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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DIANA MENDEZ ROSALES, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

DOWNEY RESTAURANT GROUP, INC. d/b/a GAUCHO GRILL, a California corporation; BUENA PARK RESTAURANT GROUP, INC. d/b/a GAUCHO GRILL, a California corporation; WEST COVINA RESTAURANT GROUP, INC. d/b/a GAUCHO GRILL, a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 24STCV15350

REPRESENTATIVE ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT

[Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Recoba, the Declaration of Plaintiff Rosales, the Declaration of Plaintiff Morales, the Declaration of Michael H. Boyamian, the Declaration of Roman Otkupman, [Proposed] Order, and [Proposed] Judgment]

PAGA APPROVAL HEARING:
Date: April 7, 2027
Time: 8:30 a.m.
Judge: Hon. Brock T. Hammond
Dept: 407
Reservation ID: 047130619924

Complaint filed: April 17, 2024
FAC filed: November 6, 2024
SAC filed: October 20, 2026

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TO THIS HONORABLE COURT, TO ALL PARTIES, AND TO COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 7, 2027, at 8:30 a.m. in Department 407 of the Los Angeles County Superior Court, 111 North Hill Street, Los Angeles, California 90012, Plaintiffs Diana Mendez Rosales, Josue Levit Recoba, and Jordan Morales (collectively, "Plaintiffs") will, and hereby do, move the Court for an Order and Judgment, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

1. Approving the PAGA Settlement Agreement ("Settlement") between Plaintiffs and Defendants Downey Restaurant Group, Inc., Buena Park Restaurant Group, Inc., West Covina Restaurant Group, Inc., Pasadena Restaurant Group, Inc., Beach Restaurant Group, Inc., and Gaucho Grill Management Company (collectively, "Defendants");
2. Approving the requested PAGA Counsel Fees Payment of $126,000.00, representing 35% of the Gross Settlement Amount;
3. Approving reimbursement of PAGA Counsel's litigation expenses in the amount of $30,007.22;
4. Appointing Phoenix Class Action Administration Solutions as the Administrator and approving a $5,950.00 as the Administration Costs;
5. Approving the scope of the Released PAGA Claims, Plaintiffs' individual releases, and the Released Parties under the Settlement;
6. Approving a non-reversionary Gross Settlement Amount of $360,000.00;
7. Approving the PAGA allocation of $168,042.78, with 75% ($126,032.09) to the LWDA and 25% ($42,010.70) to Aggrieved Employees;
8. Directing consummation of the Settlement pursuant to its terms and provisions;
9. Entering Judgment; and
10. Retaining jurisdiction over the Parties, this action, and this Settlement, including following any entry of Judgment for purposes of enforcement, interpretation, settlement administration, and any post-Judgment issues that arise.

This Motion is based upon this notice, the attached Memorandum of Points and Authorities, the declarations and exhibits filed concurrently herewith, the records and files in this action, and any other

further records or argument that the Court may properly receive at or before the hearing.

As this Motion is unopposed, Plaintiffs respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

Respectfully submitted,

DATED: November 9, 2026 **BOYAMIAN LAW, INC.**

By: */s/ Michael H. Boyamian*
Michael H. Boyamian
Alfred Movsesyan

Attorneys for Plaintiff Diana Mendez Rosales

DATED: November 9, 2026 **MOON LAW GROUP, PC**

By: */s/ Kane Moon*
Kane Moon
Allen Feghali
Chancellor Nobles

Attorneys for Plaintiff Josue Levit Recoba

DATED: November 9, 2026 **OTKUPMAN LAW FIRM, A LAW CORPORATION**

By: */s/ Roman Otkupman*
Roman Otkupman
Nidah Farishta

Attorneys for Plaintiff Jordan Morales

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Diana Mendez Rosales, Josue Levit Recoba, and Jordan Morales (collectively, "Plaintiffs") seek approval of a non-reversionary $360,000.00 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq*. ("PAGA"), and of Plaintiffs' individual claims as provided in the Settlement. Following an initial mediation or early evaluation conference on August 20, 2025, and a full day of mediation on February 4, 2026, with experienced and neutral mediator Michael Ludwig, Esq., Plaintiffs reached a resolution with Defendants Downey Restaurant Group, Inc., Buena Park Restaurant Group, Inc., West Covina Restaurant Group, Inc., Pasadena Restaurant Group, Inc., Beach Restaurant Group, Inc., and Gaucho Grill Management Company (collectively, "Defendants") (collectively, Plaintiffs and Defendants are the "Parties"). (Declaration of Kane Moon in Support of Motion for Approval of PAGA Settlement ("Moon Decl."), ¶ 14) The Parties have executed a PAGA Settlement Agreement (the "Settlement"), a true and correct copy of which is attached as Exhibit 1 to the Moon Declaration submitted concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiffs now file this motion seeking an order approving the proposed Settlement.

The Settlement resolves all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Period and the PAGA Notice. (Settlement, ¶¶ 1.1, 5.2.) For purposes of settlement, the "PAGA Period" is April 17, 2023, through May 31, 2026.[1] (*Id.* at ¶ 1.20.) This Settlement is on behalf of the California Labor and Workforce Development Agency (the "LWDA"), Plaintiffs, and all current and former non-exempt, hourly employees who worked for Defendants in California during the PAGA Period ("Aggrieved Employees"). (*Id*. at ¶ 1.4.) The Settlement separately provides for individual settlement payments of $10,000.00 to each Plaintiff, totaling

[1] The PAGA Period is defined as April 17, 2023, through whichever date is earlier: (1) the date the Court approves the PAGA Settlement; or (2) May 31, 2026. (Settlement, ¶ 1.20.) May 31, 2026, precedes the anticipated date of settlement approval. Accordingly, the PAGA Period is April 17, 2023, through May 31, 2026. (Moon Decl., ¶ 3, n.1.)

$30,000.00 from the Gross Settlement Amount, in consideration for their general releases of individual claims under the Settlement. These are not service or enhancement payments. (*Id*. at ¶¶ 3.2.4, 5.1–5.1.1.) Other than the Actions, Plaintiffs are unaware of any other pending litigation involving similar claims against Defendants that may be impacted by approval of the Settlement. (Moon Decl., ¶ 23.) This conclusion is based on a reasonable inquiry and review of the LWDA's PAGA Case Search website, this Court's case search website, and other information reasonably available online. (*Id.*)

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

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

The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the LWDA and the estimated **850** Aggrieved Employees will, cumulatively, receive **$168,042.78** as PAGA Penalties, subject to Court approval. (Moon Decl., ¶ 22.) This is a significant recovery because further litigation may have resulted in no recovery based on the facts of the case and defenses asserted by Defendants. Moreover, experienced PAGA Counsel's investigation and analysis of discovery

revealed factors that could substantially reduce recovery, including limited potential underpayments attributable to regular-rate issues, disputes concerning meal waivers and premium payments, and the need for testimony and other evidence to establish the off-the-clock, rest period, and expense reimbursement claims. These evidentiary risks, together with the possibility that the Court could reduce or decline to award certain PAGA penalties, support approval of the Settlement. (Moon Decl., ¶¶ 26–30.) For these reasons, as set forth more fully below, Plaintiffs respectfully request that the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims and Procedural Background

Defendants operate Gaucho Grill restaurants in California. (Moon Decl., ¶ 4.) Plaintiffs worked for Defendants during the PAGA Period as non-exempt, hourly employees. (*Id.*) Plaintiffs contend they and their coworkers were subjected to the same or similar unlawful labor practices during their employment by Defendants, including failure to pay all wages. (*Id.*)

Plaintiffs' claims for unpaid wages stem from allegations of Defendants' failure to pay employees all minimum, overtime, and sick pay owed, including due to Defendants' failure to compensate employees for off-the-clock work, and Defendants' failure to incorporate all remuneration into the regular rate of pay. (*Id.* at ¶ 5.) The alleged off-the-clock work included waiting to clock in, completing cleaning duties after clocking out, picking up supplies, and working during recorded meal periods. (*Id.*) Plaintiffs' meal and rest period claims are based on allegations that due to the nature of their work and Defendants' employment practices, employees regularly experienced missed, untimely, shortened, or interrupted breaks, and that Defendants failed to pay all premiums owed for non-compliant breaks. (*Id.*) Plaintiffs also allege that Defendants failed to reimburse employees for all reasonable and necessary business expenses incurred, including expenses incurred for work supplies and the use of employees' personal cellphones and vehicles for work purposes. (*Id.*) Plaintiffs further allege they and other employees did not receive all wages owed at the time of termination nor accurate itemized wage statements due to Defendants' failure to pay all wages and premiums. (*Id.*) Accordingly, Plaintiffs allege Defendants are liable for civil penalties under PAGA. (*Id.*)

On April 17, 2024, Plaintiff Rosales commenced this Action by filing a PAGA Notice Letter. Following the exhaustion of the 65-day notice period, Plaintiff Rosales filed a PAGA complaint On June 18, 2024. (*Id.* at ¶ 6.) On November 18, 2024, Plaintiff Rosales filed a First Amended Complaint adding Buena Park Restaurant Group, Inc. d/b/a Gaucho Grill and West Covina Restaurant Group, Inc. d/b/a Gaucho Grill as Defendants. (*Id.*) On August 31, 2024, Plaintiff Recoba filed a PAGA Notice Letter to the L WDA. (*Id.*) On September 9, 2024, Plaintiff Recoba filed a Class Action Complaint. On November 14, 2024, Plaintiff Recoba filed a First Amended Complaint in the Recoba Action to add civil penalties under PAGA. (*Id.*) On March 17, 2025, Plaintiff Morales filed a PAGA Notice letter. On April 16, 2025, Plaintiff Morales filed a Class Action Complaint. (*Id.*) On May 22, 2025, Plaintiff Morales filed a First Amended Complaint to add a PAGA cause of action. (*Id.*) On October 20, 2026, Plaintiff Rosales filed a Second Amended Complaint adding Plaintiffs Recoba and Morales to the instant action (the "Operative Complaint"). (*Id.*)

Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice. (*Id.* at ¶ 7. Ex 2.; Declaration of Michael H. Boyamian in Support of Motion for Approval of PAGA Settlement ["Boyamian Decl."], ¶ 10, Ex 1.; Declaration of Roman Otkupman in Support of Plaintiffs' Motion for Approval of PAGA Settlement ["Otkupman Decl."], ¶ 11, Ex. 1.)

In compliance with Labor Code section 2699(s)(1), Plaintiffs subsequently submitted to the LWDA file-stamped copies of their respective complaints asserting PAGA claims and containing the Court-assigned case numbers. (Moon Decl., ¶ 7.) To date, the LWDA has not sought to intervene in the Actions. (*Id*.)

Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged. (*Id.* at ¶ 9.)

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

The Parties agreed to mediate the representative PAGA claims asserted in the Actions and engaged in informal discovery exchange prior to mediation. (*Id*. at ¶ 10.) Defendants provided information and documents that enabled PAGA Counsel to meaningfully investigate Plaintiffs'

allegations and assess the value of the PAGA claims. (*Id*.) Specifically, Defendants produced documents regarding their written employment policies and practices, including their employee handbook, and randomized samples of employee time and payroll records. (*Id*.) In advance of mediation, Defendants agreed to produce a randomized 20% sample of pay periods containing time and payroll records. (*Id.*)

Prior to mediation, PAGA Counsel reviewed and analyzed all the information that Defendants produced, including the time/pay records and Defendants' written policies, in conjunction with information provided by Plaintiffs. (*Id.* at ¶ 11.) PAGA Counsel retained an expert to analyze the time/pay records and prepare an exposure analysis prior to mediation. (*Id*.) Plaintiffs' expert reviewed the timekeeping and payroll data for approximately 20% of all Aggrieved Employees, which allowed the expert to analyze the alleged violations and estimate Defendant's potential PAGA exposure. (*Id*.) Further, PAGA Counsel investigated the applicable law regarding the claims and defenses asserted in the Actions. (*Id*.) Accordingly, PAGA Counsel were able to evaluate the probability of success on the merits and Defendants' monetary exposure. (*Id*.) In sum, Plaintiffs and their Counsel's familiarity with the facts of the case and the legal issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. <u>Settlement Negotiations</u>

An initial mediation or early evaluation conference was held on August 20, 2025. (*Id*. at ¶ 14.) Thereafter, on February 4, 2026, the Parties participated in a full day of private mediation facilitated by Michael Ludwig, Esq. (*Id*.) The negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id*.) Both sides went into the mediation willing to explore the potential for a settlement of the dispute, but they were also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id*.) Following a full discussion of the strengths and weaknesses of the claims and defenses, the Parties ultimately reached a resolution, the material terms of which are encompassed within the Settlement at issue. (*Id.*)

In reaching a resolution, the Parties recognized that the issues presented in the Actions are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to

the potential benefits of litigation. (*Id.* at ¶ 13.) Plaintiffs and their Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id*.) In sum, Plaintiffs and their Counsel believe the proposed Settlement is in the best interests of Aggrieved Employees and the LWDA. (*Id.*)

In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed Settlement has been submitted to the LWDA. (*Id*. at ¶ 14, Ex. 3.) To date, the LWDA has not indicated any objection to the Settlement. (*Id.* at ¶ 14.)

D. Key Terms of the Proposed Settlement

The Settlement's key financial and other terms include:

1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross Settlement Amount ("GSA") is a non-reversionary $360,000.00, subject to entry of the Court's Approval Order. (Settlement, ¶¶ 1.11, 3.1.) Defendants shall fully fund the GSA by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date, which is the date on which the Judgment becomes final. (*Id*. at ¶¶ 1.10, 4.3.) Within fourteen (14) days after Defendants fully fund the GSA, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Litigation Expenses Payment. (*Id*. at ¶ 4.4.) Individual PAGA Payment checks will state a void date no less than 180 days after mailing. (*Id*. at ¶ 4.4.1.) Funds represented by checks remaining uncashed and cancelled after the void date will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (*Id*. at ¶ 4.4.3.)

2. Aggrieved Employees and PAGA Pay Periods: Based on Defendants' review of their records, the Settlement estimates that approximately 850 Aggrieved Employees worked a total of 15,291 PAGA Pay Periods. (*Id*. at ¶ 4.1.) A PAGA Pay Period means any pay period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period. (*Id*. at ¶ 1.19)

3. Individual Settlements. The Settlement includes up to $30,000.00 allocated evenly to settle Plaintiffs' individual claims, resulting in individual settlement payments of $10,000.00 each to Plaintiff Rosales, Plaintiff Recoba, and Plaintiff Morales, payable from the GSA. (*Id*. at ¶ 3.2.4.)

These payments are consideration for Plaintiffs' settlement and general release of their individual claims, subject to the scope and exclusions specified in the Settlement, including their waivers under Civil Code section 1542. (*Id*. at ¶¶ 5.1–5.1.1.)

4. Attorneys' Fees and Costs. The Settlement includes attorneys' fees in an amount not to exceed 35% of the GSA (i.e., $126,000.00), plus reimbursement of actual Court-approved litigation costs, currently estimated at $50,000.00 in total, subject to the Settlement cap and supplementation with final combined cost evidence, payable to PAGA Counsel from the GSA. (*Id*. at ¶ 3.2.1.) In the event the Court approves fees or costs less than the amounts requested, the difference will be allocated to the Net Settlement Amount. (*Id*.) The final combined litigation costs requested by PAGA Counsel are $30,007.22, with $24,081.91 incurred by Boyamian Law, Inc. ("BL"), $2,236.44 incurred by Otkupman Law Firm ("OLF"), and $3,688.87 incurred by Moon Law Group, PC ("MLG"). (Boyamian Decl., Ex. 3.; Otkupman Decl., Ex. 3.; Moon Decl., Ex. 4.) Pursuant to the Joint Prosecution Agreement ("JPA"), any attorneys' fee award will be divided 65% to Boyamian Law, Inc., 25% to Moon Law Group, PC, and 10% to OLF. Each firm will receive reimbursement of its actual litigation costs approved by the Court. (Moon Decl., ¶ 18.)

5. Administration Costs. The Settlement provides an Administration Expenses Payment to the Administrator, payable from the GSA, in an amount not to exceed $5,950.00, except upon a showing of good cause and approval by the Court. (Settlement, ¶ 3.2.2.) To the extent actual administration expenses are less than, or the Court approves payment of less than, $5,950.00, the difference will remain in the Net Settlement Amount. (*Id*.) The Parties jointly selected Phoenix Class Action Administration Solutions ('Phoenix') as the neutral entity to administer the Settlement. (*Id*. at ¶¶ 1.2, 7.1.) Plaintiffs request an Administration Expenses Payment of $5,950.00. (Lawrence Decl., ¶ 16, Ex. B).

6. Net Settlement Amount and PAGA Penalties. After deducting the Individual Settlements, PAGA Counsel Fees and Litigation Expenses Payments, Administration Expenses Payment, and LWDA PAGA Payment from the GSA, in the amounts specifically approved by the Court, the remaining Net Settlement Amount will be distributed to Aggrieved Employees as Individual PAGA Payments. (*Id*. at ¶¶ 1.16, 3.2.1–3.2.4.) The estimated PAGA Penalties are

$168,042.78, allocated 75% ($126,032.09) to the LWDA and 25% ($42,010.70) to Aggrieved Employees.[2] (Moon Decl., ¶ 20; *see* Settlement, ¶¶ 1.23, 3.2.3.) Accordingly, the Net Settlement Amount available for Individual PAGA Payments is estimated to be **$42,010.70**.[3] (Moon Decl., ¶ 20.) Any reductions in the requested attorneys' fees, litigation expenses, or administration expenses will be allocated to the Net Settlement Amount as provided in the Settlement. (Settlement, ¶¶ 3.2.1–3.2.2.)

7. Individual PAGA Payments. Each Aggrieved Employee will be entitled to his or her pro rata amount from the 25% employee share of PAGA Penalties that is directly proportional to the number of PAGA Pay Periods worked during the PAGA Period, without having to submit any claim form. (*Id*. at ¶¶ 3.1, 3.2.3.1.) This results in an estimated average Individual PAGA Payment of **$49.42** for each of the estimated 850 Aggrieved Employees ($42,010.70 / 850), and an estimated PAGA Pay Period value of **$2.75** for each of the 15,291 estimated PAGA Pay Periods ($42,010.70 / 15,291). (Moon Decl., ¶ 21.) Individual PAGA Payments represent civil penalties and will be reported on IRS 1099 Forms. (Settlement, ¶¶ 1.23, 3.2.3–3.2.3.2.)

8. Releases of Claims. Upon Defendants' full funding of the GSA, the releases specified in paragraph 5 of the Settlement will become effective. (*Id.* at ¶ 5.) The release by Aggrieved Employees provides: "All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, 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 and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Period and the PAGA Notice." (*Id*. at ¶ 5.2.) Plaintiffs separately provide the general releases and Civil Code section 1542 waivers specified in paragraphs 5.1 and

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[2] The estimated PAGA Penalties ($168,042.78) is greater than the estimate in the PAGA Settlement ($148,050.00) because Plaintiffs' Counsel are requesting less than the maximum amount for litigation costs. (Moon Decl., ¶ 20, n.2.) The estimate in the Settlement accounts for the maximum $50,000 litigation costs, whereas the estimate in Plaintiffs' motion reflects actual litigation costs. (*Id.*)

[3] The estimated Net Settlement Amount is calculated by deducting the following amounts from the GSA ($360,000.00): $30,000.00 for the Individual Settlements, $126,000.00 for the PAGA Counsel Fees Payment, $30,007.22 for the PAGA Counsel Litigation Expenses Payment, $5,950.00 for the Administration Expenses Payment, and $126,141.15 for the LWDA PAGA Payment. (Settlement, ¶¶ 1.16, 3.2.1–3.2.4.)

5.1.1, subject to the scope and exclusions stated therein. The "Released Parties" are "Downey Restaurant Group, Inc., Buena Park Restaurant Group, Inc., West Covina Restaurant Group, Inc., Pasadena Restaurant Group, Inc., Beach Restaurant Group, Inc., and Gaucho Grill Management Company and each of its former and present directors, officers, shareholders owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates." (*Id*. at ¶ 1.26.)

III. DISCUSSION

A. Availability of Civil Penalties

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

Here, in compliance with Labor Code section 2699.3, Plaintiffs submitted notices of the Labor Code violations at issue to the LWDA and exhausted their administrative remedies without the LWDA indicating any intent to investigate the claims. (Moon Decl., ¶ 7. Ex 2.; Boyamian Decl., ¶ 10, Ex 1.; Otkupman Decl., ¶ 11, Ex. 1.) Accordingly, Plaintiffs are duly authorized to act as private attorneys general pursuant to PAGA. (Moon Decl., ¶ 7.)

B. The Settlement Merits Approval

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

1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes of Deterrence and Punishment under PAGA

The $360,000.00 GSA amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public." (Moon Decl., ¶ 33; *see O'Connor*, 201 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything at all. (Moon Decl., ¶ 33.)

The Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendants have had to hire legal counsel, engage in employee-wide discovery, and participate in mediation. (Moon Decl., ¶ 34.) Assuming approval is granted, Defendants will also have to pay civil penalties pursuant to PAGA. (*Id.*) Not including its own attorneys' fees and costs, Defendant will pay at least $360,000.00 to resolve this matter—of which $168,042.78 is allocated toward PAGA Penalties and will be distributed as 75% to the LWDA and 25% to Aggrieved Employees, in compliance with PAGA law governing the claims in this action. (*See* Settlement, ¶¶ 3.1, 3.2.3-3.2.3.2.) This amount represents about **44%** of the realistic exposure for the claims ($168,042.78 / $382,275.00), as discussed below. (Moon Decl., ¶ 34.)

2. The Settlement Amount Provides a Realistic Value for the Claims that is within the "Ballpark" of Reasonableness

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations between the Parties. (Moon Decl., ¶¶ 12, 24.) PAGA Counsel performed an extensive investigation into the facts, claims, and defenses at issue and Defendants' potential liability, including a review of governing law and analysis of informal discovery, including Defendants' written employment policies and randomized samples of employee time and payroll records. (*Id*. at ¶¶ 10–11.) PAGA Counsel used the foregoing discovery and investigation to prepare for mediation and, with the assistance of an expert, assessed the probability of success on the merits

and Defendants' monetary exposure, discussed the strengths and weaknesses of the claims and defenses at mediation, and ultimately negotiated the resulting Settlement. (*Id*. at ¶¶ 12–15.)

Based on PAGA Counsel's analysis of the arguments and information provided by Defendants, an expert analysis of the time and payroll records, and information from Plaintiffs, PAGA Counsel evaluated Defendants' maximum (optimistic) and risk-adjusted (*realistic*) potential exposure in preparation for mediation. (Moon Decl., ¶ 24.) Although the expert's analysis identified potential meal period and regular rate violations, establishing the extent of the off-the-clock work, rest period, and expense reimbursement claims, and derivative penalties for those claims, would require additional testimonial and other evidence beyond the time and payroll records. (*Id*.) In other words, Plaintiffs' analysis revealed that the potential recovery depended not only on identifiable violations in the records, but also on proving the assumptions underlying the exposure estimates. (*Id.*)

The time and payroll records, standing alone, do not establish whether employees received all required, uninterrupted, and duty-free rest periods. (*Id*. at ¶ 25.) Additionally, the records do not independently establish the amount of time employees spent performing work off the clock. (*Id*.) Rather, proof of these claims would need to be supported by declarations or testimony from Aggrieved Employees regarding missed rest periods and off-the-clock work, considered together with Defendants' written policies and other evidence. (*Id*.) The records themselves cannot fully demonstrate what breaks were missed, when, and why, or the time, if any, Aggrieved Employees spent working off the clock. (*Id.*)

Indeed, the maximum exposure figures calculated for mediation were based, in part, on assumed violation rates and amounts of uncompensated work that would need to be established at trial. (*Id*. at ¶ 26.) For example, the expert's analysis assumed ten minutes of off-the-clock work per shift and a rest period violation for every shift lasting at least 3.5 hours. (*Id*.) These assumptions were used to estimate potential exposure and did not constitute findings that those violations occurred on every applicable shift. (*Id*.) Establishing the extent of the alleged violations would require additional employee testimony and other supporting evidence. (*Id*.) Obtaining such evidence could reveal differences in employees' job duties, schedules, restaurant locations, and actual experiences concerning breaks and uncompensated work. (*Id*.) The individualized nature of those experiences and

the number of employees affected present significant risks concerning proof on the merits and the extent of any recovery. (*Id.*)

Even as to the regular rate and meal period claims, PAGA Counsel's analysis identified factors that could reduce Defendants' exposure. (*Id*. at ¶ 27.) The timekeeping analysis identified potential meal period violations in 44.7% of the analyzed pay periods, or 43.5% after offsetting identified meal premium payments. (*Id*.) The payroll records reflected 98 meal premium payments, and the expert also analyzed alternative exposure assumptions concerning meal waivers. (*Id*.) Although Plaintiffs dispute the extent to which meal waivers and premium payments limit liability, those issues could affect the ultimate recovery. (*Id*.) As to the regular rate issue, Plaintiffs' expert identified approximately 0.3% pay periods as involving overtime and additional compensation or weighted-average regular rate issues, and only approximately 0.04% of pay periods as involving sick pay and such issues. (*Id*.) Accordingly, the regular rate analysis identified relatively limited estimated underpayments to Aggrieved Employees. (*Id.*)

The likelihood that Defendant could assert viable legal defenses would likely further reduce its overall exposure. (*Id.* at ¶ 28.) For example, disputes concerning the applicability of meal waivers, credits for meal premium payments, and the extent of uncompensated work would require factual and legal determinations. (*Id.*) The individualized and testimony-intensive nature of certain claims could limit the violations and affected pay periods that Plaintiffs are ultimately able to establish, thereby reducing Defendants' overall liability. (*Id*.) Further, a claim-by-claim penalty calculation presents an optimistic valuation because it assumes Plaintiffs could recover cumulative penalties for the asserted violations. (*Id.* at ¶ 29.) Rather, without either (i) a prior finding by the LWDA or a court within the past five years that the employer violated PAGA or (ii) evidence that the employer's conduct was malicious, fraudulent, or oppressive, PAGA only provides for a maximum $100.00 penalty for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) PAGA Counsel believe it would be unrealistic to expect the Court to award the full claim-by-claim exposure given the potential reduction of penalties and Defendants' defenses, including their contentions that any failure to pay premiums, regular rate wages, or compensation for off-the-clock work was not knowing or willful, and that employees suffered no actual resulting harm from allegedly inaccurate wage statements. (Moon Decl., ¶ 29.)

PAGA Counsel also considered the risk of challenges to an allegedly disproportionate aggregate penalty award. (*Id*.) For these reasons, the realistic exposure is substantially below the optimistic claim-by-claim estimate. (*Id*. at ¶ 32.)

Based on the foregoing, PAGA Counsel believe it is more reasonable to assess penalties on a $100.00 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the estimated 15,291 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 31.) Accordingly, PAGA Counsel estimate Defendants' maximum PAGA exposure to be **$1,529,100.00** ($100.00 x 15,291). (*Id.*) However, based on the discovery, Defendants' arguments during settlement discussions, the need for additional evidence to establish the alleged violations, differences in employees' experiences, and the other considerations discussed above, PAGA Counsel applied a litigation-risk assumption that violations could be established in at most one-fourth of the pay periods. (*Id*.) This results in estimated risk-adjusted exposure of $382,275.00 ($1,529,100.00 / 4). (*Id*.) The GSA of $360,000.00 represents approximately 94% of that risk-adjusted exposure ($360,000.00 / $382,275.00). (*Id.*)

The proposed Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery. (*Id.* at ¶ 32.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the GSA of $360,000.00 is within the "ballpark" of reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A*. (2010) 186 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims," but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation"].)

3. The Settlement Is a Fair and Reasonable Result Following a Thorough Investigation and Accounting of Various Litigation Risks

PAGA Counsel have conducted a thorough investigation into the facts of the allegations. (Moon Decl., ¶ 35.) Based on the foregoing discovery and on their own independent investigation

and evaluation, PAGA Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendants on the merits, the Settlement is in the best interests of the Aggrieved Employees and the State of California. (*Id.*)

Although PAGA Counsel believe there is merit to Plaintiffs' allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 36.) PAGA Counsel also recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, PAGA Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 37.) Indeed, a Court may reduce PAGA penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 37.) While PAGA Counsel believe there would be no persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and significantly reduce any award of penalties. (*Id.* at ¶ 38.) This wide range of potential recovery and additional delays and risks of trial provide justification to settle for a reasonable amount of recovery at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in preparation for mediation, the maximum exposure did not comport with the realistic exposure that Defendants faced, as discussed above. (*Id.*)

PAGA Counsel took into account the risk of not being able to proceed on a representative basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 39.) The provisions of the Labor Code triggering PAGA penalties in this case include Labor Code sections 203, 210, 226, 1197.1, and 2802. (*Id.*) However, PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).) Accordingly,

it is entirely possible that even if Plaintiffs would be successful at trial, assuming they are first able to win on the merits regarding their individual claims at arbitration and then defeat the manageability issues presented at litigation by the large number of Aggrieved Employees in this action, Plaintiffs may still be awarded substantially less than what was obtained through the Settlement. (Moon Decl., ¶ 39.)

The Settlement avoids the significant risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 40.) Though the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not completed formal discovery procedures. (*Id.*) Moreover, Plaintiffs would have to proceed with arbitration of her individual claims and win on the merits before proceeding with litigation of the representative PAGA claims. (*Id.*) Preparation for trial and the prospect of appeals in the wake of any summary judgment ruling would remain for the Parties. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial, a lengthy and uncertain process that could result in recovering less than was settled for. (*Id.*)

C. The Requested Attorneys' Fees/Costs Are Reasonable and Should Be Approved

In line with the Settlement, PAGA Counsel request an award of attorneys' fees in an amount of thirty-five percent (35%) of the GSA (i.e., $126,000.00), plus reimbursement for actual litigation costs in the amount of $30,007.22. (Boyamian Decl., Ex. 3.; Otkupman Decl., Ex. 3.; Moon Decl., Ex. 4.)

1. PAGA Counsel Request an Award of Fees Based on the Common Fund Method

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

Here, PAGA Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 58.) The purpose of this approach is to "spread

litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

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

(*Id.* at p. 111.)

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

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

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

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

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

The Settlement at issue is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendants while at the same time rewarding PAGA Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for PAGA Counsel who undertook this matter on a contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 63-66.) Once PAGA Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 64.)

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

As demonstrated by their prior experience in pursuing class and representative actions on behalf of employees, PAGA Counsel possess considerable expertise in litigating class action and representative matters. (*Id*. at ¶¶ 41–53; Boyamian Decl., ¶¶ 2-7; Otkupman Decl., ¶¶ 1-8.) PAGA Counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (Moon Decl., ¶¶ 45, 50, 51; Boyamian Decl., ¶ 2; Otkupman Decl., ¶ 6.) Because it is reasonable to compensate PAGA Counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

PAGA Counsel's experience in wage-and-hour class and representative actions was integral

in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of this Settlement. (Moon Decl., ¶ 55.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 53.) Based on these and other factors, my office has frequently received fee awards of this percentage from the gross recovery for aggrieved employees. (*See* Moon Decl., ¶¶ 45, 50, 51; Boyamian Decl., ¶ 2; Otkupman Decl., ¶ 6.) Thus, the requested fee award is reasonable and fair.

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

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

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re*

Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].) Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id*.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id*. at pp. 556–57.)

Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) 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.) Generally, hours are reasonable if they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.)

Here, Class Counsel's total current lodestar is *no less than* **$185,820.00**, which is based on **213.4 hours** of attorney time at their customary hourly rates.[4] (Moon Decl., ¶ 59; Boyamian Decl., ¶ 18; Otkupman Decl., ¶ 8.) In comparison to the requested amount of **$126,000.00**, the lodestar represents a **multiplier of approximately 0.68** ($126,000 fee request / $185,820 combined lodestar). (*See* (Moon Decl., ¶ 59; Boyamian Decl., ¶ 18; Otkupman Decl., ¶ 8.) In other words, PAGA Counsel's fee request is *less than* their combined lodestar fees. Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation, including to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (Moon

[4] MLG's lodestar is $57,290 based on 68 hours, OLF's lodestar is $46,930 based on 49.4 hours, and BL's lodestar is $81,600 based on 96 hours. (Moon Decl., ¶ 59; Boyamian Decl., ¶ 18; Otkupman Decl., ¶ 8.)

Decl., ¶ 60.) The amount of fees requested under the Settlement is warranted based on the contingent risk that PAGA Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by PAGA Counsel. (*Id.* at ¶ 62.) PAGA Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.* at ¶ 60.) Thus, the request for attorneys' fees is more than reasonable under a lodestar check.

5. PAGA Counsel's Costs Were Actually and Reasonably Incurred

Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(k)(1).) The total litigation costs is $30,007.22, which is below the maximum allocated under the Settlement. (Settlement, ¶ 3.2.1; Boyamian Decl., Ex. 3.; Otkupman Decl., Ex. 3.; Moon Decl., Ex. 4.) As such, the difference will be allocated to the Net Settlement Amount. (Settlement, ¶ 3.2.1.) Plaintiffs respectfully request reimbursement of PAGA Counsel's reasonable litigation costs in full.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant approval of the Settlement and enter the proposed approval order and proposed judgment submitted herewith.

Respectfully submitted,

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