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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JUAN RODRIGUEZ ALVAREZ, individually, and on behalf of all others similarly situated, Plaintiff, v. LATITUDE 36 FOODS, LLC, a limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No.: CVRI2404432 REPRESENTATIVE ACTION **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AGREEMENT** [Filed with the Declaration of Kane Moon, the Declaration of Plaintiff Juan Rodriguez Alvarez, the Declaration of Chris Longley, [Proposed] PAGA Approval Order, and [Proposed] Judgment] PAGA APPROVAL HEARING Date: October 12, 2026 Time: 8:30 a.m. Dept: 1 Judge: Hon. Harold W. Hopp **Reservation ID: 027126275734** Action filed: August 5, 2024 FAC filed: December 17, 2024 Trial date: Not set

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

PLEASE TAKE NOTICE that on October 12, 2026, at 8:30 a.m. in Department 1 of the Riverside County Superior Court, at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, Plaintiff Juan Rodriguez Alvarez ("Plaintiff") will, and hereby 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 Plaintiff and Defendants Latitude 36 Foods, LLC ("Latitude 36") and Fairway Staffing Services, Inc. ("Fairway") (together with Latitude 36, "Defendants");
2. Appointing Moon Law Group, PC as PAGA Counsel;
3. Approving the requested Attorney's Fees of $125,000.00, subject to potential increase under an escalator clause;
4. Approving the requested Attorney's Costs of $16,109.00;
5. Appointing Plaintiff as the PAGA representative;
6. Appointing Atticus Administration as the Administrator and approving $7,100.00 as the Settlement Administration Costs;
7. Approving the scope of the Released Claims;
8. Approving a non-reversionary Gross Settlement Amount of at least $375,000.00, subject to potential increase under an escalator clause;
9. Approving at least $226,791.00 for PAGA penalties as settlement of the Settled Claims, subject to potential increase pursuant to the escalator clause, to be distributed as 65% (at least $147,414.15) to the LWDA and 35% (at least $79,376.85) to Covered Employees;
10. Directing consummation of the Settlement pursuant to its terms and provisions;
11. Entering Judgment and dismissing the above-captioned action with prejudice; and
12. 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.

Respectfully submitted,

DATED: August 12, 2026

MOON LAW GROUP, PC

By:____

Kane Moon
H. Scott Leviant
Jaeyoung Lee

Attorneys for Plaintiff Juan Rodriguez Alvarez

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Juan Rodriguez Alvarez ("Plaintiff") seeks approval of a non-reversionary $375,000.00 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). After a full day of mediation with experienced and neutral mediator Jason Marsili, Esq., and months of extended settlement negotiations, Plaintiff reached a resolution with Defendant Latitude 36 Foods, LLC ("Latitude 36") and Fairway Staffing Services, Inc. ("Fairway") (together with Latitude 36, "Defendants") (together with Plaintiff, the "Parties"). The Parties have executed a PAGA Settlement Agreement ("Settlement"). (Declaration of Kane Moon in Support of Motion for Approval of PAGA Settlement Agreement ["Moon Decl."], ¶ 2; Ex. 1) Pursuant to Labor Code section 2699(s)(2), Plaintiff now files this motion seeking an order approving the proposed Settlement.

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

The proposed Settlement seeks to resolve all alleged claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, et seq. ("PAGA"). (Moon Decl., ¶ 4.) Plaintiff brought this PAGA action on behalf of himself and all hourly-paid or non-exempt employees hired directly by Latitude 36 and all hourly-paid or non-exempt employees of Fairway Staffing Services, Inc. who were assigned to work at Latitude 36, who performed any work in California for Latitude 36 during the applicable PAGA Period. (*Id.*) The "PAGA Period" means either: (A) the period from October 13, 2023 through the date the Court grants approval, for Covered Employees who, based on Latitude 36's records, were employed directly by Latitude 36 ("PAGA Period A"), except as modified pursuant to the escalator clause; and (B) the period from December 14, 2024 through the date the Court grants approval, for Covered Employees who, based on Defendants' records, were employed by Fairway Staffing Services, Inc. and were assigned to work at Latitude 36 ("PAGA Period B"), except as modified pursuant to the escalator clause. (*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 **1,113** Covered Employees will, cumulatively, receive approximately **$226,791.00**, as PAGA penalties. (Moon Decl., ¶ 21.) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendants, but also because an investigation by experienced PAGA Counsel and analysis of discovery revealed minimal identifiable violations, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and current state of the law. For these reasons, as set forth more fully below, Plaintiff respectfully requests the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Latitude 36 is a producer of various packaged foods and operates a packaging factory in Corona, California, and Fairway is a staffing agency. (Moon Decl., ¶ 5.) Plaintiff worked for Latitude 36 as a line worker from approximately 2018 until February 2024. (Declaration of Plaintiff Juan Rodriguez Alvarez in Support of Motion for Approval of PAGA Settlement ["Plaintiff Decl."], ¶ 2.) Throughout his employment, Plaintiff was classified as non-exempt and paid on an hourly basis. (*Id.*) Plaintiff contends that he, and other Covered Employees, were subjected to the same or similar unlawful labor practices during their employment with Latitude 36 or while placed to work at Latitude 36 by Fairway. (Moon Decl., ¶ 5.)

Plaintiff's claims for unpaid wages stem from allegations of Defendants' failure to pay employees for all hours worked, including overtime and premium pay, as a result of Defendants' failure to compensate employees for off-the-clock. (*Id.* at ¶ 6.) Plaintiff's meal and rest period claims are based on allegations that due to the nature of his work and Defendants' employment practices, Covered Employees regularly experienced missed, untimely, or interrupted breaks, and that Defendants failed to provide any premiums for non-compliant rest breaks or all premiums for non-compliant meals. (*Id.*) Plaintiff also alleges that Defendants failed to reimburse employees for all reasonable and necessary business expenses incurred, including expenses incurred for the use of employees' personal cellphone for work purposes. (*Id.*) Plaintiff further alleges he and other employees did not receive all wages owed at the time of termination nor accurate itemized wage statements due to Defendants' failure to pay all wages and premiums. (*Id.*) Accordingly, Plaintiff alleges Defendants are liable for civil penalties under PAGA. (*Id.*)

Because of the foregoing alleged violations of the Labor Code, Plaintiff filed a Class Action Complaint on August 5, 2024, alleging Defendant Latitude 36 systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest breaks, (5) failure to indemnify necessary business expenses, (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 7.) On December 17, 2024, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant Latitude 36 for civil penalties. (*Id.*) On February 4, 2025, Plaintiff dismissed the class claims without prejudice. (*Id.*) For purposes of Settlement, the Parties jointly stipulated to the filing of a Second Amended Complaint ("the Operative Complaint") to add Fairway. (*Id.*)

Pursuant to PAGA, on August 4, 2024, Plaintiff timely submitted a notice of the alleged Labor Code violations to the California Labor and Workforce Development Agency (the "LWDA"), with certified mail service on Latitude 36, and paid the required filing fee. (*Id.* at ¶ 8.) For purposes of Settlement, Plaintiff submitted an additional amended PAGA notice with the LWDA to add Fairway as a purported joint employer. (*Id.*, Ex. 3.) Pursuant to Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the complaints containing the Court-assigned case number. (*Id.* at ¶ 9.) To date, the LWDA has not sought to intervene in this Action. (*Id.*)

Defendants ardently oppose the merits of this case and deny Plaintiff's factual allegations. (*Id.* at ¶ 10.) Defendants argue that all employees were properly paid for all hours worked and that employees are not permitted to work off-the-clock, and that their round policy was neutral on its face and in compliance with California law. (*Id.*) As for the regular rate claim, Defendants argue there was no issue with paying employees the proper regular rate of pay because any additional remuneration was discretionary and thus, not required to be incorporated into the regular rate of pay. (*Id.*) Defendants maintain all employees were provided with the opportunity to take code-compliant meal and rest breaks and that missed breaks, if any, were solely the result of employees' voluntary choice. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendants argue penalties are not warranted because employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) Additionally, Defendants allege their good-faith belief that they paid all wages precludes the imposition of waiting time penalties because Plaintiff would be unable to show Defendants' alleged conduct was done willfully or knowingly. (Moon Decl., ¶ 10;

see, e.g., *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendants claim they did not engage in any unfair business practices and deny liability under PAGA. (Moon Decl., ¶ 10.) Defendants also maintain the claims are not susceptible to proof on a representative basis because of the individualized and varying nature of each employee's experience, making this matter unmanageable. (*Id.*)

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

The Parties engaged in informal discovery exchange prior to mediation. (*Id.* at ¶ 11.) Defendants provided information and documents, which enabled PAGA Counsel to meaningfully investigate Plaintiff's allegations and assess the value of the PAGA claims. (*Id.*) Specifically, Defendants produced Plaintiff's time and corresponding payroll records for approximately 18.8% of all Covered Employees. (*Id.*)

Prior to mediation, PAGA Counsel reviewed and analyzed all the information that Defendants produced, including time and pay records provided by Plaintiff. (*Id.* at ¶ 12.) PAGA Counsel retained an expert to analyze the records and prepare a damage analysis prior to mediation. (*Id.*) The time and pay records analyzed contained 62,953 shifts actually worked (representing approximately 17.12% of all shifts), which allowed the expert to prepare an analysis with a high degree of certainty. (*Id.*) Further, PAGA Counsel investigated the applicable law regarding the claims and defenses asserted in this action. (*Id.*) Accordingly, PAGA Counsel were able to evaluate the probability of success on the merits and Defendants' monetary exposure. (*Id.*) In sum, Plaintiff and his 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>

On March 26, 2026, the Parties participated in a full day of private mediation facilitated by Jason Marsili, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 13.) 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.*) Negotiations were protracted, with extended discussions and instances in which it appeared the Parties would not reach a resolution. (*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 this action 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 ¶ 14.) Plaintiff and his 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, Plaintiff and his Counsel believe the proposed Settlement is in the best interests of Covered Employees and the LWDA. (*Id.*)

D. <u>Key Terms of the Proposed Settlement</u>

The Settlement's key financial and other terms include:

1. <u>Covered Employees</u>: The Covered Employees include all hourly-paid or non-exempt employees hired directly by Latitude 36 and all hourly-paid or non-exempt employees of Fairway Staffing Services, Inc. who were assigned to work at Latitude 36, who performed any work in California for Latitude 36, during the applicable PAGA Period, which means (A) the period from October 13, 2023 through the date the Court grants approval, for Covered Employees who, based on Defendants' records, were employed directly by Latitude 36 ("PAGA Period A"), except as modified pursuant to the escalator clause; and (B) the period from December 14, 2024 through the date the Court grants approval, for Covered Employees who, based on Defendants' records, were employed by Fairway Staffing Services, Inc. and were assigned to work at Latitude 36 ("PAGA Period B"), except as modified pursuant to the escalator clause. (Settlement, ¶¶ 1.5, 1.25.) There are an estimated **1,113 Covered Employees** who worked for an estimated **71,207 PAGA Pay Periods**. (Settlement, ¶ 8; Moon Decl., ¶ 15.)

2. <u>Gross Settlement Amount</u>: Defendants agree to pay a non-reversionary Gross Settlement Amount of $375,000.00, subject to increase pursuant to the escalator clause. (Settlement, ¶¶ 3.1., 8)

3. Estimated Pay Periods: Defendants estimate that there are approximately 71,207 Pay Periods during the PAGA Period. (*Id*. at ¶ 8.) If the total number of aggregate weekly pay periods exceeds 78,327 (approximately 10% greater than 71,207) during the PAGA Periods, Defendants shall have the sole and unilateral option to elect, in writing and prior to the hearing of the settlement approval, either to: (1) increase the Gross Settlement Amount on a pro rata basis in proportion to the increase in aggregate weekly pay periods above 78,327 (e.g., if the total number of workweeks increases by 11%, the Gross Settlement Amount will increase by 1%); or (2) shorten the PAGA Periods such that the total number of aggregate weekly pay periods does not exceed 78,327. (*Id.*)

4. PAGA Counsel Fees Payment and Litigation Expenses Payment: The Settlement provides for payment to PAGA Counsel for PAGA Counsel Fees Payment of not more than 33 1/3% of the Gross Settlement Amount, which is currently estimated to be $125,000.00, and a PAGA Counsel Litigation Expenses Payment of not more than $20,000.00 (*Id.* at ¶ 3.2.1.) To date, PAGA Counsel has incurred a total of $16,109.00 in litigation costs. (Moon Decl., ¶ 17, Ex. 4.)

5. Administrator Expenses Payment: The Settlement provides that Administrator Expenses Payment will be paid from the Gross Settlement Amount, not to exceed $7,100.00. (*Id*. at ¶ 3.2.2.) The Parties propose Atticus Administration ("Atticus") as the third-party settlement administrator ("Administrator"). (*Id.* at ¶ 1.2; Moon Decl., Ex. 5.) The Declaration of Chris Longley on Behalf of Atticus is filed concurrently herewith.

6. Tax Allocation: All settlement payments to Covered Employees will be treated as miscellaneous income for which an IRS form 1099 will be issued. (*Id*. at ¶ 3.2.3.2.) The Administrator, if required, and not Defendants, will issue the appropriate tax forms for all payments issued under this Settlement. (*Id*.)

7. PAGA Penalties Fund: After deducting the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and Administrator Expenses Payment in the amounts approved by the Court, the remainder will be allocated as the PAGA Penalties Fund and distributed as 65% to the LWDA and 35% to the Covered Employees. (*Id.* at ¶¶ 1.17, 1.24., 3.2.3.) Accordingly,

the PAGA Payment is estimated to be approximately **$226,791.00**,[1] which will be distributed 65% (i.e., 65% * $226,791.00 = **$147,414.15**) to the LWDA and 35% (i.e., 35% * $226,791.00 = **$79,376.85**) to Covered Employees pursuant to PAGA law governing Plaintiff's claims. It is estimated that the **1,113 Covered Employees** will receive an average individual settlement payment of **$71.32 each** ($79,376.85 / 1,113), with a corresponding Pay Period Value of **$1.01 per Pay Period** ($79,376.85 / 78,327).

8. PAGA Notice to Covered Employees: The Administrator will issue each Covered Employee one check for their share of the PAGA Penalties Fund along with an explanatory letter, attached as **Exhibit B** of the Settlement. (*Id*. at ¶ 1.23.)

9. Funding and Distribution Timing: Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) calendar days after the Effective Date. (*Id*. at ¶ 4.1.) Within fourteen (14) calendar days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fee Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fee Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. (*Id.* at ¶ 4.2.)

10. Uncashed Funds: Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id.* at ¶ 4.2.1.) The Administrator must conduct a Covered Employee Address Search for all Covered Employees whose checks are returned undelivered without USPS forwarding address. (*Id.* ¶ 4.2.2.) Within seven (7) calendar days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Covered Employee

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[1] The estimated PAGA Penalties Fund was calculated by deducting the following amounts from the Gross Settlement Amount ($375,000.00): $125,000.00 for the PAGA Counsel Fees Payment, $16,109.00 for the PAGA Counsel Litigation Expenses Payment, and $7,100.00 for the Administrator Expenses Payment. (*See* Settlement, ¶¶ 3.1, 3.2, 3.2.1-3.2.3.2.)

The estimated amount for the PAGA Penalties provided here ($226,791.00) is greater than the estimated amount provided at paragraph 3.2.3 of the Settlement ($222,900.00) because the estimate here accounts for the actual litigation costs incurred by Plaintiff's Counsel.

Address Search. (*Id.*) The Administrator need not take further steps to deliver checks to Covered Employees whose re-mailed checks are returned as undelivered. (*Id.*) The Administrator shall promptly send a replacement check to any Covered Employee whose original check was lost or misplaced, requested by the Covered Employee prior to the void date. (*Id.*) For any Covered Employees whose Individual PAGA Payment checks are uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Covered Employee who did not cash the check. (*Id.* at ¶ 4.2.3.) The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Covered Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. (*Id.* at ¶ 4.2.4.)

11. Released Claims: Effective on the date when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows: (*Id.* at ¶ 5.)

a. Release by Plaintiff, on behalf of Plaintiff and the State of California: Plaintiff, on behalf of himself and the State of California, releases all claims for civil penalties under the California Private Attorneys General Act ("PAGA") that were described in Plaintiff's pre-filing PAGA Notice and the Amended PAGA Notice to the LWDA and alleged in the Operative Complaint. (*Id.* at ¶ 5.1.) This specifically includes, but is not limited to, civil penalties under PAGA for Labor Code §§ 201, 202, 203, 204, 210, 216, 226, et seq., 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 246, 247.5, 245-248.5, 510, 512, 516, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the related IWC Wage Order, and Business & Professions Code §§ 17200, et seq., the federal Fair Labor Standards Act, claims based on alleged violations of the aforementioned Labor Code and Wage Order provisions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Operative Complaint, including any allegation that Defendant: (1) failed to pay minimum wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to provide sick pay; (6) failed to indemnify necessary business expenses; (7) failed to timely pay final wages; (8) failed to provide accurate itemized wage statements; and (9) engaged in unfair business practices, as well as interest, fees, and costs associated therewith. (*Id.*)

b. Additional Release by Plaintiff as an Individual: Plaintiff and Plaintiff's respective former and present representatives, agents, attorneys (including PAGA Counsel), administrators, successors and assigns generally, release the Released Parties from all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities that were asserted in the Action, or that arise from or could have been asserted in the Action, based on any of the facts alleged in any and all of the complaints in the Action and/or any PAGA Notices or Amended PAGA Notices to the LWDA related to this Action, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law (the "Individual Claims Release"). (*Id.* at ¶ 5.2.) The Individual Claims Release specifically includes, but is not limited to Labor Code §§ 201, 202, 203, 204, 210, 216, 226, et seq., 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 246, 247.5, 245-248.5, 510, 512, 516, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the related IWC Wage Order, and Business & Professions Code §§ 17200, et seq., the federal Fair Labor Standards Act, claims based on alleged violations of the aforementioned Labor Code and Wage Order provisions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including any allegation that Defendant: (1) failed to pay minimum wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to provide sick pay; (6) failed to indemnify necessary business expenses; (7) failed to timely pay final wages; (8) failed to provide accurate itemized wage statements; and (9) engaged in unfair business practices, as well as interest, fees, and costs associated therewith. (*Id.*)

c. Notwithstanding the foregoing, the Release by Plaintiff as an Individual does not include, and expressly excludes, any claims arising under the Fair Employment and Housing Act (Government Code section 12900 et seq.), including but not limited to claims for discrimination, harassment, retaliation, wrongful termination, failure to accommodate, failure to engage in the interactive process, or any claims asserted or that may be asserted in Plaintiff's separate FEHA action against Defendant. Release by Covered Employees: All Covered 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 Amended PAGA Notice. (*Id.* at ¶ 5.3.) This specifically includes, but is not limited to Labor Code §§ 201, 202, 203, 204, 210, 216, 226, et seq., 226(a), 226(e), 226.3, 226.7, 227.3, 233, 234, 246, 247.5, 245-248.5, 510, 512, 516, 558, 1174, 1174(d), 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the related IWC Wage Order, and Business & Professions Code §§ 17200, et seq., the federal Fair Labor Standards Act, claims based on alleged violations of the aforementioned Labor Code and Wage Order provisions and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including any allegation that Defendant: (1) failed to pay minimum wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to provide sick pay; (6) failed to indemnify necessary business expenses; (7) failed to timely pay final wages; (8) failed to provide accurate itemized wage statements; and (9) engaged in unfair business practices, as well as interest, fees, and costs associated therewith. (*Id.*)

d. <u>Release of Additional Fees and Expenses by PAGA Counsel</u>: Other than those fees and expenses awarded by the Court pursuant to this Settlement, PAGA Counsel release, on behalf of their present and former attorneys, employees, agents, successors and assigns, the Released Parties from all claims for attorney fees and expenses incurred in connection with the Operative Complaint and the PAGA Notice and Amended PAGA Notice. PAGA Counsel will receive only those fees and expenses awarded by the Court pursuant to this Settlement. (*Id.* at ¶ 5.4.)

III. <u>DISCUSSION</u>

A. <u>Availability of Civil Penalties</u>

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, Plaintiff submitted notices of the Labor Code violations at issue to the LWDA, and they exhausted administrative remedies without the LWDA noticing any intent to investigate the claims. (Moon Decl., ¶ 9.) Accordingly, Plaintiff is duly authorized to act as a private attorney general pursuant to PAGA. (*Id.*)

B. <u>The Settlement Merits Approval</u>

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 $375,000.00 Gross Settlement Amount amounts to genuine and meaningful relief "consistent with the underlying purpose of the statute to benefit the public." (Moon Decl., ¶ 37; *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, Covered 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., ¶ 37.)

The Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes - deterrence and punishment, on the one hand, and providing Covered Employees with genuine and meaningful relief on the other. (Moon Decl., ¶ 38.) As a result of this litigation, Defendants had to hire legal counsel, engage in employee-wide discovery, and participate in mediation. (*Id.*) Assuming approval is granted, Defendants will also have to pay civil penalties pursuant to PAGA. (*Id.*) Not including its own attorneys' fees and costs, Defendants will pay at least $375,000.00 to resolve this matter-of which approximately $226,791.00 is allocated toward PAGA penalties and will be distributed as 65% to the LWDA and 35% to Covered Employees, in compliance with PAGA law governing the claims in this Action. (*See* Settlement, ¶ 3.2.3.) This amount represents roughly **32%** of ($226,791.00 / $712,070.00) of the realistic exposure for the claims. (Moon Decl., ¶ 38.) Additionally, the release obtained under the Settlement does not preclude Covered Employees from pursuing any individual (non-PAGA) claims they may have against Defendants or the other Released Parties. (Settlement at ¶ 5.3.)

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., ¶ 26.) 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 policies and time/pay data for a majority of Covered Employees. (*Id.* at ¶¶ 13–14.) PAGA

Counsel used the foregoing discovery and investigation to prepare for mediation and, with the assistance of a statistics expert, assessed the probability of success on the merits and Defendants' monetary exposure, discussed the strengths and weaknesses of the claims and defenses in depth at mediation and months of continued negotiations, and ultimately negotiated the resulting Settlement. (*Id.* at ¶¶ 15–25.)

Based on PAGA Counsel's analysis of the arguments and information provided by Defendants, on an expert analysis of the time and pay records, and on information from Plaintiff, PAGA Counsel evaluated Defendants' both maximum (*optimistic*) and risk-adjusted (*realistic*) potential exposure in preparation for mediation. (*Id.* at ¶ 26.) Although the expert's analysis revealed that the time and pay records supported several violations by Defendants, those identifiable violations were primarily limited to the unpaid overtime, regular rate, and meal break claims. (*Id.*) The records themselves did not provide strong support for the off-the-clock work, rest period, and expense reimbursement claims, and derivative penalties for those claims, as these claims are predominantly testimony based. (*Id.*) In other words, Plaintiff's analysis revealed that certain claims were not as strong as originally believed. (*Id.*)

Because Defendants did not require employees to record rest periods, nor is Defendants required to record rest periods, there are no records to establish the rest period claim on the merits. (*Id.* at ¶ 27.) Additionally, there are no records to establish the off-the-clock work claim and reimbursement claim on the merits. (*Id.*) Rather, proof of these claims would need to be supported by declarations from Covered Employees regarding missed rest periods, what business expenses were incurred, and off-the-clock work as the records themselves cannot demonstrate what breaks were missed, when, and why, and they cannot demonstrate the time, if any, Covered Employees spent working off the clock. (*Id.*)

Indeed, the exposure figures that were calculated for mediation were based on assumed high violation rates that would not likely be demonstrated at trial, as they assume either the participation of all Covered Employees (which would be difficult given the particularly large size of this group), or alternatively, the use of surveys or statistical data as a surrogate (which would still require the participation of a majority of Covered Employees to establish a sound representation of all non-exempt employees). (*Id.* at ¶ 28.) The reality is that many, if not all, employees would be unwilling to participate due to fear of retaliation. (*Id.*) However, even assuming those employees would be willing to participate, obtaining such declarations would potentially reveal that each Covered Employee had a different experience. (*Id.*) The individualized nature of their employment experience and the numerosity of employees affected present significant risk with manageability and proof on the merits. (*Id.*)

Even as to the meal period and regular rate claims our analysis found that Defendants' exposure is less than initially believed. (*Id.* at ¶ 29.)

As to Plaintiff's meal period claim, Plaintiff alleges that Defendants' meal period practices resulted in shortened meal periods even when the time records did not show a facial violation. (*Id.* at ¶ 30.) According to Plaintiff, employees were required to line up to clock out at the start of their 30-minute meal periods and then end their meal periods early to line up to clock back in, so that they could return on time and avoid demerits. (*Id.*) Plaintiff contends this process reduced the amount of duty-free mealtime actually available to employees. (*Id.*) Defendants dispute that these practices resulted in meal period violations and maintains that employees were provided compliant meal periods. (*Id.*) After a review of the records, Plaintiff's expert estimated a 68.7% violation rate among all meal periods. (*Id.*) However, Defendants argue that it provided all Covered Employees with the opportunity to take a compliant meal break and to the extent that there is any violation, it was the result of the employee voluntarily ending their meal break early. (*Id.*)

With respect to the regular rate claim, Plaintiff alleges that Defendants failed to incorporate certain bonuses into the regular rate of pay for purposes of calculating overtime, sick pay, and meal period premiums. (*Id.* at ¶ 31.) Plaintiff's expert analyzed the time and pay records and determined that 59.1% of pay periods included both overtime and additional compensation, 7.4% of pay periods included sick pay and additional compensation, and 1.8% of pay periods included meal break premiums and additional compensation. (*Id.*) However, Defendants argue that they did not fail to incorporate any non-discretionary bonuses into the regular rate of pay and that such additional payments were discretionary payments. (*Id.*)

The likelihood that Defendants could assert viable legal defenses would likely further reduce its overall exposure. (*Id.* at ¶ 32.) For example, the individualized and testimony-intensive nature of the claims could bar manageability of this representative action or otherwise significantly reduce Defendants' overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic as it presumes Plaintiff would be able to stack the penalties, although penalty stacking is not expressly permitted by PAGA. (*Id.* at ¶ 33.) 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).) Moreover, PAGA Counsel believe it would be unrealistic to expect the Court would award the full (penalty-stacked) exposure given the discretionary nature of awarding penalties and given Defendants' defenses, including that any failure to pay premiums or regular rate wages, was not knowingly or willfully done, and additionally, to the extent employees received wage statements that were allegedly inaccurate, employees suffered no actual resulting damage or harm. (Moon Decl., ¶ 33.) Moreover, awarding the full penalties amount would likely raise Due Process concerns, especially considering the records demonstrate that there are low violation rates for the underlying claims. (*Id.*) For the foregoing reasons, the *realistic* exposure is thus far below the *optimistic* claim by claim estimate. (*Id.* at ¶ 34.)

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 71,207 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 35.) Accordingly, PAGA Counsel estimate Defendants' maximum PAGA exposure to be **$7,120,700.00** ($100.00 x 71,207), if all allegations are proven. (*Id.*) The Gross Settlement Amount $375,000.00 represents approximately 5% of the maximum exposure figure ($375,000.00 / $7,120,700.00). (*Id.*) However, based on the discovery, Defendants' arguments at mediation, an understanding that the claims are heavily dependent on the unlikely participation by Covered Employees and their varying employment experience, and other important considerations discussed above, it is reasonable to assume a violation occurred only in 10% of all pay periods, which results in a realistic (risk-adjusted) exposure of **$712,070.00** ($7,120,700.00 * 10%). (*Id.*) Based on this, the Parties settled on the Gross Settlement value of $375,000.00. (*Id.*) The Gross Settlement Amount of $375,000.00 represents approximately 53% of the realistic exposure ($375,000.00 / $712,070.00). (*Id.*)

The proposed Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery. (*Id.* at ¶ 36.) 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 Gross Settlement Amount of $375,000.00 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., ¶ 39.) 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 Covered Employees and the State of California. (*Id.*)

Although PAGA Counsel believe there is merit to Plaintiff's allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 40.) PAGA Counsel also recognize that proving the amounts of penalties owed to each Covered 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 ¶ 41.) 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., ¶ 41.) 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 ¶ 42.) 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 ¶ 43.) 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. (*Id.*) Accordingly, it is entirely possible that even if Plaintiff would be successful at trial, assuming he is first able to win on the merits regarding his individual claims at arbitration and then defeat the manageability issues presented at litigation by the large number of Covered Employees in this action, Plaintiff may still be awarded substantially less than what was obtained through the Settlement. (*Id.*)

The Settlement avoids the significant risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 44.) Moreover, Plaintiff would have to proceed with arbitration of his 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. <u>The Requested Attorneys' Fees/Costs are Reasonable and Should be Approved</u>

In line with the Settlement, PAGA Counsel request an award of attorneys' fees in an amount of one-third of the Gross Settlement Amount (i.e., no less than $125,000.00, subject to potential increase under the escalator clause), plus reimbursement for actual litigation costs in the amount of $16,109.00. (*See* Settlement, ¶ 3.2.1.)

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 Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund." (*Id.* at p 34.)

Here, PAGA Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 61.) 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 his actual attorneys' fees, even if those fees were larger than the total recovery for the Covered 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., ¶ 68.) Once PAGA Counsel undertook this litigation on behalf of the Covered 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 ¶ 69.)

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 ¶¶ 45-62.) 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 Covered employees in California. (Moon Decl., ¶¶ 45-62.) 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., ¶ 64.) 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 ¶ 63.) Based on these and other factors, PAGA Counsel have frequently received fee awards of this percentage from the gross recovery for Covered employees. (*See id.* at ¶¶ 49, 51, 59.) 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 Plaintiff 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, PAGA Counsel combined current lodestar is *no less than* **$66,002.50** which is based on *no less than* **85.4** of attorney time spent to-date at their customary hourly rates. (*See* Moon Decl., ¶ 69.) Thus, in comparison to this lodestar, the total fee request of $125,000.00 represents a multiplier of **1.89** ($125,000.00 / $66,002.50). (*See* Moon Decl., ¶ 72(c).) Further, the foregoing lodestar does not reflect additional work 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 Decl., ¶ 70.) 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 Covered Employees and State of California as a result of the Settlement, and the skill displayed by PAGA Counsel. (*Id.* at ¶ 72.) PAGA Counsel also bear the risk of taking whatever actions are necessary if Defendants fail to pay. (*Id.* at ¶ 70.) 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).) Here, PAGA Counsel seek reimbursement in the total amount of $16,109.00 for expenses that were actually and reasonably incurred in this litigation. (Moon Decl., ¶ 78, Ex. 4.) Moreover, this amount is below the maximum allocation under the Settlement and thus, the remainder will be added to the PAGA Payment (Settlement, ¶ 3.2.1.) Thus, costs should be reimbursed in full.

IV. CONCLUSION

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

Respectfully submitted,

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MOON LAW GROUP, PC

By:__________________________________

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