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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JESUS ROCHA, individually, and on behalf of all others similarly situated, Plaintiff, v. T.M. Cobb Company and DOES 1 through 10, inclusive, Defendants.	Case No.: CVRI2406876 <u>REPRESENTATIVE ACTION</u> [Assigned for All Purposes to the Honorable Harold Hopp, Department 1] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT** [Filed with the Declaration of Kane Moon, the Declaration of Kyle Nordrehaug, the Declaration of Plaintiff Jesus Rocha, the Declaration of Plaintiff Jose Castanon, the Declaration of Lisa Mullins, [Proposed] PAGA Approval Order, and [Proposed] Judgment] <u>PAGA APPROVAL HEARING</u> Date: February 13, 2026 Time: 8:30 a.m. Dept: 1 Action filed: December 3, 2024 FAC filed: February 3, 2025 Trial date: Not set

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Attorneys for Plaintiffs Jesus Rocha and Jose Castanon

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

PLEASE TAKE NOTICE that on February 13, 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, Plaintiffs Jesus Rocha ("Plaintiff Rocha") and Jose Castanon ("Plaintiff Castanon") (collectively, "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 Amended PAGA Settlement Agreement ("Settlement") between Plaintiffs and Defendant T.M. Cobb Company ("Defendant");
2. Appointing Moon Law Group, PC and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Plaintiffs' Counsel;
3. Approving the requested Attorneys' Fees of $141,666.66, subject to potential increase under an escalator clause;
4. Approving the requested Attorneys' Costs of $16,936.81;
5. Appointing Plaintiffs as the PAGA representatives;
6. Appointing ILYM Group, Inc. as the Settlement Administrator and approving a $5,350.00 as the Settlement Administration Costs;
7. Approving the scope of the Settled Claims;
8. Approving a non-reversionary Gross Settlement Amount of at least $425,000.00, subject to potential increase under an escalator clause;
9. Approving at least $231,046.53 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 $150,180.24) to the LWDA and 35% (at least $78,044.17) to Aggrieved 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: January 21, 2026

MOON LAW GROUP, PC

By:______________________________________
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Allen Feghali
Lilit Ter-Astvatsatryan
Michael Citrin

Attorneys for Plaintiff Jesus Rocha

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Kyle Nordrehaug
Kyle Nordrehaug
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Attorneys for Plaintiff Jose Castanon

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I. INTRODUCTION

Plaintiffs Jesus Rocha ("Plaintiff Rocha") and Jose Castanon ("Plaintiff Castanon") (collectively, "Plaintiffs") seek approval of a non-reversionary $425,000.00 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 Michael Ludwig, Esq., and months of extended settlement negotiations, Plaintiffs reached a resolution with Defendant T.M. Cobb Company ("Defendant") (collectively, Plaintiffs and Defendant are the "Parties"). The Parties have executed an Amended PAGA Settlement Agreement (the "Settlement"). (Declaration of Kane Moon in Support of Motion for Approval of PAGA Settlement ["Moon Decl."], ¶ 2; Ex. 1) Pursuant to Labor Code section 2699(s)(2), Plaintiffs now file 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 has been submitted to the LWDA along with a copy of Plaintiffs' motion and the hearing date. (Moon Decl., ¶ 3, Ex. 2.) To date, the LWDA has not indicated any objection to the Settlement.

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"). Plaintiffs brought this PAGA action on behalf of themselves and all individuals who are or previously were employed by Defendant in the State of California and classified as non-exempt or hourly-paid employees at any time during the period from December 3, 2023 through the date the Court grants approval of the Settlement.[1] (Moon Decl., ¶ 4.)

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

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[1] Pursuant to paragraph 12(c) of the Settlement, if the total number of Pay Periods in the PAGA Period exceeds 18,399, Defendant may elect to advance the end date of the PAG Period to correspond to the last date on which the total number of Pay Periods was not in excess of 18,399. (Settlement,¶ 12(c).) Defendant shall inform the Court and Plaintiffs of its election at or before the hearing on Plaintiff's Motion for PAGA Approval. (*Id.*)

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 **481** Aggrieved Employees will, cumulatively, receive no less than **$231,046.53**, as PAGA penalties. (Moon Decl., ¶ 23.) 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 Defendant, but also because an investigation by experienced Plaintiffs' 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, Plaintiffs respectfully request the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims and Procedural Background

Defendant is a door and window manufacturer and supplier, conducting business throughout California. (Moon Decl., ¶ 5.) Plaintiff Rocha worked for Defendant as an Operator from 1995, through April 2023. (Declaration of Plaintiff Jesus Rocha in Support of Motion for Approval of PAGA Settlement

["Rocha Decl."], ¶ 2.) Plaintiff Castanon worked for Defendant from September 2017, through the present. (Declaration of Jose Castanon in Support of Motion to Approve PAGA Settlement ["Castanon Decl."], ¶ 2) Throughout their employment, Plaintiffs were and are classified as non-exempt and paid on an hourly basis. (*Id*; Rocha Decl., ¶ 2.) Plaintiffs contend that they, and other Aggrieved Employees, were subjected to the same or similar unlawful labor practices during their employment with Defendant. (Moon Decl., ¶ 5.)

Plaintiffs claim for unpaid wages stems from allegations of Defendant's failure to pay employees for all hours worked, including as a result of Defendant's failure to compensate employees for off-the-clock, its failure to incorporate non-discretionary bonuses into the regular rate of pay for purposes of overtime pay, meal premiums, or sick pay, and its failure to pay overtime at the proper rate. (*Id.* at ¶ 6.) Plaintiffs' meal and rest period claims are based on allegations that due to the nature of their work and Defendant's employment practices, employees regularly experienced missed, untimely, or interrupted breaks, and that Defendant failed to provide any premiums for non-compliant rest breaks or all premiums for non-compliant meals. (*Id.*) Plaintiffs also allege that Defendant 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.*) Plaintiffs further allege they and other employees did not receive all wages owed at the time of termination nor accurate itemized wage statements due to Defendant's failure to pay all wages and premiums. (*Id.*) Accordingly, Plaintiffs allege Defendant is liable for civil penalties under PAGA. (*Id.*)

Because of the foregoing alleged violations of the Labor Code, Plaintiff Rocha filed a Class Action Complaint on December 3, 2024, alleging Defendant 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.)

Pursuant to PAGA, on November 4, 2024 and November 28, 2024, Plaintiff Castanon and Plaintiff Rocha, respectively, submitted a notice of the alleged Labor Code violations to the California Labor and Workforce Development Agency (the "LWDA"), with certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 8, Ex. 3; Declaration of Kyle Nordrehaug in Support of Motion to Approve Settlement Pursuant to the Private Attorneys General Action of 2004 ["Nordrehaug Decl."], ¶ 4, Ex. 2.) The administrative exhaustion period under PAGA expired without the LWDA indicating any intent to investigate the allegations. (Moon Decl., ¶ 8.) On February 3, 2025, Plaintiff Rocha filed a First Amended Class and Representative Action Complaint to allege a ninth cause of action for civil penalties under PAGA. (*Id.*) On January 10, 2025, Plaintiff Castanon filed a PAGA representative action in the *Castanon* Action. (*Id.*) Accordingly, Plaintiffs are duly authorized to act as private attorneys general with respect to the PAGA claims involved in this action. (*Id.*) In compliance with Labor Code section 2699(s)(1), Plaintiffs 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.*)

Solely for purposes of the Settlement, Plaintiffs will file a Second Amended Complaint in the instant action to name Plaintiff Castanon as an additional Plaintiff. (*Id.* at ¶ 10.) Plaintiffs are also concurrently filing with this PAGA Approval Motion a request for approval for dismissal of the class claims filed in the instant action, with such dismissal contingent of the Settlement. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiffs' factual allegations. Defendant argues that all employees were properly paid for all hours worked and that employees are not permitted to work off-the-clock. (*Id.* at ¶ 11.) As for the regular rate claim, Defendant argues there was no issue with paying employees the proper regular rate of pay because any additional renumeration was discretionary and thus, not required to be incorporated into the regular rate of pay. (*Id.*) Defendant maintains 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, Defendant argues 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, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties because Plaintiffs would be unable to show Defendant's alleged conduct was done willfully or knowingly. (Moon Decl., ¶ 11; *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, Defendant claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 11.) Defendant also maintains 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. Discovery and Investigation

The Parties engaged in informal discovery exchange prior to mediation. Defendant provided information and documents, which enabled Plaintiffs' Counsel to meaningfully investigate Plaintiffs' allegations and assess the value of the PAGA claims. (*Id.* at ¶ 11.) Specifically, Defendant produced Plaintiffs' time and corresponding payroll records for approximately 9.4% of all Aggrieved Employees. (*Id.*)

Prior to mediation, Plaintiffs' Counsel reviewed and analyzed all the information that Defendant produced, including time and pay records provided by Plaintiffs. (*Id.* at ¶ 13.) Plaintiffs' Counsel retained an expert to analyze the records and prepare a damage analysis prior to mediation. (*Id.*) The time and pay records contained 12,333 shifts actually worked (representing approximately 8.4% of all shifts), which allowed the expert to prepare an analysis with a high degree of certainty. (*Id.*) Further, Plaintiffs' Counsel investigated the applicable law regarding the claims and defenses asserted in this action. (*Id.*) Accordingly, Plaintiffs' Counsel were able to evaluate the probability of success on the merits and Defendant's monetary exposure. (*Id.*) In sum, Plaintiffs and their Counsel's familiarity with the facts of the case and the legal issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

On August 12, 2025, the Parties participated in a full day of private mediation facilitated by Michael Ludwig, Esq., an experienced class and PAGA action mediator. (*Id.* at ¶ 13.) The negotiations were at arm's length and although conducted in a professional matter, 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 ¶ 15.) Plaintiffs and their Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*) In sum, Plaintiffs and their Counsel believe the proposed Settlement is in the best interests of Aggrieved Employees and the LWDA. (*Id.*)

Other than this instant action and the *Castanon* Action brought by Plaintiffs, Plaintiffs' Counsel are not aware of any other class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals, some of whom would also be Aggrieved Employees as defined in this action. (*Id.* at ¶ 28.) Plaintiffs' Counsel have come to this conclusion after a reasonable inquiry and review of the LWDA's PAGA Case Search website, this Court's case search website, and other information reasonably available online. (*Id.*) Additionally, Defendant has not indicated there is any other related case pending as of the date of this declaration. (*Id.*)

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

The Settlement's key financial and other terms include:

1. <u>Aggrieved Employees</u>: The Aggrieved Employees include all individuals who are or previously were employed by Defendant in the State of California and classified as non-exempt or hourly-paid employees at any time during the PAGA Period, i.e., from December 3, 2023, through the date the Court grants approval of the Settlement. (Settlement, ¶¶ 2, 9.) There are estimated **481 Aggrieved Employees** who worked for an estimated **16,726 PAGA Pay Periods**. (*Id*. at ¶ 12(c).)

2. <u>Gross Settlement Amount</u>: Defendant agrees to pay a non-reversionary Gross Settlement Amount of $425,000.00, subject to increase pursuant to the escalator clause. (*Id*. at ¶ 12, 12(c).)

3. Estimated Pay Periods: Defendant estimates that there are approximately 16,726 Pay Periods during the PAGA Period. (*Id*. at ¶ 12(c).) If that number is incorrect by more than Ten Percent (10%), then the Gross Settlement Amount will be increased proportionately. (*Id.*) For example, if the number is 11% higher than 16,726, then the Gross Settlement Amount will be increased by 1%. (*Id.*) In the alternative, Defendant may elect to advance the end date of the PAGA Period to correspond to the last date on which the total number of Pay Periods was not in excess of 18,399. (*Id.*) Defendant shall inform the Court and Plaintiffs of its election at or before the hearing on PAGA approval. (*Id*.)

4. Attorneys' Fees and Costs: The Settlement provides for payment to Plaintiffs' Counsel for Attorneys' Fees and Costs of 1/3 of the Gross Settlement Amount, which is estimated at $141,666.67, plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiffs' Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed $25,000.00, both of which will be paid from the Gross Settlement Amount. (*Id.* at ¶ 12(d).) Pursuant to Plaintiffs' Counsels' Joint Prosecution and Fee-Sharing Agreement (the "JPA"), and as consented to in a signed writing by Plaintiffs, any award of attorneys' fees in connection with the Settlement shall be divided between Moon Law Group, PC ("MLG") and Blumenthal Nordrehaug Bhowmik De Blouw LLP ("BNBD") with 65% to MLG and 35% to BNBD, regardless of whether the award is based on a common fund or lodestar analysis. (Moon Decl., ¶ 19; *see* Settlement ¶ 12(d).) As to costs, the JPA states that the firms shall receive reimbursement of their expenses as approved by the Court. To date, MLG has incurred $13,166.70 in litigation costs and BNBD has incurred $3,770.11 in litigation costs, for a total of $16,936.81. (*See* Moon Decl., ¶ 19; Ex. 4; Nordrehaug, ¶ 14, Ex. 3.)

5. Plaintiffs' Enhancement Awards: The Settlement provides for an Enhancement Award of $15,000.00 for each Plaintiff. (Settlement at ¶ 14.) This Enhancement Award is in addition to the Individual Payments they will receive as Aggrieved Employees and in consideration for the time, efforts, and risks associated with their initiating this case. (*Id*. at ¶ 9.)

6. Settlement Administration Costs: The Settlement provides for Settlement Administration Costs will be paid from the Gross Settlement Amount, which costs are estimated at $5,350.00. (*Id*. at ¶ 15.) The Parties propose ILYM Group, Inc. ("ILYM") as the third-party settlement administrator ("Settlement Administrator"). (*Id.*) The Settlement Administrator will be responsible for establishing a

qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to Aggrieved Employees. (*Id.*) ILYM provided a fixed fee quote of $5,350.00. (Declaration of Lisa Mullins on Behalf of ILYM Group, Inc. Re: Qualifications and Costs for Settlement Administration, ¶ 7, Ex. C.) Prior to selecting ILYM, Plaintiffs' Counsel sought quotes from three highly regarded and experienced administration firms: 1) Phoenix Class Action Administration Solutions, who provided a quote of $5,750.00; 2) Simpluris, Inc, who proved a quote of $4,727.00; and 3) ILYM, who provided a quote of $5,350.00. (Moon Decl., ¶ 21.) ILYM was selected as the proposed Settlement Administrator because it provided the second lowest bid and has more experience than Simpluris, Inc. who provided the lowest quote. (*Id.*; *compare* https://www.ilymgroup.com *with* https://www.simpluris.com/our-team/ [ILYM has managed over $30 billion in funds, while Simpluris, Inc. has managed $10 billion in funds].)

7. Tax Allocation: All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued. (*Id*. at ¶ 15.) The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement. (Settlement, at ¶ 18)

8. PAGA Penalties Fund: After deducting the Attorneys' Fees, Attorneys' Costs, Enhancement Awards, and Settlement Administration Costs 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 PAGA Employees. (*Id.* at ¶¶ 12, 12(a), 12(b).) Accordingly, the PAGA Payment is estimated to be no less than **$231,046.53**,[2] which will be distributed 65% (i.e., no less than 65% * $231,046.53 = **$150,180.24**) to the LWDA and 35% (i.e., no less than 35% * $231,046.53 = **$80,866.29**) to Aggrieved Employees pursuant to PAGA law governing Plaintiffs' claims. It is estimated that the **481 Aggrieved Employees** will receive and average individual settlement payment of **$168.12 each**

[2] The estimated PAGA Penalties Fund was calculated by deducting the following amounts from the Gross Settlement Amount ($425,000.00): $141,666.66 for the Attorneys' Fees, $16,936.81 for the Attorneys' Costs, $30,000.00 Enhancement Awards ($15,000.00 each Plaintiff) and $5,350.00 for the Settlement Administration Costs. (Moon Decl., ¶ 23, n.3; *see* Settlement, ¶¶ 6, 12(d), 14-15.)

($80,866.29 / 481), with a corresponding Pay Period Value of **$4.83 per Pay Period** ($80,866.29 / 16,726).

9. Letter to Aggrieved Employees: The Settlement Administrator will issue each Aggrieved Employee one check for their share of the PAGA Penalties Fund along with an explanatory letter, attached as **Exhibit A** of the Settlement, in English and Spanish. (*Id*. at ¶ 19.)

10. Funding and Distribution Timing: Within thirty (30) calendar days after entry of the Order and Judgment, Defendant will deposit the Gross Settlement Amount into the QSF to be established by the Settlement Administrator. (*Id*. at ¶ 18.) Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiffs' Counsel; (d) Plaintiffs' Enhancement Award; and (d) itself. (*Id.*) The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement. (*Id.*)

11. Uncashed Funds: The Settlement Administrator will issue each Aggrieved Employee one check for their share of the PAGA Penalties Fund along with an explanatory letter, attached as Exhibit A in English and Spanish. (*Id.* at ¶ 19.) Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (*Id.*) Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. (*Id.*) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for one hundred eighty (180) days. (*Id.*) Those funds represented by uncashed checks which remain outstanding one hundred eighty (180) days after the mailing of the settlement checks by the Settlement Administrator will be tendered to the California Department of

California Controller Unclaimed Property Fund in the name of the Aggrieved Employees who did not cash their checks.[3] (*Id*.)

12. Released Claims: Upon entry of the Order and Judgment and full funding of the Gross Settlement Amount, the LWDA and Plaintiffs will be forever barred from pursuing against Defendant any and all Settled Claims during the PAGA Period. (Settlement, ¶ 21.) "Settled Claims" means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Action and the PAGA Notice submitted by Plaintiffs to the LWDA, which occurred during the PAGA Period, and expressly excluding all other claims, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims, and PAGA claims outside of the PAGA Period. (*Id.* at ¶ 8.) Plaintiffs are deemed to have released individual wage and hour claims by virtue of the Settlement. (*Id.* at ¶¶ 21.)

III. DISCUSSION

A. Availability of Civil Penalties

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

[3] The Settlement inadvertently provides that unclaimed funds will be sent to the California Department of Industrial Relations Unpaid Wage Fund. (Settlement, ¶ 19.) However, the Parties intend for unclaimed funds to be sent to the California Controller Unclaimed Property Fund. (Moon Decl., ¶ 26, n.4.)

for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

Here, in compliance with Labor Code section 2699.3, Plaintiffs submitted notices of the Labor Code violations at issue to the LWDA, and they exhausted administrative remedies without the LWDA noticing any intent to investigate the claims. (Moon Decl., ¶ 8.) Accordingly, Plaintiffs are duly authorized to act as a private attorneys 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 $425,000.00 Gross Settlement Amount amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public." (Moon Decl., ¶ 40; *see O'Connor*, 201 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything at all. (Moon Decl., ¶ 40.)

The Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes - deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief on the other. As a result of this litigation, Defendant had to hire legal counsel, engage in employee-wide discovery, and participate in mediation. (Moon Decl., ¶ 41.) Assuming approval is granted, Defendant will also have to pay civil penalties pursuant to PAGA. (*Id.*) Not including its own attorneys' fees and costs, Defendant will pay at least $425,000.00 to resolve this matter - of which at least $231,046.53 is allocated toward PAGA penalties and will be distributed as 65% to the LWDA and 35% to Aggrieved Employees, in compliance with PAGA law governing the claims in this Action. (*See* Settlement, ¶ 13.) This amount represents roughly **55%** of the realistic exposure of $418,150.00. (Moon Decl., ¶ 41.) Additionally, the release obtained under the Settlement does not preclude Aggrieved Employees from pursuing any individual (non-PAGA) claims they may have against Defendant or the other Released Parties. (Settlement at ¶ 8.)

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., ¶ 29.) Plaintiffs' Counsel performed an extensive investigation into the facts, claims, and defenses at issue and Defendant's potential liability, including a review of governing law and analysis of informal discovery, including Defendant's written policies and time/pay data for a majority of Aggrieved Employees. (*Id.* at ¶¶ 12–13.) Plaintiffs' 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 Defendant's 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 ¶¶ 11–14.)

Based on Plaintiffs' Counsel's analysis of the arguments and information provided by Defendant, on an expert analysis of the time and pay records, and on information from Plaintiffs, Plaintiffs' Counsel evaluated Defendant's both maximum (*optimistic*) and risk-adjusted (*realistic*) potential exposure in preparation for mediation. (*Id.* at ¶ 29.) Although the expert's analysis revealed that the time and pay records supported several violations by Defendant, 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. In other words, Plaintiff's analysis revealed that certain claims were not as strong as originally believed. (*Id.*)

Because Defendant did not require employees to record rest periods, nor is Defendant required to record rest periods, there are no records to establish the rest period claim on the merits. (*Id.* at ¶ 30.) Additionally, there are no records to establish the off-the-clock work claim on the merits. (*Id.*) Rather, proof of these claims would need to be supported by declarations from Aggrieved Employees regarding missed rest periods 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, Aggrieved Employees spent working off the clock. (*Id.*)

Indeed, the maximum 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 Aggrieved 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 Aggrieved Employees to establish a sound representation of all non-exempt employees). (*Id.* at ¶ 31.) 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 Aggrieved 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 claims the overtime, meal period, and regular rate claims, our analysis found that Defendant's exposure is less than initially believed. (*Id.* at ¶ 32.) As to the overtime premium claim, Plaintiffs' expert analysis found a total of 18,482 unpaid overtime hours, which affected 10.1% of pay periods in the PAGA Period. (*Id.*) However, Defendant argued that it implemented an Alternative Workweek Schedule ("AWS") and that it properly compensated employees for all overtime pay. Plaintiffs' Counsel reviewed the DIR Election Database and found four results for Defendant. (*Id.*) While Plaintiffs' Counsel is of the opinion that the AWSs on file are invalid, the fact that there are four separate entries for an AWS under Defendant's name indicates that Defendant intended to implement a valid AWD and that it intended to properly compensate Aggrieved Employes for overtime. (*Id.*) As a result, Defendant's alleged failure to pay Aggrieved Employees for overtime pay would likely be found to be unintentional. (*Id.*)

As to Plaintiffs' meal period claim, a review of the time and pay records shows only a 10.6% violation rate during the PAGA Period. (*Id.* at ¶ 33.) Additionally, the records demonstrate that 1.4% of the violations included a meal waiver and that Defendant paid meal premiums for 5.7% of the violations. (*Id.*) Defendant also argues that its payment of meal premiums indicates that it did not intentionally fail to provide Aggrieved Employees with meal breaks. (*Id.*) As a result, Defendant's alleged failure to provide Aggrieved Employees with meal periods would likely be found to be unintentional. (*Id.*)

As to Plaintiffs' regular rate claim, Plaintiffs' expert found 10 additional payments that were not incorporated into the regular rate of pay for purposes of paying overtime, sick pay, and meal break premiums. (*Id.*) However, the violation rates were minimal: only 0.6% of pay periods included overtime pay and additional compensation, 0.1% of pay periods included sick pay and additional compensation, and 0.1% of pay periods included meal break premiums and additional compensation. (*Id.*) Moreover, these violation rates assume Plaintiff would be able to show the 10 bonus payments were non-discretionary payments that should have been factored into the regular rate. (*Id.*) Based on Defendant's argument that the bonuses were discretionary and the low violation rate, Defendant's alleged failure to incorporate these bonuses into the regular rate of pay for purposes of paying overtime, sick pay, and meal break premiums would likely be found to be unintentional. (*Id.*)

The likelihood that Defendant could assert viable legal defenses would likely further reduce its overall exposure. (*Id.* at ¶ 35.) For example, the individualized and testimony-intensive nature of the claims could bar manageability of this representative action or otherwise significantly reduce Defendant's overall liability. (*Id.*) Further, the maximum exposure analysis involved a claim-by-claim penalty calculation, which is overly optimistic as it presumes Plaintiffs would be able to stack the penalties, although penalty stacking is not expressly permitted by PAGA. (*Id.* at ¶ 36.) 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 penalty for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) Moreover, Plaintiffs' 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 Defendant's 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., ¶ 36.) 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* maximum estimate. (*Id.* at ¶ 37.)

Based on the foregoing, Plaintiffs' Counsel believe it is more reasonable to assess penalties on a

$100 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the estimated 16,726 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 38.) Accordingly, Plaintiffs' Counsel estimate Defendant's maximum PAGA exposure to be **$1,672,600.00** ($100 x 16,726). (*Id.*) The Gross Settlement Amount $425,000.00 represents approximately 25.4% of the maximum exposure figure ($425,000.00 / $1,672,600.00). (*Id.*) However, based on the discovery, Defendant's arguments at mediation, an understanding that the claims are heavily dependent on the unlikely participation by Aggrieved Employees and their varying employment experience, and other important considerations discussed above, it is reasonable to assume a violation occurred only in one-fourth of all pay periods, which results in a realistic (*risk-adjusted*) exposure of **$418,150.00** ($1,672,600.00 / 4). (*Id.*) Based on this, the Parties settled on the Gross Settlement value of $425,000.00. (*Id.*) The Gross Settlement Amount of $425,000.00 represents roughly **101.6%** of the realistic exposure ($425,000.00 / $418,150.00). (*Id.*)

The proposed Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery. (*Id.* at ¶ 39.) 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 $425,000.00 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

Plaintiffs' Counsel have conducted a thorough investigation into the facts of the allegations. (Moon Decl., ¶ 42.) Based on the foregoing discovery and on their own independent investigation and evaluation, Plaintiffs' 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 Defendant on the merits, the

Settlement is in the best interests of the Aggrieved Employees and the State of California. (*Id.*)

Although Plaintiffs' Counsel believe there is merit to Plaintiffs' allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 43.) Plaintiffs' Counsel also recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiffs' 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 Plaintiffs prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 44.) 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., ¶ 44.) While Plaintiffs' 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 ¶ 45.) 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 Defendant faced, as discussed above. (*Id.*)

Plaintiffs' 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 Plaintiffs prevailed at trial, the penalties would be limited due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 46.) 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. Accordingly, it is entirely possible that even if Plaintiffs would be successful at trial, assuming they first able to win on the merits regarding their individual claims at arbitration and then defeat the manageability issues presented at litigation by the large number of Aggrieved Employees in this action, Plaintiffs may still be awarded substantially less than what was obtained through the Settlement. (*Id.*)

The Settlement avoids the significant risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 47.) Though the Parties have engaged in a significant amount of investigation, informal discovery, and employee data analysis, they have not participated in formal discovery procedures, including depositions and expert discovery. (*Id.*) Moreover, Plaintiffs 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 Enhancements to Plaintiffs Are Reasonable and Should Be Approved</u>

Enhancement awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . ." (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61.) In this context, PAGA representatives should be rewarded for assuming the risk of retaliation for the sake of aggrieved employees.

Here, in light with the Settlement and subject to the Court's approval, Plaintiffs request an Enhancement Award of $15,000.00, each. (Settlement, ¶ 14.) Plaintiffs and Plaintiffs' Counsel respectfully submit that the requested enhancement is reasonable in recognition of Plaintiffs' role as named Plaintiffs and PAGA Representatives, for the risks to future employment inherent in undertaking this role and for their service and participation in litigation that resulted in a fair settlement under PAGA. (Moon Decl., ¶¶ 48–51; Rocha Decl., ¶¶ 6–19; Castanon Decl., ¶¶ 5-8.)

D. <u>The Requested Attorneys' Fees/Costs are Reasonable and Should be Approved</u>

In line with the Settlement, Plaintiffs' Counsel request an award of attorneys' fees in an amount of one-third of the Gross Settlement Amount (i.e., no less than $141,666.67, subject to potential increase under the escalator clause), plus reimbursement for actual litigation costs in the amount of $25,000.00. (*See* Settlement, ¶ 12(d).)

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

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

Here, Plaintiffs' Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 87.) 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 PAGA Employees at the conclusion of this case. (*Id.*) This fee/cost-shifting provision reflects the understanding that Plaintiffs' Counsel must accept significant risk of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that Plaintiffs' 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 Defendant while at the same time rewarding Plaintiffs' Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiffs' Counsel who undertook this matter on a contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 89-95.) Once Plaintiffs' Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 93.)

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, Plaintiff's Counsel possess considerable expertise in litigating class action and representative matters. (*Id*. at ¶¶ 61–83; Nordrehaug Decl., ¶¶ 3, Ex. 1.) Plaintiffs' Counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (Moon Decl., ¶¶ 61–83; Nordrehaug Decl., ¶¶ 3, Ex. 1.) Because it is reasonable to compensate Plaintiffs' Counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

Plaintiffs' 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., ¶ 84.) 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 ¶ 82.) Based on these and other factors, Plaintiffs' Counsel have frequently received fee awards of this percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 65, 70, 76; Nordrehaug Decl., ¶¶ 3(b).) Thus, the requested fee award is reasonable and fair.

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

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

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].) Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.*) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id*. at pp. 556–57.)

Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) The Court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Generally, hours are reasonable if they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.)

Here, Plaintiffs' Counsel combined current lodestar is *no less than* **$114,352.50** which is based on *no less than* **164.10** of attorney time spent to-date at their customary hourly rates.[4] (*See* Moon Decl., ¶88; Nordrehaug Decl., ¶ 12.) Thus, in comparison to this lodestar, the total fee request of $141,666.66 represents a multiplier of **1.24** ($141,666.66 / $114,352.50). (*See* Moon Decl., ¶88; Nordrehaug Decl., ¶ 12.) Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation, including to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiffs regarding the case. (Moon Decl., ¶ 89.) The amount of fees requested under the Settlement is warranted based on the contingent risk that Plaintiffs' Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the PAGA Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel. (*Id.* at ¶ 91.) Plaintiffs' Counsel also bear the risk of taking whatever actions are necessary if Defendants fail to pay. (*Id.* at ¶ 89.) Thus, the request for attorneys' fees is more than reasonable under a lodestar check.

5. Plaintiffs' 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, Plaintiffs' Counsel seek reimbursement in the total amount of $16,936.81[5] for expenses that were actually and reasonably incurred in this litigation. (Moon Decl., ¶ 84, Ex. 4.) Moreover, this amount is below the maximum allocation under the Settlement and thus, the remainder ($8,063.19 = $25,000 - $16,936.81) will be added to the PAGA Penalties Fund (Settlement, ¶ 12(d).) Thus, costs should be reimbursed in full.

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[4] MLG's lodestar is $73,605.00 based on 95.1 hours of attorney time, and BDBD's lodestar is $40,747.50 based on 69 hours of attorney time. (Moon Decl., ¶ 88, Ex. 9; Nordrehaug Decl., ¶ 12, Ex. 3.)

[5] MLG incurred $13,166.70 in litigation costs and BNBD incurred $3,770.11 in litigation costs, for a total of $16,936.81. (Moon Decl., ¶ 96, Ex. 4.; Nordrehaug Decl., ¶ 14, Ex. 3.)

IV. CONCLUSION

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

Respectfully submitted,

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