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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

YUNUEN GUTIERREZ BAUTISTA, as individual, on behalf of herself, and all persons similarly situated,

Plaintiff,

v.

SPRING FERTILITY MANAGEMENT, LLC, a Delaware limited liability company, SPRING FERTILITY HOLDINGS, LLC, a Delaware limited liability company, SPRING FERTILITY MANAGEMENT OAKLAND, LLC, a Delaware limited liability company, SPRING FERTILITY MANAGEMENT SILICON VALLEY LLC, a Delaware limited liability company, SPRING FERTILITY MASTER MSO LLC, a Delaware limited liability company, NAM D. TRAN, an individual; PETER KLATSKY, an individual, KIMBERLY KWOK, an individual, CHAU DANG, an Individual, TANYA LY, an Individual; and DOES 1 and 10 inclusive;

Defendants.

CASE NO.: CGC-24-619940

Assigned for all purposes to the Honorable A. Marisa Chun, Department 302

CLASS & REPRESENTATIVE ACTION

PLAINTIFF YUNUEN GUTIERREZ BAUTISTA'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT AND APPLICATION FOR ATTORNEYS' FEES, COSTS, ADMINISTRATION COSTS, AND PAGA REPRESENTATIVE SERVICE PAYMENTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Complaint Filed: November 20, 2024
FAC Filed: October 14, 2026

Date: December 04, 2026
Time: 9:00 A.M.
Dept: 302

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 04, 2026 at 9:00 A.M., or as soon thereafter as the matter may be heard in Department 302 of the above-entitled Court, located at 400 McAllister Street, San Francisco, CA 94102, Plaintiff Yunuen Gutierrez Bautista ("Plaintiff") will and hereby does move the Court for an Order Granting Plaintiff Yunuen Gutierrez Bautista's Unopposed Motion for Court Approval of PAGA Settlement. The Parties' proposed Order is lodged concurrently herewith.

This notice and motion are made pursuant to Labor Code section 2699 *et. seq.* and on the grounds that the proposed PAGA settlement appears to be fair, reasonable, and adequate. Plaintiff understands the motion is unopposed by Defendants.

This motion is also based upon this notice; the Memorandum of Points and Authorities submitted herewith; the Declarations and exhibits filed concurrently herewith; the other records, pleadings, and papers filed in this action; and upon such other documentary and oral evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: November 03, 2026

CONSUMER AND EMPLOYMENT LAWYERS

By:_____

R. Craig Clark
Alicja A. Urtnowski

Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION……1

II. FACTUAL AND PROCEDURAL BACKGROUND……2

A. Plaintiff's Claims ……2

1. Plaintiff's Employment with Defendants……2

2. Plaintiff's PAGA Notice……..3

B. Discovery, Investigation, and Settlement Negotiations ……4

III. KEY SETTLEMENT TERMS……5

IV. LEGAL ARGUMENT……...8

A. Standards for Approval of A PAGA Settlement ……8

B. The Settlement Satisfies the Criteria for Approval……..9

1. The Factors Giving Rise to a Presumption of Fairness Exist……10

2. The Relative Strength of the PAGA Claim and the Realistic Range of Outcomes in the Litigation Strongly Favor Approval of Settlement……10

3. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement……12

4. The Benefit Conferred by the Settlement Balance in Favor of Approval……14

5. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement……..15

6. The Extent of Discovery Completed and Stage of the Proceedings Favor Approval of the Settlement…….……15

C. The Requested Attorney's Fees and Costs Are Reasonable and Should Be Approved. 16

D. Plaintiff's PAGA Representative Service Payments Are Reasonable and Should Be Approved ……18

V. CONCLUSION……....19

TABLE OF AUTHORITIES

Cases

7-Eleven Owner for Fair Franchising v. Southland Corp., 85 Cal.App.4th 1135 (2000) 11
Adams v. Inter-Con Sec. Sys., Inc., 2007 WL 3225466 10
Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157 (2008) 11
Arias v. Super. Ct., 46 Cal.App.4th 969 (2009) 6
Baumann v. Chase Inv. Servs. Corp., 747 F.3d 1117 8
Bravo v. Gale Triangle, Inc., 2017 WL 708766 1
Bravo v. Gale Triangle, Inc., 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) 14
C.f. Tseng v. Nordstrom, Inc., 2016 WL 7403288, at *4 (C.D. Cal. Dec. 19, 2016 14
Carrington v. Starbucks, 30 Cal.App.5th 504 (2018) 12
Clark v. Am. Residential Servs., LLC, 175 Cal.App.4th 785 (2009) 18
Culley v. Lincare, Inc., 236 F.Supp.3d 1184 (E.D. Cal. 2017) 11
Durham v. Cont'l Cent. Credit, Inc., 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011) 15
Ferreri v. Bask Technology, Inc., 2016 WL 6833927 9
Franco v. Ruiz Food Prods., Inc., 2012 WL 5941801 ..... 1, 14
Glass v. UBS Fin. Servs., 2007 WL 221862 (N.D. Cal. Jan. 26, 2007) 19
Gomez v. Lincare, Inc., 173 Cal.App.4th 508 (2009) 13
Guilbaud v. Sprint Nextel Corp., 2016 WL 7826649 (N.D. Cal. Apr. 15, 2016) 18
Hensley v. Eckerhart, 461 U.S. 424 (1983) 17
In re Ampicillian Antitrust Litigation (D.D.C. 1981) 526 F. Supp. 494 17
In re Pacific Enters. Sec. Litig., 47 F.3d 373 (9th Cir. 1995) 15
In re TD Ameritrade Account Holder Litig., 2011 WL 4079226 ..... 8, 15
Lampe v. Queen of the Valley Medical Center, 19 Cal.App.5th 832 (2018) 13
Maldonado v. Epsilon Plastics, Inc., 22 Cal.App.5th 1308 (2018) 13
Mendez v. Tween Brands, Inc., 2010 WL 2650571 9
Murillo v. Pac. Gas & Elec. Co., 266 F.R.D. 468, 479 (E.D. Cal. 2010 10
Naranjo v. Spectrum, 40 Cal.App.5th 444 (2019) 13
Nordstrom Com'n Cases, 186 Cal.App.4th 576, 589 (2010) 12
Ochoa-Hernandez v. CJADERS Foods, Inc., 2010 WL 1340777 9
Officers for Justice v. Civ. Serv. Com'n of City and County of San Francisco, 688 F.2d 615 8
Ruch v. AM Retail Grp., Inc., 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) 14

Schiller v. David's Bridal, Inc., 2012 WL 2117001, at *14 (E.D. Cal. June 11, 2012) 14
Serrano v. Aerotek, Inc., 21 Cal.App.5th 773 (2018) 13
Serrano v. Priest, 20 Cal.3d 25 (1977) 17
Slavkov v. Fast Water Heater Partners I, LP, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) 14
Tseng v. Nordstrom, Inc., 2016 WL 7403288 (C.D. Cal. Dec. 19, 2016) 14
Van Gemert v. Boeing Co. (S.D.N.Y. 1981) 516 F. Supp. 412 17
Van Kempen v. Matheson Tri-Gas, Inc., 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) 14
Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 490 (E.D. Cal. 2010) 14
Viceral v. Minstras Group, Inc., 2016 WL 5907869 9
Villacres v. ABM Indus. Inc., 189 Cal. App. 4th 562 (2010) 11, 16
Whiteway v. FedEx Kinkos Office & Print Servs., Inc., 2007 WL 4531783, at *3 (N.D. Cal. Dec. 17, 2007) 18
Williams v. Super. Ct., 221 Cal.App.4th 1353 (2013) 13

Statutes

2003 Cal. Legis. Serv. Ch. 906 § 1 16
Cal. Code Civ. Proc. §340 3
Lab. Code §2699 ..... 8, 14

I. INTRODUCTION

Plaintiff Yunuen Gutierrez Bautista ("Plaintiff"), on behalf of herself, and as proxy/agent for the State of California and the California Labor and Workforce Development Agency ("LWDA"), seeks Court approval of the $70,000.00 Private Attorneys General Act ("PAGA") settlement with Defendants Spring Fertility Management LLC, Spring Fertility Holdings, LLC, Spring Fertility Management Oakland LLC, Spring Fertility Management Silicon Valley LLC, Spring Fertility Master MSO LLC, Nam D. Tran, Peter Klatsky, Kimberly Kwok, Chau Dang, and Tanya Ly (collectively, "Defendants"), as required by Labor Code section 2699, subdivision (l)(2).

Discussions and negotiations between counsel for the Parties, informal disclosures and discovery, a full-day mediation, as well as the investigation and evaluation of the claims, have permitted both sides to assess the merits of the claims and the defenses to those claims. The Parties agree that the above-described discovery, investigation, and evaluation are sufficient to assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis. The Parties have, therefore, concluded it is desirable that the action be settled, upon such terms and conditions as set forth in the Settlement Agreement, and request that this Court approve the settlement.

The settlement includes Defendants' approximated (as of the time of the mediation of this matter) 196 aggrieved employees represented by the named Plaintiff ("PAGA Settlement Members") and resolves the PAGA claims alleged in this action. The PAGA period is from September 17, 2025, through the date the Court enters the Order approving the PAGA settlement. Settlement Agreement[1], ¶ 1.20.

The total settlement payment of $70,000 is a significant recovery, well above other penalty awards approved as reasonable in California, which typically range between $7,500 and $15,000. *Franco v. Ruiz Food Prods., Inc*., 2012 WL 5941801, at *14 (E.D. Cal. 2012); *Bravo v. Gale Triangle, Inc*., 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) ($10,000 as PAGA penalties found reasonable).

The settlement should be approved by the Court because it is a fair and reasonable result for the PAGA Settlement Members given the known facts and circumstances, including, but not limited to, the

[1] The Settlement Agreement is attached as Exhibit 1 to the Declaration of R. Craig Clark ("Clark Decl."), filed concurrently with this motion.

defenses asserted in this action, and the risk, expense, and uncertainty of continued litigation, trial, and the possibility of appeals. Defendants deny any failure to comply with the laws identified in this matter and deny any and all liability for the causes of action alleged.

Plaintiff seeks entry of an order approving the proposed Settlement of this PAGA Action, and directing disbursement of the total settlement amount as provided in the Settlement Agreement. Concurrently with filing this motion, Plaintiffs submitted the Settlement Agreement to the LWDA. Clark Decl. ¶ 44.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

1. Plaintiff's Employment with Defendants

Plaintiff has been employed by Defendants Spring Fertility since approximately August 2024. Plaintiff's job duties included patient care, assisting medical procedures, cleaning and disinfecting exam rooms, taking vitals, assisting and rooming patients, completing blood work, stocking, obtaining and rooming patients, and completing various medical forms. Clark Decl., ¶ 2.

Plaintiff alleges that she and other non-exempt employees of Defendants were not properly compensated for all time worked. Plaintiff alleges that Defendants required or permitted non-exempt employees to perform work "off the clock," and did not pay proper minimum and/or overtime wages. *Id*. Plaintiff further alleges that Defendants failed to provide legally compliant meal and rest periods and, instead, automatically deducted meal periods from employees' time records even when no compliant meal period was provided. *Id*.

Plaintiff brought the instant PAGA case alleging, among other things: (1) failure to timely pay minimum wages and overtime/ double time compensation; (2) failure to provide legally compliant meal periods or compensation in lieu thereof; (3) failure to provide legally compliant rest periods or compensation in lieu thereof; (4) failure to pay all wages owed upon separation; (5) failure to provide paid sick leave and written notice of the amount of sick leave available; (6) failure to furnish accurate itemized wage statements; (7) failure to maintain accurate records; (8) failure to provide copies of signed documents; (9) failure to reimburse for necessary work expenses; and (10) failure to pay all wages due

and owing. Clark Decl., ¶ 3-8. Defendants deny these claims.

2. Plaintiff's PAGA Notice

In accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 et seq.), on September 13, 2024, predecessor Plaintiff Cantu gave written notice to the California Labor and Workforce Development Agency of Defendants' alleged violations of the Labor Code. Clark Decl., ¶ 3. Copies of the written notices were sent by certified mail to Defendants. *Id*. The LWDA did not respond to the PAGA Notices during the statutory 65-day time period. Thus, on November 20, 2024, Cantu filed this instant PAGA action in San Francisco County Superior Court, establishing case no. CGC-24-619940. *Id*.

Following motion practice, on February 18, 2025, the Court stayed this Action in light of the overlapping *De Alba* cases in Alameda County Superior Court Case Nos. 23CV034590 and 23CV048946. Clark Decl., ¶ 4.

On February 9, 2026, Plaintiff sent an Amended Notice of Labor Code Violations to the LWDA, on behalf Isella Cantu and Plaintiff Bautista. The Amended PAGA Notice expressly states that it relates back to the original September 13, 2024 notice, adds Plaintiff Bautista, and updates the facts and theories supporting the alleged Labor Code violations. The LWDA did not respond to the notice within the statutory 65-day period. Clark Decl., ¶ 5.

On June 17, 2026, the predecessor plaintiff Cantu filed a Motion to Lift Stay and for Leave to File a First Amended Complaint. The Motion sought to lift the stay on the ground that the *De Alba* action had reached final resolution following final approval of the class action settlement on March 25, 2026, and entry of final judgment on April 20, 2026, eliminating the basis for the stay. It also sought leave to add Yunuen Bautista as a named plaintiff to assert the same claims against Defendants based on alleged ongoing Labor Code violations. Clark Decl., ¶ 6.

Accordingly, on September 15, 2026, the Court granted the motion to lift stay, lifted the stay in this Action and granted leave to file a First Amended Complaint adding Plaintiff Yunuen Gutierrez Baustista as a named Plaintiff. Clark Decl., ¶ 7.

Per the Court's Order, on October 14, 2026, Plaintiff Bautista filed the Operative Complaint,

FAC, which attaches the respective PAGA Notice(s). The FAC alleges a claim for violation of the PAGA statute predication on Labor Sections 200, 201, 202, 203, 204, 206, 210, 212, 213, 216, 218.5, 221, 223, 225.5, 226, 226(a), 226.3, 226.7, 227.3, 246, 256, 432, 510, 512, 512(a), 551, 552, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2804, 2810.5, 2698, et seq., and the applicable IWC wage orders, to which PAGA applies under Labor Code section 2699.5. Clark Decl., ¶ 8.

B. Discovery, Investigation, and Settlement Negotiations

The Parties engaged in an extensive discovery and investigation into the facts and legal issues this Action. My office conducted interviews with numerous aggrieved employees regarding the claims alleged in this case. My office evaluated Plaintiff's PAGA claims by requesting and reviewing various information and documents from Defendants. The Parties agreed to exchange information and documents on informal basis in order to efficiently assess the claims at issue. Clark Decl., ¶ 9. The Parties also agreed to attend mediation in hopes of resolving this matter in a timely and efficient manner. *Id*. In preparation for mediation, the Parties agreed to the exchange of information, data, and documents. *Id*. Pursuant to this agreement, Defendants produced, among other things, Plaintiff's personnel files; written policies and employee handbooks; job descriptions for non-exempt positions; data regarding the number of current and former non-exempt employees during the PAGA Period; the number of PAGA Pay Periods worked; and a twenty percent (20%) representative sampling of time and payroll records for non-exempt employees during the PAGA Period. *Id*. Plaintiff was able to conduct a detailed analysis of the merits of their claims based on the documents and information produced by Defendants and meaningfully evaluate the case prior to and in preparation for mediation. *Id*.

On September 15, 2026, the parties mediated this case before Michael D. Young, Esq., a neutral mediator experienced in representative wage and hour matters. Clark Decl., ¶ 10. Prior to mediation, the Parties examined the documents and data exchanged for mediation purposes and performed analyses and calculations of potential PAGA penalties. *Id*.

During the mediation, the Parties accepted the Mediator's proposal. Thereafter, the Parties engaged in further negotiations regarding the specific terms of the settlement, ultimately finalizing and executing a written settlement agreement. See Clark Decl., ¶ 11, Exh. 1.

Based on Plaintiff's counsel's experience in litigating similar representative wage and hour claims and the amount of information, data, and documents reviewed, Plaintiff's counsel was able to sufficiently determine the potential value and strength of the PAGA claim for purposes of this settlement. *Id*.

III. KEY SETTLEMENT TERMS

1. The total settlement amount of $70,000 includes: (i) all payments to the LWDA and PAGA Settlement Members (Aggrieved Employees), (ii) settlement administration fees and costs, (iii) attorney's fees and litigation costs, and (iv) the Representative Service Payment to the Representative Plaintiff. Settlement Agreement, ¶ 3.

2. The Net PAGA Settlement Amount will be allocated as follows: Thirty-five percent (35%) of the Net PAGA Settlement Amount will be paid to all Aggrieved Employees on a pro-rata basis ((a) by dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period; and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.), and sixty-five percent (65%) shall be paid to the LWDA, as required under Labor Code section 2699(i). Settlement Agreement, ¶ 3.2.4.

3. In exchange for the above consideration, effective upon Defendants' full funding of the Gross Settlement Amount following the Effective Date, Plaintiff, acting on behalf of the State of California and all Aggrieved Employees, releases the Released Parties from all claims for civil penalties under PAGA that were alleged or reasonably could have been alleged based on the facts, circumstances, policies, practices, and Labor Code violations alleged in the Action or the PAGA Notice during the PAGA Period, including the Labor Code violations and applicable provisions of IWC Wage Order No. 4-2001 identified in the Agreement. The release binds all Aggrieved Employees regardless of whether they participate in, object to, cash, or receive an Individual PAGA Payment, and no Aggrieved Employee

may opt out. The release does not extinguish any Aggrieved Employee's individual claims for wages, damages, restitution, statutory penalties payable directly to that employee, or other individual relief, except Plaintiff's individual claims expressly released under Paragraph 5.1. Settlement Agreement, ¶¶ 5, 5.1–5.2.; *see also Arias v. Superior Court,* 46 Cal.4th 969, 986 (2009) ("with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act…").

4. The Settlement Administration Cost, which is to be paid from the total settlement amount, is not to exceed $4,700. Settlement Agreement ¶ 3.2.3. See Also Declaration of Pat McFadden ¶ 8. The parties selected Atticus Administration LLC. (Administrator), an experienced third-party administrator, to administer this Settlement. *Id*., ¶ 7.1.

5. Plaintiff seeks Court approval of PAGA Representative Service Award of $5,000, in recognition of her time, efforts, and risks undertaken in prosecuting this PAGA Action. These service payment awards are in addition to her rights to payment under the Settlement Agreement. The Service Payment Award shall be paid from the gross total settlement amount. *Id*., ¶ 3.2.2.

6. Plaintiff's counsel seeks an award of attorneys' fees of one third (33.3%) of the gross total settlement amount, or $23,333.33, in addition to allowable costs not to exceed $25,000, both of which Defendants do not oppose. *Id*., ¶ 3.2.1. Any attorneys' fees and costs not awarded to Plaintiff's Counsel will be reallocated to the Net Settlement Amount. *Id*.

7. Administering the Settlement and Payment Plan: Within twenty (20) days after appointment of the Administrator, or another mutually agreed date, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form Microsoft Excel spreadsheet, including each Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods. The Administrator will maintain the confidentiality of this information and use it solely to administer the Settlement. Defendants will fully fund the Gross Settlement Amount within thirty (30) days after the Effective Date. Within fourteen (14) days after funding, the Administrator will disburse the Individual PAGA Payments, the LWDA PAGA Payment, and the Court-approved fees, expenses, and any representative service award. *Id* ¶¶ 1.5, 4.2.

8. Defendants shall fully fund Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective date. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will disburse all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and any Court-approved PAGA Representative Service Award. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. *Id* ¶ 4.3.

9. Payments to Aggrieved Employees: Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will disburse all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and any Court-approved PAGA Representative Service Award. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. *Id* ¶ 4.4.

10. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. *Id* ¶ 4.4.1.

11. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within 7 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 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. *Id* ¶ 4.4.2.

12. For any aggrieved employee whose Individual PAGA Payment check is 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 Aggrieved Employee. *Id* ¶ 4.4.3.

IV. LEGAL ARGUMENT

A. Standards for Approval of A PAGA Settlement

The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). "Settlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." *In re TD Ameritrade Account Holder Litig*., 2011 WL 4079226, at *9 (N.D. Cal. Sept. 13, 2011). Thus, the settlement should "not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice v. Civ. Serv. Com'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Although the PAGA statute does not list the criteria on which a PAGA settlement is to be judged, a reviewing court may utilize some of the factors for review of a class action settlement under Rule 23.[2] However, not all Rule 23 factors can be applied, because "PAGA actions are not class actions under state law… [as they are] fundamentally different from class actions…" *Baumann v. Chase Inv. Servs. Corp*., 747 F.3d 1117, 1121 (9th Cir. 2014) (citing to *Arias, supra*, 46 Cal.4th at 975). Thus, a court's review of a PAGA settlement implicates a couple of unique features that render the approval process distinct from approval of a class action settlement under Rule 23.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not on the amount which "aggrieved employees" are to receive, but rather, on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages" [*Mendez v. Tween Brands, Inc*., 2010 WL 2650571, at *4 (E.D. Cal. June

[2] Evaluation of a class settlement under Rule 23 "[involves]…several factors…[such as]: [1] the strength of plaintiff's case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir., 1998); *see also Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1802 (1982).

30, 2010)], and "[u]nlike class actions, these civil penalties are not to compensate unnamed employees because the action is fundamentally a law enforcement action." *See Ochoa-Hernandez v. CJADERS Foods, Inc*., 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010).

Yet, while "[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct" [*Mendez*, 2010 WL 2650571, at *4], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement –involves a "compromise" that stops short of rendering findings of liability and damages. Moreover, "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *Ochoa-Hernandez*, 2010 WL 1340777, at *4.

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." *See Ochoa-Hernandez*, 2010 WL 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval process" required under Federal Rule 23(e) (which includes preliminary approval, followed by the issuance of the notice to the class, and then the fairness hearing).

Finally, federal courts have interpreted PAGA settlements to require it be "genuine and meaningful" and "consistent with the underlying purpose of the statute to benefit the public." *Viceral v. Minstras Group, Inc.*, 2016 WL 5907869 * 9 (N.D.Cal. Oct. 11, 2016); *Ferreri v. Bask Technology, Inc.*, 2016 WL 6833927 (S.D. Cal Nov. 21, 2016) (evaluating PAGA settlement in light of purposes and policies of PAGA).

B. The Settlement Satisfies the Criteria for Approval

Applying the Rule 23 fairness factors (*supra*, at fn. 3) compatible with the unique PAGA considerations detailed above, the proposed Settlement is fair, reasonable, and adequate for the reasons listed below.

/ / /

1. The Factors Giving Rise to a Presumption of Fairness Exist

A presumption of fairness generally applies to a class settlement that resulted from arm's-length negotiations. *Dunk, supra*, 48 Cal.App.4th at 1801. This Settlement is the result of extensive, hard-fought negotiations among experienced counsel. Clark Decl., ¶ 11-12. Plaintiff's interest and the interests of other aggrieved employees were zealously represented by Consumer and Employment Lawyers, while Defendants were represented by seasoned attorneys from Fisher & Phillips LLP. Clark Decl., ¶ 12. This settlement was reached after Plaintiff's' counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claim. *See id*.; *Adams v. Inter-Con Sec. Sys., Inc*., 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007) (preliminarily approving the settlement agreement after finding it was reached through extensive negotiations and plaintiffs' counsel's thorough investigation of the claims). Thus, the Court should give considerable weight to the competency and integrity of counsel to determine that the Settlement Agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct.

Moreover, the settlement was reached with the assistance of a private, neutral mediator experienced in representative wage-and-hour actions. Clark Decl., ¶ 10. Accordingly, the settlement was free of collusion. "The assistance of a well-respected mediator with substantial experience in employment litigation…supports approval of the settlement." *Murillo v. Pac. Gas & Elec. Co*., 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk, supra,* 48 Cal.App.4th at 1802-03. Thus, these factors warrant approval of this settlement.

2. The Relative Strength of the PAGA Claim and the Realistic Range of Outcomes in the Litigation Strongly Favor Approval of Settlement

The Settlement provides a significant monetary benefit that falls well within the range of an acceptable settlement under the circumstances, which is the standard on which this Settlement must be judged. Courts in California have held that a settlement may be fair and reasonable even where it only provides a small portion of what could have been obtained at trial. Simply put, "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean that [it] should be

disapproved." *7-Eleven Owner for Fair Franchising v. Southland Corp.,* 85 Cal.App.4th 1135, 1150 (2000) (citing *Linney, supra*, 151 F.3d at 1242).

Here, the parties agreed on a Gross Settlement Amount of $70,000.00 to resolve the representative PAGA claims, inclusive of attorneys' fees, litigation costs, settlement administration expenses, and the representative service award. Under Labor Code section 2699(f)(1)-(2), the PAGA penalty is $100 per employee per pay period for the initial violation, and $200 for each employee per pay period for each subsequent violation. However, for a plaintiff to recover for a "subsequent violation," an employer must have notice that it has violated the Labor Code. *Amaral v. Cintas Corp. No. 2,* 163 Cal.App.4th 1157, 1207–09 (2008); *see also Amalgamated Transit Union, supra,* 2009 WL 2448430, at * 9 ("For the purposes of subsequent violation penalties, the issue is not whether [employer] willfully violated the Labor Code, but rather whether a court or commissioner had notified it of any violation."). Plaintiff anticipates Defendants would argue that under Labor Code section 558, the penalties should be $50 per violation, because although Plaintiffs seek penalties through PAGA, PAGA provides the applicable civil penalty only if a particular Labor Code provision does not specify one. *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 580 (2010). Here, meal and rest break premiums are not penalties, but wages, and therefore, section 226.7 does not contain a penalty, and the penalty under section 558 should be applied, as it applies to unpaid wages. *Culley v. Lincare, Inc*., 236 F.Supp.3d 1184, 1195 (E.D. Cal. 2017). Likewise, failure to pay overtime is subject to $50 civil penalty provided in section 558, because section 558 applies to the penalties contained in the same chapter as section 510. *Villacres, supra*, 189 Cal.App. at 580. (Clark Decl. ¶ 13.)

In this case, there are approximately 3,500 pay periods worked by the approximately 196 PAGA Settlement Members during the PAGA Period. Following a comprehensive review of Defendants' timekeeping, payroll, and policy data produced in advance of mediation, Plaintiff determined that the alleged PAGA violations were not substantially uniform or systemic across every pay period and did not occur with the same frequency for all Aggrieved Employees. Instead, the data reflected that potential violations occurred intermittently and varied by employee, worksite, and/or pay period. Accordingly, the maximum amount in penalties Plaintiff could have recovered at trial was approximately $525,000

(3,500 pay periods × $50 penalty × 3, for overtime, meal premiums, and rest premiums). . (Clark Decl. ¶ 14.)

As such, the total settlement amount represents approximately 13.33% of the maximum potential penalties that the Court could award under the statute. *Id*. Considering courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties, and at least one California Court of Appeal has, in a published decision, approved an allocation of zero dollars ($0) to PAGA (*Nordstrom Com'n Cases,* 186 Cal.App.4th 576, 589 (2010)), this result is well within an appropriate range. *See* section B(4), below. Plaintiff attached a nominal value to the unreimbursed expenses claim based on the evidence in this case. Clark Decl., ¶ 14. Without accounting for the length of time each employee worked for Defendants during the PAGA Period, the average amount in penalties per employee is approximately $357.14. *Id.*

This is a reasonable result, especially where it is unclear the Court would award such penalties as there is little guidance as to the standard for determining the number of appropriate penalties under PAGA:

> [S]ection 2699, subdivision (e)(2) describes the conditions under which a trial court may exercise its discretion to *reduce* penalties. It does not specify guidelines for exercising discretion in general with regard to the amount of penalties, because the amount is fixed by statute…A court can only exercise its discretion *to award lesser penalties* based on the enumerated considerations.

Amaral, supra, 163 Cal. App. 4th at 1213 (internal quotations omitted); *see also Carrington v. Starbucks,* 30 Cal.App.5th 504, 529 (2018) (affirming the award of PAGA penalties of $5 per pay period). Thus, this factor weighs in favor of settlement approval.

3. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement

Defendants maintained defenses to Plaintiff's theory of liability, which, if successful, had the potential to eliminate recovery altogether. Clark Decl. ¶ 15. Therefore, the amount of compensation available for payment to the Aggrieved Employees may otherwise be diminished if the parties are required to further litigate the Action.

Plaintiff would pursue off-the-clock and overtime claims based on *Williams v. Superior Court,*

221 Cal.App.4th 1353 (2013), which holds that an employer's official written policy forbidding off-the-clock work does not immunize it from liability if the employer has a *de facto* practice of not paying employees for all hours worked. *Id*. at 1365, 1369. Here, Plaintiff anticipates Defendants would likely argue that they had a policy against overtime work without express written authorization from the employee's supervisor. Clark Decl., ¶16.

Plaintiff also considered that Defendants would likely rely on California authority holding that time records showing late meal breaks alone are not sufficient to create a presumption of violations, because they do not answer the question as to whether a meal break was waived voluntarily or involuntarily. *See Serrano v. Aerotek, Inc*., 21 Cal.App.5th 773, 781-82 (2018); *Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 850-51 (2018). Clark Decl., ¶17.

With respect to the break claims, Plaintiff also considered that Defendants would likely argue that some employees might have been able to take uninterrupted meal and rest breaks, while some might not have been able to (on different occasions and for different reasons). This could create individualized issues defeating manageability. Clark Decl., ¶18.

With respect to the failure to reimburse for work expenses claim, Defendants' policy regarding work uniforms states that employees were provided with uniforms. As such, even if some employees did not receive uniforms, the question presented would require testimony from individual employees and create a manageability issue if this case were to proceed to trial. Clark Decl., ¶ 19.

Further, with respect to derivative wage statements and untimely wage claims, if Plaintiff did not prevail on the underlying claims, then Plaintiff's derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508, 524-25 (2009). Also, recent California authorities hold that such penalties are not triggered by meal and rest break claims, and when wages on wage statements and wages actually paid match. *Maldonado v. Epsilon Plastics, Inc*., 22 Cal.App.5th 1308 (2018) and *Naranjo v. Spectrum*, 40 Cal.App.5th 444 (2019). Clark Decl., ¶ 20.

Lastly, although a PAGA litigant need not meet the requirements of class certification (*Arias, supra*, 46 Cal.4th at 975), where it appears that the timekeeping and meal and rest break practices varied between Defendants' numerous locations in this case, Plaintiff would likely face difficulties in trying this

case manageably. *C.f. Tseng v. Nordstrom, Inc*., 2016 WL 7403288, at *4 (C.D. Cal. Dec. 19, 2016); Clark Decl., ¶21.

Thus, when considering the probability of lengthy litigation, the uncertainty of any outcome, the fact that Defendants have facially compliant policies in place, the risk that Plaintiffs and the aggrieved employees might not have been able to succeed at trial, and the risk that a judge could award less penalties than $70,000, the settlement amount is reasonable. Settlement also forgoes the risk of a potentially lengthy appeals process. Clark Decl., ¶ 22.

4. The Benefit Conferred by the Settlement Balance in Favor of Approval

Here, after the deductions from the total settlement amount of $70,000, a Net PAGA amount of approximately $11,992.97 will be paid out, of which $ 7,795.43 will go to LWDA, and $4,197.54 will go to PAGA Settlement Members. *See* Settlement Agreement, ¶¶ 3.1-3.2.4 ; *see* Lab. Code §2699(i).

This is a significant result, as settlements of PAGA claims between $7,500 and $15,000 are routinely approved as reasonable by California state and federal courts. *See Bravo v. Gale Triangle, Inc*., 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) ($10,000 as PAGA penalties found reasonable); *Franco, supra*, 2012 WL 5941801, at *14 (approving PAGA penalties of $10,000 and noting that amount was in line with settlement approval of PAGA awards in other cases.); *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 490 (E.D. Cal. 2010) ($10,000 in PAGA approved out of a $300,000 settlement); *Schiller v. David's Bridal, Inc*., 2012 WL 2117001, at *14 (E.D. Cal. June 11, 2012) ($7,500 to LWDA reasonable); *Ruch v. AM Retail Grp., Inc*., 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that "$7,500 PAGA payment is reasonable when measured against the total overall settlement [of $345,000] and the possible weaknesses in Plaintiff's case," or 2.2 percent). Here, $11,992.97 in PAGA penalties significantly exceeds the PAGA awards approved by courts throughout California, and this factor favors approval of this Settlement.

5. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement

In approving settlements in a class action context, the courts consider plaintiff's counsel's experience and success in similar class actions. *Dunk, supra*, 48 Cal.App.4th at 1802. Counsel's recommendation of the settlement should be given weight because "parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." *In re Pacific Enters. Sec. Litig.,* 47 F.3d 373, 378 (9th Cir. 1995).

Here, counsel has extensive experience in wage and hour class and representative actions, having worked on and settled hundreds of complex employment law cases in the last few decades. *See* Clark Decl., ¶¶ 23-31, Exh. 2. Through their investigation, review of data, documents, and information produced, Counsel has a thorough understanding of this action and believe this Settlement meets or exceeds the standard required for the Court's approval.

6. The Extent of Discovery Completed and Stage of the Proceedings Favor Approval of the Settlement

Another factor reinforcing the presumption of fairness is whether sufficient investigation and discovery have been conducted to allow the counsel and the Court to assess the fairness of the settlement. *Dunk, supra*, 48 Cal.App.4th at 1802. However, the settlement can be approved even in the absence of any discovery if other factors are satisfied. *In re TD Ameritrade Account Holder Litig*., 2011 WL 4079226, at *6. What matters is that "the parties have sufficient information to make an informed decision about the settlement." *Durham v. Cont'l Cent. Credit, Inc*., 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011) (citing *Linney, supra*, 151 F.3d at 1239).

Here, before reaching settlement, the Parties had a thorough understanding of their respective claims and defenses. Prior to mediation, the Parties engaged in the informal exchange of information, documents, and data relevant to Plaintiff's PAGA claims. *See* Clark Decl., ¶ 9. As part of this process, Defendants produced, among other things, Plaintiff's personnel files, written policies and procedures, employee handbooks, job descriptions for non-exempt positions during the PAGA Period, and timekeeping and payroll records for a 20% sampling of non-exempt employees during the PAGA Period,

as well as data reflecting the number of current and former non-exempt employees and the number of pay periods worked. *Id*.

The Parties also participated in a full-day, arm's-length mediation on September 15, 2026, which was preceded by this substantial informal discovery. Clark Decl., ¶ 10. Plaintiff's counsel carefully reviewed and analyzed the information produced by Defendants and performed PAGA penalty calculations based on that data. *Id*. As a result, Plaintiffs and their counsel obtained sufficient information to meaningfully evaluate the strengths and risks of the PAGA claims, Defendants' asserted defenses, and the potential range of civil penalties recoverable under PAGA.

At the time the parties settled this case, they knew and understood their respective positions. As a result, counsel determined that the Settlement with Defendants is fair, reasonable, adequate, and in the best interest of PAGA Settlement Members and the LWDA. Therefore, this factor warrants approval of the Settlement.

7. The Settlement is Genuine and Meaningful, and Benefits the Public

Finally, the settlement value at $70,000 is genuine and meaningful, and benefits the public. The Parties negotiated a value of settlement and thus, a benefit to the State of California and the aggrieved employees. The payment, and Defendants' willingness to compromise and pay a settlement value, is genuine and meaningful, and consistent with PAGA's purpose to "achieve maximum compliance with state labor laws." 2003 Cal. Legis. Serv. Ch. 906 § 1(a).

C. The Requested Attorney's Fees and Costs Are Reasonable and Should Be Approved

Plaintiff's counsel seeks an award of attorneys' fees of 33.3% of the total settlement amount (or $23,333.33) and actual out-of-pocket litigation costs of up to $25,000.00. *See* Settlement Agreement, ¶ 3.2.1. PAGA provides for an award of attorneys' fees and costs to a prevailing employee. Cal. Lab. Code, §2699(g)(1); *See also Villacres, supra,* 189 Cal.App.4th at 578. In this case, Plaintiff acted as a true private attorney general by initiating and prosecuting a lawsuit intended to protect employees and penalize their employer for alleged unlawful conduct. Further, the California Supreme Court held that "when a number of persons are entitled in common to a specific fund, and an action brought by plaintiff or plaintiffs for the benefit

of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). As Plaintiff's counsel have expended a significant amount of time and money to secure a $70,000.00 settlement for aggrieved employees and the LWDA, and in doing so have borne the risk that Plaintiff would not prevail, and hence recover nothing, Plaintiff's counsel are entitled to claim reasonable fees from the fund.

The requested fee falls within the range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates PAGA Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. *Newberg on Class Actions* (3rd Ed. 1992), § 14.03; *c.f. In Re Cendant Corp. PRIDES Litigation* (3rd Cir. 2001) 243 F.3d 722, 736; *See e.g. Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.") Numerous courts routinely approve fee requests equal to or greater than 35% of the common fund. *See In re Ampicillian Antitrust Litigation* (D.D.C. 1981) 526 F. Supp. 494 [awarding 45% of $7.3 million settlement fund]; *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981) 516 F. Supp. 412, 420 [awarding 36% of the settlement fund]; *Martin v. Ameripride Servs*., 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a $16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp., USDC Southern District*, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a $3.75 million wage and hour class action settlement).

Further, a cross-check of counsel's requested attorneys' fees with counsel's lodestar[3] supports approval of the fee award. Counsel seeks $23,333.33 in attorneys' fees, whereas Counsel's lodestar in this case is over 4.30 times higher at $100,256.00. Clark Decl., ¶ 34. Thus, the $23,333.33 that Counsel requests is a standard and reasonable amount in PAGA actions.

[3] The lodestar amount is calculated by multiplying all reasonable hours spent on the case by the counsel's reasonable hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

Lastly, Plaintiff's counsel requests reimbursement of $24,973.70 for their actual out-of-pocket litigation costs, which is below the maximum of $25,000 agreed upon in the Settlement. Clark Decl., ¶ 38, Exh. 3. Thus, Plaintiff's counsel respectfully request that the Court approve their requested attorneys' fees and costs.

D. Plaintiff's PAGA Representative Service Payment Is Reasonable and Should Be Approved

Plaintiff seeks the Court's approval of $5,000 as a PAGA Representative Service Payment, to be paid from the total settlement amount. Settlement Agreement, ¶ 3.2.2. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark v. Am. Residential Servs., LLC*, 175 Cal.App.4th 785, 806 (2009). Simply put, such payments acknowledge that without class representatives, there can be no class action. *Id.* at 804.

In this case, an award of $5,000 to the Representative Plaintiff is reasonable because over the course of this action, Ms. Bautista have spent significant time and effort assisting counsel in the investigation of Defendants' policies and practices, providing relevant information regarding the claims, reviewing pleadings and other case documents, and assisting in the preparation for mediation. *See* Bautista Decl., ¶ 9-14; Clark Decl., ¶ 41. She also remained on standby during the mediation and participated in numerous telephonic conferences with their counsel. Bautista Decl., ¶ 9-14; Clark Decl., ¶ 41. In addition, Ms. Bautista also agreed to undertake specific risks in being the named Plaintiff, including the stigma and potential negative publicity that comes from suing one's former employer, and the risk of being liable for Defendants' costs had they prevailed. Bautista Decl., ¶ 13;; Clark Decl., ¶ 41. The risk of being liable for costs is a substantial, very real factor for a wage earner. *See Whiteway v. FedEx Kinkos Office & Print Servs., Inc*., 2007 WL 4531783, at *3 (N.D. Cal. Dec. 17, 2007). Finally, in the Settlement Agreement of this PAGA matter, Plaintiff has agreed to provide a "general release" of claims, which is much broader than the release required of other PAGA Settlement Members. Settlement Agreement, ¶ 5.1.1. Incentive awards are often premised in part on representative plaintiffs agreeing to a general release of their claims against the defendant. *See Guilbaud v. Sprint Nextel Corp.*, 2016 WL

7826649, at *4 (N.D. Cal. Apr. 15, 2016).

The requested $5,000 for the PAGA Representative is well within the range of the incentive awards typically approved by California courts. *Glass v. UBS Fin. Servs*., 2007 WL 221862 at *17 (N.D. Cal. Jan. 26, 2007) ($25,000 for each class representative in wage and hour action). Therefore, Plaintiff respectfully requests that the Court approve a $5,000 PAGA Representative Service Payment, given the work and the risks that he took and bore for the benefit of other members of the PAGA Settlement Class.

V. CONCLUSION

In the judgment of Plaintiff and Defendants, the proposed Settlement is a fair and reasonable compromise of the issues in light of the strengths and weaknesses of Plaintiff's' PAGA claims and the defenses asserted. After weighing the substantial, certain, and immediate benefits of this Settlement against the uncertainty of further trial and appeal, the parties believe the proposed Settlement is fair, reasonable, and adequate. Thus, this Settlement, which includes the payment of attorneys' fees and costs, and Plaintiff's Service Awards, should be approved.

Dated: November 03, 2026

CONSUMER & EMPLOYMENT LAWYERS

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