevant time period. This amounts to a maximum exposure of $5,500 (55 Aggrieved Employees x $100).

7. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employees in the PAGA Period, this amounts to a maximum exposure of $4,000,000 (40,000 pay periods x $100).

In sum, Plaintiffs' Counsel calculated Defendants' total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period, allow "stacking" of PAGA Penalties (i.e. multiple penalties for different Labor Code violations in the same pay period), and not exercise its discretion to reduce any of those penalties to be $18,005,500.

On the other hand, Plaintiffs' Counsel understands that Defendants argued the following in connection with this claim: Defendants contend that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Plaintiffs are vastly overstated. First, Defendants defend that PAGA penalties cannot and should not be stacked, specifically including penalties arising from violations of Labor Code sections 201-203, 204, and 226, and that, even if they could, very few Courts have ever exercised discretion to stack them. Second, Defendants deny that a violation for each pay period can be established. Third, Defendants contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, Defendants contend there is no conduct that would show any Labor Code violations by Defendants, if any, is knowing and intentional that would justify PAGA penalties. Finally, Defendants assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Thus, Defendants contend that no PAGA penalties should be awarded and even if they were, the Court should exercise its discretion to award much less than the total maximum exposure.

While Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to each predicate Labor Code violation. For example, Plaintiffs contend that the Aggrieved Employees were subjected to, *inter alia*, not being paid for all time under Defendants' control, unlawful meal and rest break policies, and were denied meal and rest break premiums. Defendants refute these contentions, claiming, for example, that everyone was paid for all time worked, they authorized and permitted rest breaks, and provided meal periods.

Plaintiffs also considered the fact that continued litigation would be expensive, time-consuming and an uncertain proposition, involving a trial and possible appeals, and would delay any recovery to the State and the Aggrieved Employees. There is also a substantial risk that the Court would reduce the award even if Plaintiffs successful or otherwise exercises its discretion not to award penalties at all even if Labor Code violations are found. In contrast, if the Court approves the Settlement, the Aggrieved Employees will receive timely relief and avoid the risk of an unfavorable judgment. Plaintiffs objectively and knowledgably balanced the strengths and weaknesses of their claims, the likelihood of reaching a trial, and the likelihood of success at trial against the risk of continued litigation and was able to determine a realistic range of settlement recovery for PAGA penalties.

As such, Plaintiffs' Counsel believes a 75% discount of this theoretical maximum exposure, resulting in **$4,501,375 to be a reasonable estimate of the likelihood of what Plaintiffs may potentially recover at trial for PAGA penalties** ($18,005,500 x 0.25). *See also Carrington v. Starbucks Corp*., 30 Cal.App.5th 504, 529 (2018) (upholding trial courts 90% reduction in maximum penalties, from $50 to $5 per initial violation). In all, Plaintiffs' Counsel obtained a Maximum Settlement Amount of $640,000.00.

Thus, when the risks of litigation, including, without limitation, the burdens of proof necessary to establish liability, and the mixed case law on manageability, that no recovery may have been possible whatsoever, as well as the probability of appeal of a favorable judgment are considered, it is clear that the Settlement is reasonable and in the best interest of the State and the public. The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." (Lab. Code, § 2699, subd. (e)(2); *Iskanian,* 59 Cal.4th at 384.)

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

Plaintiffs' Counsel is entitled to reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) which provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Lab. Code, § 2699, subd. (g)(1); see also *Gouskos v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 765 [holding that attorneys' fees to prevailing party are mandatory when the statute uses the word "shall"].) Additionally, Plaintiffs' Counsel is entitled to fees based on the contingent agreement with its clients. It is undisputed that Plaintiff are the prevailing party. (*See Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 153, internal citations omitted ["[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves some of the benefit the parties sought in bringing suit.")

Accordingly, Plaintiffs are entitled to recover attorneys' fees and costs. Plaintiffs request a fee of thirty-five percent (35%) of the Gross Settlement Amount, which, unless and until escalated pursuant to the Parties' Settlement Agreement, amounts to $240,000, is reasonable, is well within the range of fees generally sought and approved in other class and representative cases and is also reasonable based on Plaintiffs' Counsel's lodestar.

1. An Award of Fees Based on a Percentage of the Common Fund is Appropriate and Reasonable

The percentage of attorneys' fees set forth in the Settlement (*i.e.,* up to thirty-five (35%) of the GSA) is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50% in collective actions, depending on the circumstances of the case. (Newberg on Class Actions, 4th Ed. 2002, § 14: 6.) Furthermore, California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total recovery. (*Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; *see also In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn.13, emphasis added ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around *one-third* of the recovery"].)

Here, the requested fee of only thirty-five percent (35%) of the Gross Settlement Amount is consistent with the fees awarded in other PAGA settlements approved by California courts. (*See, e.g.*, *Ortiz v. Morgan Stanley Smith Barney, LLC* San Francisco County Superior Court, Case No. CGC-17-560139 [awarding attorneys' fees of one-third under percentage method]; *Chavez v. Saticoy Lemon Ass'n Case No.* 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118, Ventura County Superior Court Aug. 29, 2015) [approving attorneys' fees of one-third of PAGA settlement fund]; *Tocci v. Yard House Northridge LLC,* Los Angeles County Superior Court Case No. BC625604 [same]; *Jozami v. Twilio Inc.,* San Francisco County Superior Court Case No. CGC-18-566356 [same].)

Plaintiffs' Counsel invested time and resources into litigating this Action, with over $26,363.83 of costs to date and counting deferred to the end of the case and entirely contingent on the outcome which, as set forth above, the recovery of which was far from certain with much of the litigation still potentially pending. It has been a long-recognized principle that an attorney merits a significantly larger fee when the compensation is contingent, rather than being fixed on a time or contractual basis. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) During the period that this Action has been pending, Plaintiffs' Counsel have advanced all expenses, and has not received any compensation for prosecuting the Action on behalf of the State and other Aggrieved Employees.

The significant outlay of monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a substantial settlement or the imposition of civil penalties at trial. Plaintiffs' Counsel should not be penalized with a lower fee for settling the case prior to trial, because the percentage of the fund method "encourages early settlement, which avoids protracted litigation." (*Laffitte v. Robert Half Int'l* (2016) 1 Cal.5th 480, 489.) Thus, the requested award of attorneys' fees is reasonable under the percentage of the fund method.

2. The Requested Fees are Also Reasonable Under a Lodestar Crosscheck.

To measure reasonableness, the Court may cross-check the percentage of recovery against Plaintiff's Counsels' lodestar. (*Laffitte*, 1 Cal.5th at 506; *see Privacy Cases*, 175 Cal.App.4th at 556-58.)

To summarize Plaintiffs' Counsel's lodestar request, Plaintiffs' Counsel at Bibiyan Law Group, P.C., will have collectively worked approximately 330.7 hours. Plaintiffs' Counsel's hourly rate in this case for David D. Bibiyan is $1,100 per hour (approx. 31.7 hours); Jeff Klein is $1000 per hour (approx. 4.8 hours); Diego Aviles is $850 per hour (approx. 26.1 hours); Vedang J. Patel is $800 per hour (approx. 73.4 hours); Eric Naessig is $525 per hour (approx. 8.2 hours); Jasmin Aradi is $500 per hour (approx.. 141.3 hours); Keaton Mendoza is $450 per hour (approx. 17.2 hours); Paralegals are $200 per hour (approx. 16.5 hours); and Legal Assistants are $95 per hour (approx. 11.5 hours). At Bibiyan Law Group, P.C.'s hourly rates, this results in a total lodestar amount of $207,663.

As indicated in the declaration of Shani O. Zakay, Zakay Law Group's total lodestar amounts to $10,800.00.

As indicated in the declaration of Jean-Claude Lapuyade, JCL Law Firm's total lodestar amounts to $1,605.00.

As indicated in the declaration of Kenneth Seligson, Seligson Law's total lodestar amounts to $49,739.33.

Thus, the total lodestar for Plaintiffs' counsel amounts to $269,807.33.

3. Plaintiffs' Counsel's Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." (*Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 fn. 8.) The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 [noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."]. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records" (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, citations omitted; *see also Wershba,* 91 Cal.App.4th at 255 ["California permits fee awards in the absence of detailed time sheets"]; *Laffitte*, 1 Cal.5th at 505 [trial court properly exercised its discretion to perform the lodestar cross-check "using counsel declarations summarizing overall time spent rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task"].)

Bibiyan Law Group, P.C., has spent over 330 hours litigating this Action to bring it to resolution, not including time which will be expended monitoring the administration of the settlement and distribution of funds to Aggrieved Employees. The efforts expended by Plaintiffs' Counsel to achieve this result include, but are not limited to, the following:

- The investigation of the matter, including meeting with Plaintiffs, reviewing policies provided by Plaintiffs, review of documents in Plaintiffs' possession, review and analysis of Plaintiffs' personnel files, and exploring Defendants' corporate structure to determine whether any other individuals or entities should be named in the litigation;

- Researching the dockets for other cases filed against Defendants, determining whether they named all allegedly culpable defendants and included all theories available;
- Filing and serving pleadings in the Actions;
- Compliance with prerequisites in connection with Plaintiffs' cause of action under PAGA;
- Filing and serving of the PAGA Notice;
- Reviewing and analyzing Defendants' Answers to Plaintiffs' initial complaints;
- Review and analysis of the Court's Minute Orders, attention to scheduling and delegation of actions in light thereof, drafting and filing Case Management Statements, and preparation for appearance at the Case Management Conferences;
- Meeting and conferring with counsel for Defendants, drafting and filing Joint Statements and Joint Reports in advance of the conferences and hearings held by the Court, and preparation and attendance of the same;
- Review and analysis of Defendants' purported arbitration agreements, extensive discussions with Defense counsel regarding enforceability of the arbitration agreements, and negotiating, drafting, reviewing, and filing the Stipulation Re: Arbitration;
- Obtaining and reviewing informal discovery from Defendants, including time and payroll records for a sampling of the Aggrieved Employees, Defendants' written policies, and other informal discovery produced for Plaintiffs to evaluate the claims;
- Drafting and propounding formal discovery consisting of Form Interrogatories, Special Interrogatories, Requests for Admission and Requests for Production to numerous defendants;
- Analyze and assess Defendants' responses and production in response to formal discovery;
- Discussing the potential merits of mediation, as well as negotiating the parameters thereof and the informal discovery to be exchanged beforehand, which involved

various iterations of written correspondence back and forth and several telephone discussions between counsel regarding the potential scope of discovery, as well as the scope of the pleadings;

- Negotiating, drafting, and executing pre-mediation joint stipulation which included an agreement by Defendants to refrain from attempting to individually settle employees' claims alleged in the Action;
- Working with opposing counsel and consultants for the receipt of a representative sampling and analyzing the same with the aid of retained expert data consultants and Plaintiffs to perform analyses of liability and exposure;
- Selecting a mediator and scheduling a mediation date;
- Preparation of mediation brief, analysis, and damages model in conjunction with expert data consultants, for use at the mediation session;
- Attendance at a full-day mediation session by various attorneys;
- Drafting First Amended Complaint to include all allegations from the PAGA action and Vargas PAGA action;
- Extensive negotiation of the PAGA Settlement Agreement involving numerous drafts exchanged between counsel for the Parties;
- Drafting and reviewing the Payment Letter to be sent to by the Settlement Administrator to the Aggrieved Employees;
- Communicating with Plaintiffs who requested updates or other information regarding this matter;
- Requesting bids from third-party settlement administrators for settlement administration; and
- Preparing the Motion for Approval of PAGA Settlement and preparation and attendance at the Motion for Approval of PAGA Settlement hearing.

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

And, the hours expended by the lawyers and staff members of Plaintiffs' Counsel in connection with this Action, and more fully detailed in the declarations filed concurrently herewith, is only a calculation of efforts made thus far; it does not include the time that will be spent preparing for and attending the approval hearing, reviewing the Settlement Administrator's final calculations, and subsequent coordination with the Settlement Administrator to ensure payments to Aggrieved Employees are timely distributed. Thus, Plaintiff's Counsel requests that the Court find that these hours are reasonable in this litigation.

The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice. "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigation of the facts and the law, and preparing the initial pleadings. (*New York Gaslight Club. Inc. v. Carey* (1980) 447 U.S. 54, 62. Further, the fee award should include fees incurred to establish and defend the attorney's fee claim. (*Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639.). Here, Plaintiff's Counsel has established by declaration testimony the over 573 hours spent in this case, which suffices for evidentiary purposes.

Once the Court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. (*Id*.) However, this list is not exhaustive, and the Court can consider other factors it deems important in setting the multiplier. (*Id.*) A limitation in setting the multiplier is that the Court cannot duplicate factors already included in the lodestar. (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1139.).

Multipliers are commonly awarded in cases accepted on a contingent basis. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133 [contingent risk multipliers applied to attract attorneys to cases of significant societal importance and "to compensate them for the risk of loss generally in contingency cases *as a class*."]; *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 947 [contingency fee factor *alone* supported a multiplier].) Indeed, it is virtually impossible to bring a plaintiff's counsel's compensation "into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis" unless a premium *(i.e.,* a multiplier) is provided. (*Ketchum,* 24 Cal.4th at 1132.) "Multipliers can range from two to four or even higher". (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in *Hernandez Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 273-74, fn. 4.)

Plaintiff's Counsel has been representing Plaintiff for nearly 2 years, while never receiving any compensation, and expending significant time and resources which could have been directed towards other cases. In agreeing to litigate this case on a contingent fee basis, Plaintiff's Counsel assumed considerable risk given the uncertain outcome of PAGA actions.

In applying a multiplier, *Newberg on Class Actions* states that "[m]ultipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier." (*Id.*, Vol. 3, §14.03, pp. 14-5, Dec. 1992.)

Here, no multiplier is required as Plaintiffs' counsel incurred more than is being requested.

a. <u>Plaintiff Would Have been Entitled to a Multiplier Based on a Percentage of the Fund to Ensure that the Fee Awarded is Within the Range of Fees Freely Negotiate in the Legal Marketplace in Comparable Litigation</u>

Had it been necessary, a multiplier to reach the fees requested by Plaintiff's Counsel is more than justified to compensate Plaintiff's Counsel at a rate reflecting the risk of nonpayment in this matter, as Plaintiff's Counsel's representation of Plaintiff were purely on a contingent basis. As set forth herein, the risk of nonpayment in this Action was particularly acute, too. This is because litigating a PAGA representative action through trial takes years and requires the investment of tens (if not hundreds) of thousands of dollars and thousands of hours of time. Attorneys willing to undertake this risk deserve a high rate of recovery.

Moreover, wage-and-hour laws are still developing, and change in the law always threaten to wipe out the plaintiff's attorney. In fact, numerous appellate decisions and decisions of both the California and United States Supreme Courts have attacked the validity of PAGA actions directly relevant to this case, which, as set forth herein, could have significantly affected its value. It is this contingent nature of these cases that justify an award when and if PAGA Counsel are able to obtain a settlement or verdict, because oftentimes no money is recovered in a case, including plaintiff's counsel's costs, let alone their time.

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

Plaintiffs' Counsel used a high level of skill in addressing the difficult questions presented in this case, which involved the contested issues regarding: the compliance of various of Defendants' policy with the Labor Code, including whether all time worked was paid for; whether meal and/or rest breaks were given in compliance with the Labor Code; issues regarding the timeliness of pay, including whether all pay was received by termination or resignation; the sufficiency and accuracy of wage statements (including whether issues therewith, if any, were intentional or injurious); and various other issues. Proof of Plaintiff's Counsel's skill in this area of law lies in the size of this Settlement and the recoveries of the State and Aggrieved Employees despite Defendants' contentions that Plaintiff's unpaid wages claims are speculative; Defendants' contention that its meal and rest period policies were compliant; and other hurdles encountered by Plaintiff's Counsel that were traversed in reaching this Settlement pertaining to evolving case law regarding PAGA actions.

c. This Litigation Precluded Other Employment by Plaintiff's Counsel

A practitioner can only properly litigate so many cases at one time. The requirements of this case were significant, requiring over 330 hours to be expended to date by Plaintiff's Counsel, and another twenty-five (25) to fifty (50) hours conservatively expected to be expended in the future in connection with approval, settlement administration, answering questions of Aggrieved Employees, and updates to this Court regarding uncashed checks. Plaintiff's Counsel was also most definitely precluded from other employment. This factor must also be considered.

4. Plaintiff's Counsel's Hourly Rates Are Reasonable

At this requested rate, this results in a total lodestar amount of $269,807.33. A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095.) The Court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise, and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.)

One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any consumers, pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a contingency fee relationship. Although there is no customary billing rate, the nature of class action work should be strongly considered by the court. Courts have upheld rates as high as $450[8] per hour (in 1993) in employment matters. (*Bihun v. AT&T Information Systems. Inc.* (1993) 13 Cal. App. 4th 976, overruled on other grounds.)

A survey conducted by the National Law Journal for the year 2002 provides a sample of a billing rate for California Lawyers. In that survey, six California firms provided their hourly billing rates. Of those six firms, five regularly charge in excess of $500.00 per hour for their partners. In fact, four of the firms charge as high as $600.00, $620.00, $650.00, and up to $850.00 per hour. These firms are located in Orange County, Los Angeles County, San Francisco County and San Diego County and are the types of firms that Plaintiff's Counsel regularly opposes in these class action cases. (*See* National Law Journal Survey, attached as Exhibit "3" to the Declaration of Vedang J. Patel). The only difference is that these defense attorneys are paid on a monthly basis

[8] Adjusted for inflation, $450 in 1993 equals nearly $960 in 2023.

and do not have to advance any costs on a case.

Finally, Plaintiffs' Counsel attach the Declaration of Richard Pearl in support of the Motion for Final Approval in the case of *Rosa Cantu, et al v. Pacific Bell Telephone Company*, Los Angeles Superior Court Case No. BC441237, dated January 4, 2011. (*See* Declaration of Richard Pearl attached as Exhibit "4" to the Declaration of Vedang J. Patel). Mr. Pearl specializes in issues related to cost-award attorney's fees, including the representation of parties in fee litigation and appeals, serving as an expert witness, mediator and arbitrator in disputes concerning attorney's fees and related issues. Mr. Pearl is also the author of California Attorney's Fee Awards (3d ed. Cal. CEB 2010), as well as the author of the Second Edition, years 1994 through 2008. He has also authored numerous other publications on attorney's fees, as set forth in his Declaration.

Mr. Pearl has reviewed the comparable hourly rates of attorney fees in California. He confirms that courts have approved hourly rates of attorneys as follows:

- Rates of up to $875.00 in *Savaglio, et al. v. Wal-Mart*, Alameda County Superior Court, Case No. C-835687-7 (before applying a 2.36 multiplier);
- Rates of up to $750.00 in *Kashmiri et al. v. Regents of UC*, San Francisco County Superior Court (before applying a 3.7 multiplier); and
- Rates of up to $750.00 in *Environmental Law Foundation v. Laidlaw Transit, Inc.*, San Francisco Superior Court, Case No. CGC-06-451832 (before applying a 1.25 multiplier). *Id* at pages 4 and 5.

Additionally, Mr. Pearl has reviewed numerous declarations, depositions and surveys of legal rates on a non-contingent basis for the year 2009 and found hourly rates of up to $775.00, $795.00, $800.00, $855.00, $950.00, etc. (*Id.* at pp. 6-12). These are non-contingent rates where payment in full is expected promptly upon billing. (*Id.* at p. 13).

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

5. Plaintiff's Counsel's Litigation Expenses Are Reasonable

The Settlement provides for reimbursement of Plaintiffs' Counsel's reasonable litigation costs in an amount of up to $30,000.00. Bibiyan Law Group has incurred litigation costs of $21,060.83. (Declaration of David D. Bibiyan). JCL Law Firm has incurred litigation costs of $279.73. (Declaration of Jean-Claude Lapuyade). Zakay Law Group has incurred litigation costs of $20.45. (Declaration of Shani O. Zakay). Seligson Law P.C. has incurred litigation costs of $5,002.82. (Declaration of Kenneth Seligson). In total, Plaintiffs' counsel requests $26,363.83 for costs incurred. Because these costs are reasonable, Plaintiffs' Counsel requests that the Court approve those costs.

6. The Settlement Administrator Costs Are Reasonable

The Settlement Administrator's request for costs of up to $8,000.00 is reasonable, given the tasks to be performed by the Settlement Administrator, including but not limited to: receiving and processing the Aggrieved Employees data; establishing a settlement fund; calculating and mailing Individual PAGA Payments to the Aggrieved Employees along with the Notice of Settlement to Aggrieved Employees via First Class U.S. Mail, postage prepaid; providing the Parties' counsel reports regarding administration of the Settlement Agreement as needed or requested; if a Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment from the initial mailing is returned as undeliverable during the check-cashing period, the Settlement Administrator will attempt to obtain a current address for the PAGA Member to whom the returned Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment had been mailed within three (3) calendar days of receipt of the returned Notice of Settlement to Aggrieved Employees and/or Individual PAGA Payment check, by: (a) contacting the PAGA Member by phone, if possible, (b) undertaking all reasonable efforts to identify the Aggrieved Employees' correct address, and (c) undertaking skip tracing; if the Settlement Administrator is successful in obtaining a new address, it will promptly remail the Notice of Settlement to Aggrieved Employees and Individual PAGA Payment check to the PAGA Member at his or her updated address within three (3) business days; providing necessary reports and declarations; and performing other such duties as the Parties and/or the Courts direct. Thus, the Settlement Administrator's costs should be approved.

7. The Requested PAGA Representative Service Payment is Reasonable

Plaintiff in class and representative actions are eligible for reasonable enhancement 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 service awards for the class representatives, which are "intended to compensate class representatives for work performed on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and 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 same reasoning enhancement awards are given in class actions should be applied in PAGA actions to provide for relief that is consistent with the underlying purpose of the statute. "Unlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (*McKenzie,* 765 F. Supp. 2d at 1233.) The California legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Iskanian,* 59 Cal.4th at 383.)

Failing to provide an enhancement award in a representative action for civil penalties would completely undermine the purpose of PAGA by eliminating any incentive to pursue such cases. As an action for civil penalties, a PAGA action is not compensatory in nature, and a PAGA plaintiff cannot expect to obtain restitution for the violations forming the basis for a PAGA settlement.

It is for this reason that courts routinely award enhancement payments in other PAGA settlements. (*Blanchard v. BJ's Restaurants, Inc*., Orange County Superior Court Case No. 30-2014-00761961-CU-OE-CX (Sept. 26, 2016) [approving $10,000 service award]; *Bui v. Vitamin Shoppe*

Industries Inc., Los Angeles County Superior Court Case No. BC518486 (Aug. 31, 2016) [approving $10,000 service award]; *Jesus Miranda v. HomeDeliveryLink, Inc.*, San Bernardino County Superior Court Case No. CIV DS1505393 (Aug. 9, 2016) [approving $10,000 service award]; *Mohamad Najjar v. Calop Business Systems, Inc. d/b/a Ca/op Aeroground Service*, Los Angeles County Superior Court Case No. BC582290 (April 5, 2016) [approving $10,000 service award]; and *Sheldon v. AHMC Monterey Park Hospital LP*, Los Angeles County Superior Court Case No. BC440282 (March 2, 2016) [approving $10,000 service award].)

The proposed settlement would not have been made possible without Plaintiffs' effort and commitment. The requested payment is intended to recognize Plaintiffs' effort in bringing the Action, serving as private attorney general under PAGA, assisting Plaintiffs' Counsel with the investigation, litigation, and settlement, regularly conferring with Counsel on the status of the case, reviewing the Settlement Agreement, providing declarations in support of this Motion, and providing a broader release to Defendants, including a release of their individual wage and hour claims, as Plaintiff have not entered into any separate settlement agreement for the release of his individual claims. If the Court approves a PAGA Representative Service Payment less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.*). For these reasons, the Court should approve the requested service award of $10,000.00 to each Plaintiff for a total of $20,000.00 to Plaintiffs.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the PAGA Settlement Agreement in its entirety.

Dated: April 27, 2026

BIBIYAN LAW GROUP, P.C.

BY: */s/ Vedang J. Patel*

VEDANG J. PATEL
Attorneys for Plaintiffs, on behalf of themselves and all others aggrieved