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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF VENTURA**

PATRICIA CUELLAR and MICHELLE LEE,  
as individuals and on behalf of all others  
similarly situated,

Plaintiffs,

v.

AVEANNA HEALTHCARE AS, LLC, a  
Delaware Limited Liability Company;  
PREMIER HEALTHCARE SERVICES, LLC,  
a California Limited Liability Company; and  
DOES 1 through 100,

Defendants.

Case No.: 56-2021-00556492-CU-OE-VTA

*[Case assigned for all purposes to the Hon.  
Ronda J. McKaig, Dept. 41]*

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR SETTLEMENT  
APPROVAL OF CLAIMS BROUGHT  
UNDER THE PRIVATE ATTORNEYS  
GENERAL ACT, REASONABLE  
ATTORNEYS' FEES AND COSTS, AND  
ENHANCEMENT AWARDS**

Date: November 8, 2022  
Time: 8:20 a.m.  
Dept: 41

Action Filed: July 23, 2021  
Trial Date: None Set

1 **JCL LAW FIRM, APC**

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10 *Attorneys for Plaintiffs*

1           **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2           PLEASE TAKE NOTICE that on November 8, 2022 at 8:20 a.m., or as soon thereafter as  
3 the matter may be heard, in Department 41 of the Ventura County Superior Court, located at 800  
4 South Victoria Avenue, Ventura, California 93009, Plaintiffs Patricia Cuellar and Michelle Lee  
5 (“Plaintiffs”), individually and on behalf of other aggrieved employees, will and hereby do move  
6 this Court for entry of an Order as follows:

- 7           1. Granting approval pursuant to Labor Code section 2699(l) of the parties’ proposed  
8 Settlement Agreement of claims brought by Plaintiffs pursuant to the Private  
9 Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*;
- 10          2. Appointing ILYM Group, Inc. as the third-party Settlement Administrator, and  
11 approving an award of \$19,985.00 in anticipated costs to ILYM Group, Inc. for its  
12 settlement administration services;
- 13          3. Approving as to form and content the proposed Notice of PAGA Settlement and  
14 Release of Claims, and directing that it be distributed to the Aggrieved Employees  
15 pursuant to the terms of the Settlement Agreement;
- 16          4. Directing the distribution of the Maximum Settlement Amount (\$1,200,000.00)  
17 pursuant to the terms of the Settlement Agreement;
- 18          5. Approving an award of one-third of the Maximum Settlement Amount (\$400,000.00)  
19 in attorneys’ fees to Plaintiffs’ counsel;
- 20          6. Approving an award of \$18,577.66 in actual litigation costs reimbursement to  
21 Plaintiffs’ counsel;
- 22          7. Approving enhancement awards of \$5,000.00 each to Plaintiffs (\$10,000.00 total) for  
23 their service to the Aggrieved Employees and the State of California; and
- 24          8. Approving the payment of \$563,578.00 to the California Labor & Workforce  
25 Development Agency for its 75% share of PAGA civil penalties.

26           This Motion is based on this Notice, the attached Memorandum of Points and Authorities;  
27 the declarations of Fletcher W. Schmidt, Shani O. Zakay, Jean-Claude Lapuyade, Patricia Cuellar,  
28 Michelle Lee, and Sean Hartranft of ILYM Group, Inc., and all exhibits attached thereto; the

1 Settlement Agreement; all other pleadings and papers on file in this action; and on any further  
2 oral or documentary evidence or argument presented at the time of hearing.

3         Given the multiplicity of issues addressed herein, Plaintiffs' memorandum of points and  
4 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court  
5 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider  
6 the entire Motion, which is 23 pages in length.

7  
8 Dated: October 17, 2022

Respectfully Submitted,  
HAINES LAW GROUP, APC

9  
10 By:



11 Fletcher W. Schmidt  
12 Attorneys for Plaintiffs  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Patricia Cuellar and Michelle Lee (collectively, “Plaintiffs”), “Aggrieved  
4 Employees” under the Private Attorneys General Act of 2004, California Labor Code section  
5 2698 *et seq.* (“PAGA”), respectfully move this Court for an Order granting approval of the  
6 Settlement Agreement (the “Settlement Agreement” or “Settlement”)<sup>1</sup> entered into between  
7 Plaintiffs and Defendants Aveanna Healthcare AS, LLC and Premier Healthcare Services  
8 (collectively, “Defendants”).<sup>2</sup> The proposed Settlement, under which Defendants will pay a non-  
9 reversionary Maximum Settlement Amount of \$1,200,000.00, will dispose of Plaintiffs’  
10 representative PAGA claim filed on behalf of the State of California and all “Aggrieved  
11 Employees” as defined by Labor Code section 2699(c). This PAGA action is predicated on  
12 Defendants’ alleged failures to: pay all minimum and overtime wages; pay sick leave at the  
13 regular rate of pay; provide all lawful meal periods; authorize and permit all lawful rest periods;  
14 provide timely wages; issue accurate itemized wage statements; maintain accurate and complete  
15 payroll records; timely pay all final wages owed upon separation from employment; and  
16 reimburse all necessary business expenses.

17 This PAGA action seeks civil penalties for Defendants’ Labor Code violations on behalf  
18 of the California Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved  
19 Employees,” defined as “all current and former non-exempt employees who worked for  
20 Defendants as a Home Health Aid, Registered Nurse, Licensed Practical Nurse, Licensed Nurse,  
21 Licensed Vocational Nurse, Wellness Immunization Nurse, Clinical Research Nurse, or in an  
22 administrative position, in the State of California from May 18, 2020 to the date that the Court  
23 enters an order approving this Settlement.” The time period from May 18, 2020 to the date that  
24 the Court enters an order approving this Settlement is referred to herein as the “PAGA Period.”

25  
26 \_\_\_\_\_  
27 <sup>1</sup> The Settlement Agreement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt (“Schmidt  
Decl.”), filed concurrently with this Motion.

28 <sup>2</sup> Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed Settlement, a copy  
of this motion, and all papers filed in support hereof, to the LWDA. *See* Schmidt Decl., ¶ 9, Exhibit 2.

1 Notably, the relief provided under the Settlement, and the claims released thereunder, are *solely*  
2 for the payment of civil penalties under the PAGA. Based on the information provided by  
3 Defendants, the number of Aggrieved Employees, including Plaintiffs, is estimated to be  
4 approximately 4,500 individuals.

5 In deciding whether to grant approval of the Settlement, the primary issue is whether the  
6 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement  
7 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it (1) is the  
8 product of extensive arm's-length negotiations, (2) was negotiated by attorneys experienced in  
9 wage-and-hour issues with the assistance of an experienced, neutral mediator, (3) was negotiated  
10 after the parties undertook sufficient investigation to evaluate the relative strength and value of  
11 the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength  
12 and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of  
13 further litigation.

14 Pursuant to the Settlement, Defendants will pay a Maximum Settlement Amount ("MSA")  
15 of \$1,200,000.00 on a non-reversionary basis. *See* Settlement, §§ I.8 and II.3. After deducting  
16 amounts for requested attorneys' fees (\$400,000.00), attorney costs (\$18,577.66),<sup>3</sup> enhancement  
17 awards for the named Plaintiffs (\$5,000.00 each), and settlement administration costs  
18 (\$19,985.00), the Settlement provides for distribution of \$563,578.00 to the LWDA for its 75%  
19 share of the civil penalties pursuant to Labor Code section 2699(i), and approximately  
20 \$187,859.34 in civil penalties to the Aggrieved Employees. Settlement, §§ I.9, II.5-6.

21 The MSA represents a reasonable recovery for the State of California and Aggrieved  
22 Employees when considering the limited release of only PAGA claims based on the factual  
23 allegations in Plaintiffs' operative complaint and respective prefiling LWDA letters. Of particular  
24 relevance here is the fact that on June 15, 2022, less than two months after this Settlement was  
25

26  
27 <sup>3</sup> Although the Settlement provides for reimbursement of Plaintiffs' verified litigation costs and expenses  
28 "up to \$35,000.00," Plaintiffs' counsel has collectively incurred \$18,577.66 in actual litigation costs, and respectfully requests reimbursement of only the amount actually incurred. *See* Settlement, §§ I.9 and II.5.a; Schmidt Decl., Exhibit 3 (Expense Report); Declaration of Shani O. Zakay ("Zakay Decl."), ¶ 3, Exhibit 1; Declaration of Jean-Claude Lapuyade (Lapuyade Decl.), ¶ 4, Exhibit 2.

1 reached, the United States Supreme Court issued its opinion in *Viking River Cruises, Inc. v.*  
2 *Moriana* (“*Viking River*”) where it overruled the California Supreme Court’s holding in *Iskanian*  
3 *v. CLS Transportation Los Angeles, LLC* which held that a representative PAGA claim could not  
4 be compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No. 20-  
5 1573) 596 U.S. \_\_\_\_ [\_\_\_\_ S.Ct. \_\_\_\_], 2022 WL 2135491; *Iskanian v. CLS Transportation Los*  
6 *Angeles, LLC* (2014) 59 Cal.4th 348. In effect, the U.S. Supreme Court’s ruling in *Viking River*  
7 means that if this matter had not settled, Defendants would likely be able to compel this case to  
8 individual arbitrations based on the arbitration agreements signed by each Plaintiff, precluding  
9 any PAGA recovery whatsoever. Therefore, this is a unique case where further litigation would  
10 almost certainly have resulted in a smaller recovery, or even no recovery at all. Moreover,  
11 notwithstanding these risks, the MSA results in individual payments that exceed other PAGA  
12 penalty awards approved as reasonable throughout California. *See, e.g., Penaloza v. PPG*  
13 *Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at \*2 (Super. Ct. L.A. County, May 20,  
14 2013) (average PAGA penalties of \$7.49); *Cabrera v. Advantage Sale & Marketing, LLC*, Case  
15 No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (average PAGA  
16 penalties of \$3.33). Further, the amounts requested for attorneys’ fees and costs, Plaintiffs’  
17 enhancement awards, and settlement administration costs are fair, adequate, and reasonable. In  
18 light of the foregoing, this Court should enter the [Proposed] Judgment and Order submitted  
19 herewith.

## 20 **II. SUMMARY OF THE LITIGATION**

### 21 **A. The Parties**

22 Defendants provide in-home health care services throughout California. Schmidt Decl., ¶  
23 10. Plaintiff Cuellar worked for Defendants as a non-exempt nurse from 2018 until commencing  
24 a medical leave of absence on December 6, 2020, and worked one additional week in April 2021  
25 on modified duty. Declaration of Patricia Cuellar (“Cuellar Decl.”), ¶ 2. Plaintiff Lee worked for  
26 Defendants from October 2019 to May 2021 as a licensed vocational nurse. Declaration of  
27 Michelle Lee (“Lee Decl.”), ¶ 2. Plaintiffs’ job duties consisted of providing in-home healthcare  
28 services for children with disabilities. *Id.*; Cuellar Decl., ¶ 2. Plaintiffs, like all Aggrieved

Employees, were employed by Defendants as non-exempt employees during the PAGA Period, and were subject to Defendants' wage and hour policies and practices. *Id.*

**B. Procedural History**

On July 23, 2021, after exhausting her pre-filing requirements, Plaintiff Cuellar filed the instant action against Defendant Aveanna, alleging a single cause of action for civil penalties under California's Private Attorney General Act, Labor Code Section 2698, *et seq.* Schmidt Decl., ¶ 11. On September 27, 2021, after exhausting her pre-filing requirements, Plaintiff Lee initiated a second action against Defendants, titled *Michelle Lee v. Aveanna Healthcare AS, LLC*, in Santa Clara County Superior Court, Case No. 21CV387081, alleging a single cause of action for civil penalties under PAGA premised upon the same or similar underlying alleged Labor Code violations. *Id.* After Plaintiff Cuellar learned of Plaintiff Lee's action, counsel in the two actions met and conferred, and agreed to attend mediation in an attempt to seek a global resolution of all claims alleged by Plaintiffs. *Id.*

On April 27, 2022, the parties attended a full-day mediation session with mediator Tripper Ortman, Esq., an experienced and well-respected wage and hour mediator. Schmidt Decl., ¶ 12. Prior to attending mediation, Defendants provided Plaintiffs with a representative sampling of the Aggrieved Employees' timekeeping and payroll records, as well as wage and hour policy documents in an employee handbook. *Id.* Plaintiffs then retained an expert with a Ph.D. in economics to examine Defendants' produced data and conduct a comprehensive exposure analysis for the claims at issue. *Id.*

During mediation, the parties debated the legal bases for their claims and defenses, their respective data analyses, their respective positions regarding the extent to which the Court would likely reduce any PAGA penalties recovered, and the potential impact of the *Viking River* decision. Schmidt Decl., ¶ 13. At the conclusion of mediation, Mr. Ortman made a mediator's proposal to globally and fully resolve all PAGA claims asserted by Plaintiffs, which the parties ultimately accepted. *Id.* As a material term of the Settlement, Plaintiff Cuellar filed the operative First Amended Complaint on October 17, 2022, adding Plaintiff Lee as a named plaintiff in the

instant action and consolidating all factual allegations alleged in both actions and settled through mediation. *Id.*

**C. Plaintiffs' Claims And Defendants' Defenses**

Plaintiffs allege that they and the Aggrieved Employees regularly work off the clock, including remain on-call, completing pre-shift tasks before clocking in and post-shift tasks after clocking out, clocking out for purported meal periods but continuing to work, donning and doffing uniforms and/or safety equipment off the clock, attending company meetings off the clock, and making work-related phone calls and/or driving while off the clock, resulting in Defendants' failure to accurately track and pay Plaintiffs and other Aggrieved Employees all minimum and overtime wages for all minutes actually worked. Schmidt Decl., ¶ 14. Further, Plaintiffs allege that Defendants unlawfully rounded the Aggrieved Employees' time entries, edited and/or manipulated time entries to show fewer hours than actually worked, and paid straight pay instead of overtime pay, resulting in additional unpaid overtime and minimum wages. *Id.*

Moreover, Plaintiffs allege that Defendants paid Plaintiffs and the Aggrieved Employees non-discretionary incentive pay and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law, but failed to include the value of this incentive pay when calculating the regular rate of pay for purposes of overtime pay, meal period premium pay, rest period premium pay, and sick pay, resulting in unpaid and/or underpaid overtime wages, meal and rest period premium pay, and sick pay wages. Schmidt Decl., ¶ 15. Plaintiffs further assert that Defendants failed to correctly calculate the regular rate of pay in violation of *Alvarado v. Dart Container Corp. of California*, (2018) 4 Cal.5th 542. *Id.*

Plaintiffs further allege that Defendants failed to provide Plaintiffs and the Aggrieved Employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute meal periods commencing before the end of the fifth hour of work and second duty-free 30-minute meal periods commencing before the tenth hour of work. Schmidt Decl., ¶ 16. Specifically, as a result of Defendants demanding work requirements and understaffing, Plaintiffs and Aggrieved Employees were required to work during the time they had "clocked out" for their meal periods, and required

1 Plaintiffs and the Aggrieved Employees to sign on-duty meal period agreements that  
2 acknowledge that the nature of the work requires that employees remain on duty at all times  
3 during meal periods. *Id.* Plaintiffs were also interrupted during their meal periods on occasion,  
4 and required to conduct work assignments and to carry cellular phones and/or walkie-talkies for  
5 work purposes during purported meal periods, in violation of California law. *Id.*

6 Plaintiffs allege that Defendants maintained an unlawful written rest period policy which  
7 required employees to remain on premises at their client's residence and supervise residents  
8 during rest periods and remain on duty at all times. Schmidt Decl., ¶ 17. By prohibiting their non-  
9 exempt employees from leaving the work premises and by requiring employees to supervise  
10 residents during their rest periods, Plaintiffs contend that Defendants failed to relinquish control  
11 over employees in violation of California law. *Id.*; see also *Augustus v. ABM Security Services,*  
12 *Inc.* (2016) 2 Cal.5th 257, 269 (“[O]ne cannot square the practice of compelling employees to  
13 remain at the ready, tethered by time and policy to particular locations or communications  
14 devices, with the requirement to relieve employees of all work duties and employer control during  
15 10-minute rest periods.”).

16 Moreover, Plaintiffs allege that Defendants failed to reimburse all necessary business  
17 expenses for Plaintiffs and the Aggrieved Employees, including for the use of their personal  
18 cellular phones for essential work duties, driving their personal vehicles (i.e., mileage and gas),  
19 purchasing their uniforms and other deposits, separately laundering mandatory uniforms, and  
20 purchasing tools and safety equipment. Schmidt Decl., ¶ 18; see *Cochran v. Schwan's Home*  
21 *Service, Inc.*, (2014) 228 Cal.App.4th 1137, and Labor Code § 2802

22 In addition, Plaintiffs allege that Defendants failed to comply with Labor Code § 226(a)  
23 by intentionally failing to furnish Plaintiffs and the Aggrieved Employees with documents signed  
24 to obtain or hold employment under Labor Code § 432, personnel records under Labor Code §  
25 1198.5, and time records under Labor Code § 1174, making it difficult for Plaintiffs and the  
26 Aggrieved Employees to calculate their unpaid wages and/or premium payments. Schmidt Decl.,  
27 ¶ 19. Similarly, Plaintiffs allege that Defendants failed to comply with the notice requirements  
28 of Labor Code § 2810.5 by, among other things, failing to provide Plaintiffs and the Aggrieved

1 Employees with the rates of pay and overtime rates of pay applicable to their employment and  
2 other pertinent information required to be disclosed by Defendants under Labor Code § 2810.5.  
3 *Id.*

4 Finally, as a result of Defendants’ failures to pay all minimum wages, overtime wages,  
5 and meal period and rest period premiums, Plaintiffs assert that Defendants also failed to issue  
6 accurate itemized wage statements, and failed to timely pay all final wages at the time of  
7 separation. Schmidt Decl., ¶ 20. Defendants also failed to maintain accurate payroll records and  
8 issued wage statements to Plaintiffs and the Aggrieved Employees that fail to identify the correct  
9 number of total hours worked, rates of pay, and applicable sick leave pay. *Id.*; *see also* Labor  
10 Code § 226(a).

11 In response, Defendants assert that they maintained facially lawful written wage and hour  
12 policies, including meal and rest period policies, at all times throughout the PAGA liability  
13 period, and the meal period waivers that employees signed were voluntary, lawful, and not a  
14 condition of continued employment. Schmidt Decl., ¶ 21. Further, Defendants argue that  
15 Plaintiffs’ underlying claims will fail and, as a result, the wholly derivative claims will also fail.  
16 *Id.*; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying  
17 causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendants also maintain  
18 that any “derivative” PAGA claims for violations of Labor Code Sections 226 or 203 would be  
19 entirely duplicative and would be unlikely to be awarded in any significant manner by a Court.  
20 Schmidt Decl., ¶ 21. Given their good faith defenses and prompt remedial measures, Defendants  
21 argue that this Court would exercise its discretion to substantially reduce any PAGA penalties  
22 awarded. *Id.*; *see also* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012)  
23 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks*  
24 *Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court’s reduction of PAGA penalties to  
25 10% of calculated exposure after bench trial).

26 Further, Defendants argue that Plaintiffs could only seek PAGA penalties at the \$100  
27 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since Defendants had  
28 never been put on notice by a court or the Labor Commissioner that their practices violated the

Labor Code until Plaintiffs initiated this action. Schmidt Decl., ¶ 21; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision).

### **III. THE PROPOSED SETTLEMENT**

#### **A. “Aggrieved Employees” Defined**

Aggrieved Employees are defined as, “all current and former non-exempt employees who worked for Defendants as a Home Health Aid, Registered Nurse, Licensed Practical Nurse, Licensed Nurse, Licensed Vocational Nurse, Wellness Immunization Nurse, Clinical Research Nurse, or in an administrative position, in the State of California from May 18, 2020 to the date that the Court enters an order approving this Settlement.” *See* Settlement, § I.2.

#### **B. Essential Terms Of The Settlement**

Defendants will pay a MSA of \$1,200,000.00. Settlement, § I.8. After deducting amounts for requested attorneys’ fees and costs, Plaintiffs’ enhancement awards, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the Aggrieved Employees and the LWDA is estimated to be \$751,437.34. *See id.*, § I.9. The monetary terms of the Settlement are as follows:

|                                             |                       |
|---------------------------------------------|-----------------------|
| <b>Maximum Settlement Amount:</b>           | <b>\$1,200,000.00</b> |
| Minus Court-approved attorneys’ fees (1/3): | \$400,000.00          |
| Minus Court-approved attorneys’ costs:      | \$18,577.66           |
| Minus Court-approved enhancement payments:  | \$5,000.00 each       |
| Minus settlement administrator costs:       | \$19,985.00           |
| <b>Net Settlement Amount:</b>               | <b>\$751,437.34</b>   |
| Minus LWDA’s 75% Share:                     | \$563,578.00          |
| <b>Total Paid to Aggrieved Employees:</b>   | <b>\$187,859.34</b>   |

#### **1. Attorneys’ Fees and Costs**

Plaintiffs’ counsel requests one-third of the MSA (\$400,000.00) in attorneys’ fees, and \$18,577.66 in actual litigation costs. *See* Schmidt Decl., ¶¶ 26, 30, Exhibit 3; Zakay Decl., Exhibit 1; Lapuyade Decl., Exhibit 2; Settlement, § II.5.a.

#### **2. Settlement Administration Costs**

The parties agree to engage ILYM Group, Inc. (“ILYM”) as the third-party settlement administrator. *See* Settlement, §§ I.16. ILYM shall be responsible for calculating the settlement

1 checks and mailing the settlement checks and Notice to the Aggrieved Employees,<sup>4</sup> among other  
2 duties. *Id.*, § III. ILYM estimates incurring \$19,985.00 in costs in connection with the  
3 administration of this settlement. *See* Declaration of Sean Hartranft (“Hartranft Decl.”), Exhibit  
4 B.

### 5 **3. Plaintiffs’ Enhancement Awards**

6 Plaintiffs also request enhancement awards of \$5,000.00 each in recognition of their  
7 efforts to initiate this case, their contributions to the prosecution of this case, and their efforts in  
8 bringing this case to a successful resolution. Settlement, §§ I.9, II.5.b; Schmidt Decl., ¶ 34;  
9 Cuellar Decl., ¶¶ 4-5; Lee Decl., ¶¶ 5-6.

### 10 **4. Payment to the LWDA and Aggrieved Employees**

11 The entire NSA shall be designated as PAGA civil penalties. Settlement, § III.3. From  
12 the NSA, 75% (\$563,578.00) will be distributed to the LWDA, and 25% (\$187,859.34) will be  
13 distributed to the Aggrieved Employees. *Id.*, § II.6; *see also* Labor Code § 2699(i) (“[C]ivil  
14 penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the  
15 [LWDA]...and 25 percent to the aggrieved employees.”). 100% of the individual payments to  
16 the Aggrieved Employees will be reported using IRS Form-1099s, since all funds received under  
17 Section 2699 are civil penalties that do not trigger payroll taxes or withholdings. *See* Settlement,  
18 § III.3. Individual Settlement Payments shall be apportioned based on the proportionate number  
19 of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the  
20 NSA by a fraction, the numerator of which is each Aggrieved Employee’s total pay periods  
21 worked during the PAGA Period, and the denominator of which is the total aggregate number of  
22 pay periods worked by all Aggrieved Employees during the PAGA Period. *Id.*, § II.6.

### 23 **5. Funding of the Settlement**

24 Defendants will deposit the MSA within thirty (30) calendar days after the Effective Date,  
25 as that term is defined in the Settlement Agreement. Settlement, §§ I.5, II.3. Within thirty (30)  
26 days after the Effective Date, Defendants will provide ILYM with information for the Aggrieved  
27 Employees, including their full names, last known mailing addresses, last known telephone  
28

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<sup>4</sup> Based on Defendants’ employees’ demographics, Notices will be sent out in English only.

1 numbers, number of applicable pay periods during the PAGA Period, and Social Security  
2 numbers or tax identification numbers. Settlement, § III.2. Within ten (10) business days  
3 thereafter, ILYM will circulate to counsel for both parties an anonymized spreadsheet containing  
4 the Individual Settlement Payments and the data used to calculate said payments. *Id.* Within  
5 twenty-one (21) calendar days Defendants’ deposit of the MSA and after receiving approval from  
6 the parties of the calculations used to determine the Individual Settlement Payments, ILYM will  
7 mail copies of the explanatory letter, along with the Individual Settlement Payments, to the  
8 Aggrieved Employees via First-Class U.S. Mail. *Id.*, § III.3. Before mailing, ILYM will perform  
9 a search on the National Change of Address database to update the Aggrieved Employees’  
10 addresses. *Id.*

#### 11 **IV. ARGUMENT**

##### 12 **A. Standards for Approval of a PAGA Settlement**

13 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)  
14 (stating, the “court shall review and approve any penalties sought as part of a proposed settlement  
15 agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise,  
16 which balances the possible recovery against the risks inherent in litigating further.” *In re TD*  
17 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL  
18 4079226, \*9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding  
19 of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in  
20 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”  
21 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As such, “the  
22 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits,”  
23 or “judged against a hypothetical or speculative measure of what might have been achieved.” *Id.*

24 Although the operative PAGA statute does not set forth the criteria by which a PAGA  
25 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors  
26 for review of a class action settlement. However, “a PAGA claim asserted on a non-class  
27 representative basis...is not considered a class action but a law enforcement action, and therefore  
28 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,  
2012 WL 253217 at \*3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL

2650571 at \*4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus 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,” and while a “[PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct,” a reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a compromise. *Mendez, supra*, 2010 WL 2650571 at \*4. “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777 at \*4 (N.D. Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[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.” *Id.*

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,<sup>5</sup> “[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.” *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 F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).<sup>6</sup>

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<sup>5</sup> As held by the California Supreme Court, “[PAGA] does not create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

<sup>6</sup> The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves or object. *See Fed. R. Civ. Proc. R. 23(e)*. Rule 3.769 contains similar rules for State court class actions.

1 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of  
2 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is  
3 binding not only on the named employee plaintiff but also on government agencies and any  
4 aggrieved employee not a party to the proceeding...the non-party employees, because they were  
5 not given notice of the action or afforded any opportunity to be heard, would not be bound by the  
6 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,  
7 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties  
8 alleged in the complaint and to the claims that were, or could have been, alleged pursuant to  
9 PAGA based on the factual allegations in the complaint.<sup>7</sup> In the case at hand, as the only claims  
10 at issue are PAGA claims, those will be the only claims extinguished because of this Settlement.

11 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate,**  
12 **and Reasonable Compromise of Disputed Claims**

13 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*  
14 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and  
15 representative PAGA settlements involve a court approval process that exists to prevent fraud,  
16 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*  
17 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same  
18 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.  
19 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement  
20 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,  
21 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208  
22 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in  
23 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.

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24  
25 <sup>7</sup> This is contrasted with the much broader release permitted in a class action context, which may release  
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*  
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority  
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,  
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set  
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir., 2010) (“we  
have held that federal district courts properly released claims not alleged in the underlying complaint where  
those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is fair, adequate, and reasonable, Plaintiffs respectfully requests that the Court grant approval.

### **1. Factors in Evaluating a Representative PAGA Settlement**

A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

*Id.* These factors require balancing and are non-exhaustive. Trial courts should therefore tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.* In the context of a PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

“In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250. Because settlements inherently involve compromise, settlements providing for narrower relief than can be obtained if the suit were successfully litigated can be reasonable because “the

1 public interest may indeed be served by a voluntary settlement in which each side gives ground  
2 in the interest of avoiding litigation.” *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,  
3 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties  
4 to aid in assessing whether the parties sufficiently developed the claims and supporting factual  
5 bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is  
6 sufficient where it allows the parties and the court to form “an understanding of the amount that  
7 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*  
8 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide  
9 the trial court with “a meaningful and substantiated explanation of the manner in which the factual  
10 and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

11 **a) The Strength of Plaintiffs’ Case**

12 Plaintiffs acknowledge that there are substantial risks and uncertainty in proceeding to  
13 trial. First and foremost was the risk that the United States Supreme Court would issue its opinion  
14 in *Viking River* which could result in the outright dismissal of Plaintiffs’ representative PAGA  
15 claim. *See Schmidt Decl.*, ¶ 22. At the time that this settlement was reached, *Viking River* had  
16 been fully briefed and oral argument had already occurred. *Id.* Less than two months after  
17 Plaintiffs entered into this Settlement, this risk became a reality and the Supreme Court issued its  
18 opinion in *Viking River*, which overturns the California Supreme Court’s holding in *Iskanian v.*  
19 *CLS Transportation Los Angeles, LLC* which held that a representative PAGA claim could not be  
20 compelled to arbitration. *See Viking River Cruises, Inc. v. Moriana* (June 15, 2022, No. 20-1573)  
21 596 U.S. \_\_\_\_ [\_\_\_\_ S.Ct. \_\_\_\_], 2022 WL 2135491; *Iskanian v. CLS Transportation Los Angeles,*  
22 *LLC* (2014) 59 Cal.4th 348. As a result, absent this settlement, it is likely that no representative  
23 PAGA recovery would be possible at all.

24 In addition, Defendants presented numerous defenses to Plaintiffs’ underlying claims and  
25 arguments to why Plaintiffs’ damages calculations were overstated; chief among them that the  
26 Court would utilize its discretion to substantially reduce any award of PAGA penalties. While  
27 Plaintiffs were prepared to litigate their claims through trial, Plaintiffs faced substantial  
28

1 challenges in prevailing in this matter and obtaining a better result than will be provided through  
2 the Settlement. Thus, this factor supports approval.

3 **b) Risk, Expense, Complexity, and Duration of Further Litigation**

4 As discussed in Section IV.B.1.a, *Viking River* posed an existential threat to this case, and  
5 has since become controlling precedent that would likely result in the dismissal of Plaintiffs’  
6 representative PAGA claim if it had not already been settled. Therefore, at the time the settlement  
7 was reached, Plaintiffs faced tremendous risk that continued litigation would have resulted in the  
8 dismissal of their representative PAGA claim. This factor therefore clearly supports approval of  
9 the Settlement.

10 **c) Amount Offered in Settlement Given Realistic Value of Claims**

11 This proposed Settlement provides a fair and reasonable monetary recovery for the  
12 LWDA and Aggrieved Employees in the face of disputed claims and significant litigation risks.  
13 Plaintiffs and their retained expert analyzed Defendants’ produced data, and forecasted  
14 Defendants’ realistic exposure for PAGA civil penalties as follows:

15 The Aggrieved Employees worked an aggregate 250,000 pay periods during the relevant  
16 time period. Schmidt Decl., ¶ 23. Labor Code § 2699(f)(2) provides for PAGA civil penalties in  
17 the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200  
18 for each aggrieved employee per pay period for each subsequent violation. *See* Labor Code  
19 § 2699(f)(2). However, courts have interpreted section 2699(f)(2) to only impose the \$200  
20 subsequent penalty after an employer has been notified that its conduct violates the Labor Code.  
21 *See, e.g., Amaral, supra*, 163 Cal.App.4th at 1207 (finding “initial” violation rate applies until  
22 employer is notified that it is violating a Labor Code provision); *Trang v. Turbine Engine*  
23 *Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at \*5 (C.D.  
24 Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for  
25 subsequent violations unless and until a court or commissioner notifies the employer that it is in  
26 violation of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw*  
27 *Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at \*9 (S.D. Cal. 2009)  
28 (finding that California law imposes the “subsequent violation penalty” only after an employer

1 has been notified its conduct violates the Labor Code). Plaintiffs' expert's analysis confirmed that  
2 Plaintiffs' primary substantive theories of relief (regular rate miscalculations, non-compliant meal  
3 and rest period policies, and failure to reimburse for work-related cell phone use) would be  
4 triggered in virtually every pay period during the PAGA Period. Schmidt Decl., ¶ 23. Assuming  
5 that Plaintiffs could prove at least one Labor Code violation in each pay period, Plaintiffs  
6 calculated Defendants' maximum possible PAGA exposure at \$25,000,000 (250,000 pay periods  
7 x \$100 per violation). *Id.*

8         However, as discussed above, Defendants raised numerous defenses to the merits of  
9 Plaintiffs' underlying claims and argued that even if found liable, the Court would exercise its  
10 discretion to drastically reduce any potential PAGA penalties awarded. Schmidt Decl., ¶ 24; *see*  
11 *also* Section II.C, *supra*. Additionally, at the time of mediation, there was a looming threat that  
12 a forthcoming decision in *Viking River* could preclude any representative PAGA recovery at all.  
13 Schmidt Decl., ¶ 24. In the face of Defendants' defenses on the merits, the Court's discretion to  
14 reduce PAGA penalties, and the threat (which has since become reality) of an adverse *Viking*  
15 *River* ruling, Plaintiffs discounted this figure by 80% to account for the risk of losing on the merits  
16 and for the anticipated impact of *Viking River* on Plaintiffs' potential to move the case forward,  
17 and by an additional 70% for the risk of the Court reducing the penalties, to arrive at a realistic  
18 recovery of \$1,500,00.00. *Id.*; *see also, e.g., Thurman, supra*, 203 Cal.App.4th at 1136 (affirming  
19 reduction of PAGA penalties); *Carrington, supra*, 30 Cal.App.5th 504 (affirming reduction of  
20 PAGA penalties to 10% of maximum exposure).

21         Therefore, the mediator's proposed maximum settlement amount of \$1,200,000 represents  
22 approximately 80% of Plaintiffs' reasonably forecasted recovery, which is well within the range  
23 approved by courts as being fair, reasonable and adequate, while also avoiding further expense  
24 and risk of further litigation. Schmidt Decl., ¶ 24. Therefore, approval is appropriate since the  
25 Settlement will provide tangible, monetary relief to the Aggrieved Employees and the State of  
26 California.

27 ///

28 ///

1                                    **d)            Discovery Completed and the Status of Proceedings**

2            The parties engaged in a significant exchange of documents and data necessary to evaluate  
3 the value of the PAGA claim prior to mediation. *See* Schmidt Decl., ¶¶ 25. Defendants provided  
4 Plaintiffs with a representative sampling of the Aggrieved Employees’ timekeeping and payroll  
5 records and written wage and hour policies. *Id.* It was only after the completion of this informal  
6 discovery exchange and Plaintiffs’ expert’s comprehensive data analysis that the parties attended  
7 mediation. *Id.* Thus, this factor supports settlement approval.

8                                    **e)            The Experience and Views of Counsel**

9            “Parties represented by competent counsel are better positioned than courts to produce a  
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*  
11 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are  
12 represented by competent and experienced wage and hour counsel who possess extensive  
13 experience litigating wage and hour class actions and PAGA representative actions, and who  
14 believe this Settlement to be fair and adequate for all involved. *See* Schmidt Decl., ¶¶ 2-6, 27-28;  
15 Zakay Decl., ¶¶ 4-5, Exhibit 2; Lapuyade Decl., ¶ 3, Exhibit 1. Further, the proposed Settlement  
16 was reached with the input and assistance of mediator Tripper Ortman, Esq., an experienced wage  
17 and hour mediator, whose mediator’s proposal was ultimately accepted by the parties. Schmidt  
18 Decl., ¶ 25. Thus, this factor strongly supports settlement approval. *See, Kullar, supra*, 168  
19 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight to the competency  
20 and integrity of counsel and the involvement of a neutral mediator in assuring itself that a  
21 settlement agreement represents an arm’s length transaction entered without self-dealing or other  
22 potential misconduct.”).

23                                    **C.            The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of**  
24                                    **the MSA**

25            Plaintiffs, as the prevailing party in settlement, are entitled to recover attorneys’ fees and  
26 costs for bringing this PAGA claim. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails  
27 in any action shall be entitled to an award of reasonable attorney’s fees and costs.”); Code of Civil  
28 Procedure § 1021.5(a). A fee award is justified where the legal action has produced its benefits  
by way of a voluntary settlement. *See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91;

1 *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53. The  
2 California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,  
3 506, that “[t]he percentage of fund method survives in California class action cases.” Specifically,  
4 the *Laffitte* Court held:

5       The recognized advantages of the percentage method—including relative  
6 ease of calculation, alignment of incentives between counsel and the class, a  
7 better approximation of market conditions in a contingency case, and the  
8 encouragement it provides counsel to seek an early settlement and avoid  
unnecessarily prolonging the litigation—convince us the percentage method  
is a valuable tool that should not be denied our trial courts.

9 *Id.*, at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34  
10 (“when a number of persons are entitled in common to a specific fund, and an action brought by  
11 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,  
12 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*  
13 (1982) 32 Cal.3d 621, 627 (in awarding a fee from the common fund obtained for the benefit of  
14 all parties, the trial court acts within its equitable power to prevent the other parties’ unjust  
15 enrichment); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the  
16 percentage of the fund method for calculating attorneys’ fees more accurately reflects the results  
17 achieved for the putative class than the lodestar method and “establishes reasonable expectations  
18 on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early  
19 settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396  
20 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in  
21 common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards  
22 counsel for success and penalizes it for failure.’”). Further, while trial courts have discretion to  
23 assess the reasonableness of fee awards with tools such as the “lodestar cross-check,” it need not  
24 do so. *Laffitte*, 1 Cal.5th at 506 (“[w]e hold further that trial courts...retain the discretion to forgo  
25 a lodestar cross-check and use other means to evaluate the reasonableness of a requested  
26 percentage fee.”).

27       Here, Plaintiffs’ counsel’s fee request of \$400,000.00 (one-third of the MSA) is the same  
28 percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery

1 method. Fee awards of roughly one-third of the settlement fund are routinely awarded in  
2 California state and federal courts in class and representative PAGA actions. *Chavez v. Netflix,*  
3 *Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *see also In re Pacific Enterprises Securities Litig.*, 47  
4 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case  
5 No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29,  
6 2015) (approving attorneys’ fees of one-third of settlement fund in representative PAGA  
7 settlement). This is also consistent with Plaintiffs’ counsel’s experience in similar wage and hour  
8 class action and PAGA matters. Schmidt Decl., ¶ 26; *see also* 4 Newberg on Class Actions § 14.6  
9 (4th Ed. 2013) (“No general rule can be articulated on what is a reasonable percentage of a  
10 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award...”).

11         The fee award requested here is justified because Plaintiffs’ counsel achieved a reasonable  
12 monetary recovery for the Aggrieved Employees and the State of California (who did not take  
13 this case after receiving Plaintiffs’ respective PAGA notices) in an uncertain and risky case, while  
14 bearing the substantial burdens of representation on a contingency basis. Schmidt Decl., ¶ 26.  
15 Additionally, Plaintiffs’ recovery for the State of California and Aggrieved Employees exceeds  
16 other PAGA awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL  
17 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA  
18 penalties of \$3.33). That Plaintiffs’ counsel achieved these results without engaging in a  
19 protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape,  
20 confirms the strength of the results achieved.

21         As discussed, this case presented significant risks to Plaintiff, including the risk that an  
22 adverse *Viking River* decision could effectively conclude the case. It is fair and reasonable to  
23 account for these risks in compensating Plaintiffs’ counsel, as well as the risks involved in  
24 undertaking this litigation and expending considerable effort while working on a pure  
25 contingency basis. Since undertaking representation of Plaintiffs, Plaintiffs’ counsel dedicated  
26 substantial resources to this litigation, including expending \$18,577.66 in litigation costs, without  
27 receiving any compensation to date. Schmidt Decl., ¶ 30, Exhibit 3; Zakay Decl., Exhibit 1;  
28 Lapuyade Decl., Exhibit 2. Plaintiffs’ counsel’s efforts include conducting pre-filing

1 investigation, analyzing Plaintiffs' claims, conducting extensive legal research regarding the  
2 merits and legal bases of Plaintiffs' claims, Plaintiffs' ability to recover penalties under the  
3 PAGA, and Defendants' potential defenses, drafting and filing Plaintiffs' respective complaints  
4 and LWDA notice letters, attending various court hearings, meeting and conferring with  
5 Defendants' counsel regarding defendants' informal document production, reviewing substantial  
6 documents and data produced by Defendants prior to mediation, retaining an expert to analyze  
7 Defendants' document production, evaluating the timekeeping and payroll data prior to  
8 mediation, drafting a mediation brief, preparing for and attending mediation, negotiating and  
9 drafting the long-form Settlement Agreement and Notice, preparing this Motion for settlement  
10 approval and all supporting documents hereto, and otherwise litigating the case. Schmidt Decl., ¶  
11 29. Plaintiffs' counsel will spend additional time attending the hearing on this Motion and  
12 overseeing the settlement administration process. *Id.* Given the potential for adverse outcomes,  
13 the contingent risks borne by Plaintiffs' counsel was great. The quality of Plaintiffs' counsel's  
14 work, and the efficacy and dedication with which it was performed, should be compensated.

15 Plaintiffs' counsel's previous experience in litigating wage and hour class and  
16 representative actions also supports the reasonableness of the fee request. Plaintiffs' counsel are  
17 well-versed in plaintiff- and defense-side wage and hour class and representative action litigation,  
18 and collectively bring decades worth of wage-and-hour class and representative action litigation  
19 experience. *See* Schmidt Decl., ¶¶ 2-6, 27-28; *see also* Zakay Decl., Exhibit 2; Lapuyade Decl.,  
20 Exhibit 1. Plaintiffs' counsel have also been certified as class counsel in numerous class action  
21 cases alleging wage and hour claims. *See id.* Plaintiffs' counsel's experience in similar matters  
22 was integral in evaluating the strengths and weaknesses of this case and the reasonableness of the  
23 Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge  
24 concerning the rapidly evolving substantive state and federal law, as well as the procedural law  
25 of representative litigation. Schmidt Decl., ¶ 29. Because it is reasonable to compensate Plaintiffs'  
26 counsel commensurate with their skill, reputation, and experience, the requested fee award of  
27 \$400,000.00 (one-third of the MSA) is fair and reasonable, as the California Supreme Court held  
28 in *Laffitte*, and should therefore be approved.

1           **D.     The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**  
2           **and Reasonable**

3           Plaintiffs’ counsel incurred and respectfully requests reimbursement of \$18,577.66 in  
4 actual litigation costs. Schmidt Decl., ¶ 30, Exhibit 3; Zakay Decl., Exhibit 1; Lapuyade Decl.,  
5 Exhibit 2.<sup>8</sup> Plaintiffs’ counsel’s request is fair, adequate, and reasonable, as all of these costs are  
6 documented and reasonably incurred. *See id.* Moreover, the costs Plaintiffs seek are the types of  
7 costs routinely approved by courts. *See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19  
8 (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee  
9 paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, \* 3 (N.D. Cal. 2011)  
10 (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their  
11 fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and*  
12 *Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs  
13 are reimbursable); *In re Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d  
14 1166, 1177-78 (mediation expenses, legal research, copies, postage, filing fees, messenger and  
15 overnight delivery costs are reimbursable). Because the expense reimbursements requested by  
16 Plaintiffs’ counsel were reasonably incurred, the Court should grant Plaintiffs’ counsel’s request  
17 for reimbursement of \$18,577.66 in actual litigation costs incurred.

18           **E.     The Court Should Approve the Requested Administration Costs**

19           Plaintiffs also request that the Court approve \$19,985.00 in administration costs to the  
20 Settlement Administrator, ILYM. Schmidt Decl., ¶ 31; Hartranft Decl., ¶ 6, Exhibit B. As detailed  
21 in the Settlement Agreement and declaration of Sean Hartranft, submitted concurrently with this  
22 Motion, ILYM will perform duties in connection with this Settlement that are integral in  
23 effectuating the Settlement and the Notice process. Among other things, ILYM will calculate each  
24 Aggrieved Employee’s Individual Settlement Payment, update addresses contained in the

25 \_\_\_\_\_  
26 <sup>8</sup> Plaintiffs’ counsel’s costs records reflect Plaintiffs’ actual costs as of the date of the filing (\$18,399.06).  
27 Schmidt Decl., ¶ 30, Exhibit 3; Zakay Decl., Exhibit 1; Lapuyade Decl., Exhibit 2. However, the total  
28 amount that Plaintiffs’ counsel is requesting for expense reimbursements, \$18,577.66, includes an  
additional \$178.60 in anticipated future costs for the filing and service of this Motion for PAGA Settlement  
Approval, as well as the CourtCall costs for Plaintiffs’ counsel to attend the hearing on this Motion, which  
will be incurred by the time this motion is heard. *Id.*

1 employee data supplied by Defendants, format the Notices for mailing and mail Notices to all  
2 Aggrieved Employees, and otherwise administer the Settlement. *See generally*, Hartranft Decl.;  
3 Settlement, § III. ILYM was selected to administer this Settlement because it is an experienced  
4 and well-respected settlement administrator, and returned a bid at a competitive rate. Schmidt  
5 Decl., ¶ 31; *see generally*, Hartranft Decl. For these reasons, ILYM’s requested costs are fair,  
6 reasonable, and adequate, and should be approved.

7 **F. This Court Should Approve Plaintiffs’ Requested Enhancement Awards**  
8 **Because they are Fair, Adequate, and Reasonable in View of Plaintiffs’**  
9 **Efforts and the Risks Assumed on Behalf of the Aggrieved Employees**

10 Courts routinely approve enhancement awards to compensate named plaintiffs for the  
11 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*  
12 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to  
13 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*  
14 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to  
15 the Settlement, Plaintiffs seek enhancement awards of \$5,000.00 each. *See* Settlement, §§ I.9 and  
16 II.5.b. This request is reasonable given Plaintiffs’ efforts in this case, the significant time devoted  
17 to the prosecution and resolution of this action, and the risks they undertook on behalf of the  
18 Aggrieved Employees. Among other things, Plaintiffs searched for and gathered relevant  
19 documents and provided them to their attorneys, engaged in multiple discussions with their  
20 attorneys regarding Defendants’ policies and practices, the lawsuit and case strategy, and their  
21 work experiences with Defendants, helped their attorneys prepare for mediation, and reviewed  
22 and discussed the Settlement with their attorneys. Cuellar Decl., ¶¶ 4-5; Lee Decl., ¶¶ 5-6.  
23 Plaintiffs estimate spending approximately 10 hours each on activities that ultimately lead to the  
24 Settlement. *Id.* Accordingly, Plaintiffs’ enhancement awards are appropriate and justified as part  
25 of the Settlement.

26 **V. CONCLUSION**

27 Concurrently with the filing of this motion, Plaintiffs provided notice of the proposed  
28 Settlement, as well as copies of this motion and all papers filed in support hereof, to the LWDA.  
*See* Schmidt Decl., ¶ 9, Exhibit 2. For the reasons stated herein, this Court should grant Plaintiffs’

1 Motion in its entirety and adopt the [Proposed] Judgment and Order Granting Plaintiffs' Motion  
2 for Settlement Approval of Claims Brought Under the PAGA, Reasonable Attorneys' Fees and  
3 Costs, and Enhancement Awards, submitted concurrently herewith.

4  
5 Dated: October 17, 2022

Respectfully submitted,  
HAINES LAW GROUP, APC

6  
7 By:

  
Fletcher W. Schmidt  
Attorneys for Plaintiff