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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11
12 DINORA GONZALES and ANITA RAMOS,
as aggrieved employees pursuant to the Private
13 Attorneys General Act ("PAGA"), on behalf of
the State of California and other aggrieved
14 employees,

15 Plaintiffs,

16 vs.

17 GROWERS EXPRESS (DE), LLC, a Delaware
limited liability company; and DOES 1 through
18 10, inclusive,

19 Defendants.
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27
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Case No. 20CV001103

**NOTICE OF MOTION AND MOTION FOR
COURT APPROVAL OF THE PARTIES'
PAGA SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

Date: April 6, 2021
Time: 8:30 a.m.
Place: Department 13

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

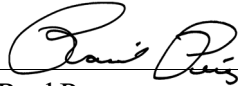
2 **PLEASE TAKE NOTICE** that on April 6, 2021 at 8:30 a.m., or as soon thereafter as counsel
3 may be heard, in Department 13 of the above-captioned court, located at 1200 Aguijito Road, California
4 93940, the Honorable Vanessa W. Vallarta presiding, Plaintiffs Dinora Gonzales and Anita Ramos will,
5 and hereby do, move this Court for entry of an order and judgment approving the Parties' PAGA
6 settlement pursuant to Labor Code section 2699(l)(2).

7 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
8 Points and Authorities in Support of Motion for Court approval of the PAGA Settlement; (3) the
9 Declaration of Raul Perez, which attaches the PAGA Settlement Agreement; (4) the Declaration of
10 Dinora Gonzales; (5) the Declaration of Anita Ramos; (6) [Proposed] Order Approving the PAGA
11 Settlement Agreement and Judgment; (7) the records, pleadings, and papers filed in this action; and (8)
12 upon such other documentary and oral evidence or argument as may be presented to the Court at or prior
13 to the hearing of this Motion.

14
15 Dated: March 9, 2021

Respectfully submitted,

Capstone Law APC

17
18 By: 
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20 Robert J. Drexler, Jr.
Molly Ann DeSario
Jonathan Lee

21 Attorneys for Plaintiffs Dinora Gonzales and Anita
22 Ramos
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code. §§ 2698, *et seq.*, “PAGA”), Plaintiffs Dinora Gonzales and Anita Ramos (“Plaintiffs”) seek Court approval of the settlement of their claim for PAGA civil penalties with Defendant Growers Express (DE), LLC (“Defendant”) (collectively with Plaintiffs, the “Parties”). The total amount of the settlement for this hard-fought litigation is \$405,000.

The PAGA provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). The statute does not require the two-step process utilized in class actions. *See Salazar v. Sysco Central Cal.*, No. 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action settlement rules and procedures for PAGA settlement approval). The California Labor Workforce and Development Agency (“LWDA”) has explained that when trial courts review PAGA settlements, they should consider whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public.” *O’Connor v. Uber Techs., Inc.*, No. 13-03826-EMC, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. Aug. 18, 2016). Nothing in the PAGA changes the strong judicial preference in support approving settlements.

The principal terms of the PAGA Settlement Agreement¹ are as follows:

- (1) The creation of a PAGA Penalties Fund of approximately \$252,675, which will be paid to aggrieved employees and the LWDA in full satisfaction of all claims Settled Claims (“PAGA Penalties Fund”).
 - (a) Seventy-five percent of the PAGA Penalties Fund, or approximately \$189,506, will be paid to the LWDA pursuant to Labor Code section 2699(i).
 - (b) Twenty-five percent of the PAGA Penalties Fund, or approximately \$63,169, will be paid to all persons who were employed by Defendant as non-exempt, hourly-paid, employees at Defendant’s fresh vegetable processing facility, who received at least one wage statement, in the State of California at any time from January 10, 2019 through February 1, 2020 (“Aggrieved Employees”). There are approximately 216 Aggrieved Employees.

¹ Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the PAGA Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Raul Perez filed in conjunction with this motion.

- (2) Service awards of \$3,000, each, to Plaintiffs as consideration for their service on behalf of the State of California and Aggrieved Employees.
- (3) Reasonable attorneys' fees and costs under Labor Code section 2699(g) for Plaintiffs' Counsel's successful prosecution and resolution of this action. Plaintiffs request \$135,000 in attorneys' fees and \$7,325 in costs for their counsel, Capstone Law APC ("Plaintiffs' Counsel").
- (4) Settlement Administration Costs of approximately \$4,000 to ILYM, Group, Inc.

The civil penalties secured by the settlement represent a fair compromise of Plaintiffs' PAGA claim in view of the risks of continued litigation and the hotly contested issues of law and fact relating to PAGA claims. The Settlement accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from committing any of the Labor Code violations alleged, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 384 (2014).

For these reasons, Plaintiffs respectfully request that the Court approve the Settlement and enter the proposed Order Approving the PAGA Settlement Agreement and the proposed Judgment.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Plaintiffs bring claims for civil penalties under the PAGA on behalf of non-exempt employees of Defendant's fresh vegetable processing facility in Gonzales, California, from January 10, 2019 through February 1, 2020. Defendant employed Plaintiff Dinora Gonzales as a non-exempt General Laborer from approximately July 2015 to January 2019. Defendant employed Plaintiff Anita Ramos as a non-exempt Packer from approximately September 2015 to February 2019.

On January 10, 2020, Plaintiffs submitted notice of their claims for civil penalties under the PAGA to the LWDA. Having received no response from the LWDA after 65 days, Plaintiffs filed their civil complaint in the Superior Court of California for the County of Monterey on March 18, 2020. Plaintiffs' Complaint alleges the following violations: (1) violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendant's alleged failure to compensate Plaintiffs and Aggrieved Employees with all required overtime pay; (2) violation of Sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendant's alleged failure to compensate Plaintiffs and Aggrieved Employees with at least minimum wages for all hours worked; (3) violation of Sections

226.7, 512, 516, 1198, and the applicable IWC wage order for Defendant's failure to provide Plaintiffs and Aggrieved Employees with meal periods; (4) violation of Sections 226.7, 516, 1198, and the applicable IWC wage order for Defendant's failure to authorize and permit Plaintiffs and Aggrieved Employees to take rest periods; (5) violation of Sections 226(6), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiffs and Aggrieved Employees; (6) violation of Sections 1174(7), 1198, and the applicable IWC wage order for failure to maintain payroll records; (7) violation of Section 204 for failure to pay all earned wages during employment; (8) violation of Sections 201, 202, and 203 for failure to pay all earned wages upon termination; (9) violation of Sections 551 and 552 for failure to provide one day's rest in seven to Aggrieved Employees; (8) violation of Section 2802 for failure to reimburse Plaintiffs and Aggrieved Employees for all business expenses necessarily incurred; and (9) violation of Sections 6401 and 6403 for failure to provide personal protective equipment. (Declaration of Raul Perez ["Perez Decl."] ¶ 2.)

B. Plaintiffs' Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness

Beginning shortly after counsel was retained to represent the Plaintiffs, and continuing over the next 14.5 months until a settlement in principle was reached, Plaintiffs' Counsel conducted a thorough investigation of the factual and legal issues. (Perez Decl. ¶ 4.)

At the outset of the litigation, Plaintiffs provided Plaintiffs' Counsel with a detailed summary of their experiences working for Defendant, and the circumstances that gave rise to the alleged Labor Code violations. Plaintiffs were able to share their intimate understanding of Defendant's policies and practices, and how these policies and practices were instituted on a daily basis. In addition to informing Plaintiffs' Counsel's initial evaluation of the lawsuit, the information that Plaintiffs provided also influenced Plaintiffs' Counsel's discovery efforts. (Perez Decl. ¶ 5.)

In response to Plaintiffs' discovery requests, Plaintiffs' Counsel received a large number of documents including employee demographic data, time and pay records, including the policies and practices directly at issue, as well as those policies and procedures that potentially affected Defendant's ability to comply with the Labor Code. The document and data exchanges allowed Plaintiffs' Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery,

1 so as to make an independent assessment of the reasonableness of the terms to which the parties have
2 agreed. (Perez Decl. ¶ 6.)

3 In summary, Plaintiffs' Counsel performed a thorough investigation into the claims at issue,
4 which included: (1) determining Plaintiffs' suitability as private attorneys general through interviews,
5 background investigations, and analyses of their employment files and related records; (2) evaluating all
6 of Plaintiffs' potential representative claims; (3) researching similar wage and hour class actions as to the
7 claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and
8 wage records; (5) reviewing Defendant's employment policies and practices; (6) researching settlements
9 in similar cases; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of
10 settlement; (8) drafting the mediation brief; and (9) participating in the mediation. (Perez Decl. ¶ 7.)

11 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs'
12 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
13 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
14 known facts and circumstances, including the risk of significant delay and uncertainty associated with
15 litigation, and various defenses asserted by Defendant. (Perez Decl. ¶ 8.)

16 **C. The Parties Settled After Mediation**

17 On November 19, 2020, the Parties participated in full-day mediation with the Hon. Steven M.
18 Vartabedian (Ret.), an experienced mediator of wage and hour class actions. Justice Vartabedian helped
19 to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
20 sides. With Justice Vartabedian's guidance, the Parties were eventually able to negotiate a complete
21 settlement of Plaintiffs' claims. The terms of the settlement are now set forth in complete and final form
22 in the PAGA Settlement Agreement. At all times, the Parties' negotiations were adversarial and non-
23 collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims
24 at issue. (Perez Decl. ¶ 3, Ex. 1.)

25 **D. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiffs' Claims**

26 **1. Terms of the Settlement and Distribution of PAGA Penalties**

27 The Settlement Agreement provides that Defendant will pay a total of \$405,000 to settle this
28 Action. (Settlement Agreement ¶ 12.) From this amount, payments will be made to the LWDA and

1 Aggrieved Employees, to Plaintiffs Gonzales and Ramos as compensation for their service on behalf of
2 the State, to Plaintiffs' Counsel for their attorneys' fees and litigation costs, and to the Settlement
3 Administrator (ILYM) for settlement administration costs. (Settlement Agreement ¶¶ 12-19.)

4 The resulting balance will be distributed to the LWDA and Aggrieved Employees. The LWDA
5 will receive approximately \$189,506. Aggrieved Employees will receive approximately \$63,169. *Id.* The
6 Aggrieved Employees encompassed by the proposed Settlement are all persons who were employed by
7 Defendant as non-exempt, hourly-paid, employees at Defendant's fresh vegetable processing facility,
8 who received at least one wage statement, in the State of California at any time from January 10, 2019
9 through February 1, 2020. (Settlement Agreement ¶ 2.) There are approximately 216 Aggrieved
10 Employees. (*Id.* at ¶ 19.)

11 **2. Allocations to the LWDA and Aggrieved Employees**

12 Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual
13 allocations will be calculated on a pro-rata basis using the number of pay periods worked by each
14 employee. Defendant will provide the total number of pay periods worked by each Aggrieved Employee
15 and the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.
16 (Settlement Agreement ¶ 13.) The Settlement Administrator will calculate each Aggrieved Employee's
17 payment using the proportional number of pay periods during which the employee worked. Thus, the
18 Settlement Administrator will perform the following calculation to calculate individual payments:
19
$$\text{Settlement Payment} = (25\% \text{ of PAGA Penalties Fund}) \times (\text{pay periods worked by individual Aggrieved}$$

20
$$\text{Employee during the Settlement Period} \div \text{total pay periods worked by all Aggrieved Employees during}$$

21
$$\text{the Settlement Period}).$$
 (*Id.*) This is a fair and equitable means of allocating the penalties. Aggrieved
22 Employees who worked for a longer duration during the Settlement Period will receive proportionally
23 larger payments than those employees who worked for shorter durations.

24 **3. The Settled PAGA Claims**

25 Upon entry of the Order and Judgment, the LWDA and Plaintiffs, on behalf of themselves and
26 the Aggrieved Employees to the fullest extent allowed by law, will be deemed to have fully, finally, and
27 forever released, relinquished, and discharged each and all of the Released Parties from any and all
28 claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or

1 other provisions of law alleged or could have been alleged to have been violated in the Actions with
2 respect to Aggrieved Employees based on the facts alleged in the Action during the Settlement Period.
3 (Settlement Agreement ¶¶ 10, 24.)

4 **III. ARGUMENT**

5 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and** 6 **Fulfill PAGA’s Underlying Purpose To Benefit the Public**

7 The California legislature enacted PAGA to “augment the limited enforcement capability of the
8 [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.”
9 *Iskanian*, 59 Cal. 4th at 383. This statute authorizes an employee to bring an action for “civil penalties on
10 behalf of the state against his or her employer for Labor Code violations committed against the employee
11 and fellow employees” *Id.* at 360. The goal of a PAGA enforcement action is to impose civil
12 penalties for Labor Code violations “significant enough to deter violations.” *Id.* at 379.

13 Fundamentally, “a PAGA action is a statutory action in which the penalties available are
14 measured by the number of Labor Code violations committed by the employer.” *Sakkab v. Luxottica*
15 *Retail N. Am., Inc.*, 803 F.3d 425, 435 (9th Cir. 2015). Under the general provisions of the PAGA
16 scheme, 75% of the civil penalties recovered goes to the state while the remaining amount is given to the
17 aggrieved employees. Lab. Code § 2699(i). Although PAGA penalties are mandatory and must be
18 awarded by a court if a violation is found, the court “may award a lesser amount than the maximum civil
19 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
20 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab.
21 Code § 2699(e)(2); *see also Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1213 (2008).

22 Moreover, the PAGA statute distinguishes and preserves the right of employees to separately (or
23 concurrently) pursue their own causes of action against their employers and to recover other available
24 federal and state remedies. Cal. Lab. Code § 2699(g)(1); *see Baumann v. Chase Inv. Servs. Corp.*, 747
25 F.3d 1117, 1123 (9th Cir. 2014) (explaining the differences between the finality in class action
26 judgments and the limited res judicata effect of PAGA judgments). “Unlike a class action seeking
27 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties
28 to recover civil penalties for the government that otherwise may not have been assessed and collected by

overburdened state enforcement agencies.” *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222, 1233 (C.D. Cal. 2011).

The LWDA has advised that courts should evaluate settlements of PAGA claims based on whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public.” *O’Connor*, 201 F. Supp. 3d at 1133; *see also*, *Salazar*, 2017 WL 1135801, *2 (quoting the above passage). As courts defer to the agency’s interpretation of a statute where authority has been delegated to that agency (*see New Cingular Wireless PCS, LLC v. Pub. Utilities Comm’n*, 246 Cal. App. 4th 784, 807 (2016)), the Court should analyze the PAGA settlement by focusing on whether the amount of civil penalties obtained is “genuine and meaningful” in light of PAGA’s statutory purpose.

The Court’s evaluation of the settlement should therefore not focus on “restitution”—the average recovery per aggrieved employee, as in a class action settlement, but rather take into account PAGA’s statutory purpose in deterring Labor Code violations through the imposition of civil penalties, with special attention on whether the relief is “genuine and meaningful.” *Salazar*, 2017 WL 1135801 at *2.

B. The Settlement Is Reasonable Given the Risks of Further Litigation

In assessing whether the amount of civil penalties is genuine and meaningful, the Court may balance the amount in penalties against the risks of further litigation. Here, Plaintiffs obtained a meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on information and evidence produced by Defendant during discovery, Plaintiffs’ Counsel calculated Defendant’s maximum potential exposure for PAGA penalties as follows:

CLAIM	PAGA PENALTIES
Rest Period Claim	\$793,000.00
Meal Period Claim	\$465,000.00
Reimbursement Claim	\$1,055,400.00
Protective Equipment Claim	\$21,600.00
Off-the-Clock Claim	\$391,100.00
7th Day Rest Claim	\$2,400.00
Wage Statement Claim	\$782,200.00
Final Pay Claim	\$21,600.00
TOTAL	\$3,532,300.00

After calculating Defendant’s maximum exposure under PAGA, Plaintiffs then discounted that

1 exposure for settlement purposes to account for the risks of continued litigation, including: (i) the
2 strength of Defendant’s defenses on the merits; (ii) the risk of losing at trial; (iii) the risk that the Court
3 would exercise its discretion under PAGA to significantly reduce the maximum civil penalties available
4 by statute;² (iv) the chances of a favorable verdict being reversed on appeal; and (v) the difficulties
5 attendant to collecting on a judgment. Taking into account the above contingencies, Plaintiffs determined
6 that a settlement for \$405,000 was warranted by the circumstances of the case.

7 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
8 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
9 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
10 reducing PAGA penalties, courts have considered issues including whether the employees suffered
11 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
12 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
13 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
14 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
15 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

16 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
17 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
18 **or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the
19 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith
20 attempts” to comply with meal period obligations and because the court found the violations were
21 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced
22 award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied here,
23 Plaintiffs would have recovered only approximately \$7,420 ($\$3,532,300 \times 0.0021$ reduction).

24 Likewise, in *Covidien*, the court reduced the potential penalties by over 82%, awarding \$500,000
25 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*

26 ² See Lab. Code § 2699(e) (“In any action by an aggrieved employee seeking recovery of a civil
27 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
28 penalty amount specified by this part 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.”).

Bayshore Transit Mgmt., 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

Considering the issues, defenses, and the risks, a \$405,000 settlement for a limited release of PAGA penalties—no individual wage and hour claims will be extinguished by the Settlement—is a fair and just result and furthers PAGA’s objectives, and is not “unjust, arbitrary, and oppressive.”

C. The Requested Recovery In Litigation Expenses Is Reasonable

Plaintiffs’ Counsel is entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on other grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary costs may be claimed as part of an attorneys’ fees motion when seeking statutory fees under the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are necessarily incurred). The following chart reflects the costs incurred by Plaintiffs’ Counsel:

Cost & Expense Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$222.00
Court Fees, Filings & Service of Process	\$671.85
Delivery & Messenger (UPS, FedEx, messenger)	\$35.44
Desmond, Marcello & Amster, LLC (consultant)	\$1,947.50
Interpreters & Translators	\$1,075.59
Legal Research Services (PACER, Westlaw, etc.)	\$76.78

Cost & Expense Categories	Amount
Mediation Fees	\$2,000.00
Postage & Mailings	\$30.54
Simpluris, Inc. (skip-tracing)	\$187.50
Telephone (Long distance, conference calls)	\$6.35
Travel-Related Costs and Expenses	\$1,069.04
Total	\$7,322.59

As indicated above, Plaintiffs' Counsel advanced \$7,322.59 in out-of-pocket costs to the State for, among other things, filing fees and courier fees. (Perez Decl. ¶ 12.) Because these reasonable costs were necessarily incurred during the case's pendency, these costs are reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) ("[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court's discretion."); *Hsu v. Semiconductor Sys., Inc.*, 126 Cal. App. 4th 1330, 1341 (2005) ("[W]hile it is reasonable to interpret a general contractual cost provision by reference to an established statutory definition of costs, we do not discern any legislative intent to prevent sophisticated parties from freely choosing a broader standard authorizing recovery of reasonable litigation charges and expenses."); *Mora v. Cal W. Ag Servs., Inc.*, No. 15-1490, 2019 WL 2084725, at *10 (E.D. Cal. May 13, 2019), report and recommendation adopted, No. 15-01490, 2019 WL 3760402 (E.D. Cal. Aug. 9, 2019) ("The most significant expenses included the requested costs are expert witness fees . . . and mediation fees . . . The Court finds the requested costs to be reasonably incurred in litigating this case. . . ."); *Nelson v. Avon Prod., Inc.*, No. 13-02276, 2017 WL 733145, at *7 (N.D. Cal. Feb. 24, 2017) ("Most of the expenses resulted from expert witness fees, mediation fees, class notice expenses, and deposition expenses . . . Upon review, the expenses are reasonable."); *Metrow v. Liberty Mut. Managed Care LLC*, No. EDCV1601133JGBKKX, 2018 WL 6265085, at *11 (C.D. Cal. June 14, 2018) ("Class counsel provides an itemized breakdown of the expenses in this case, which include travel, transcripts and expert witness fees . . . All of these expenses are typically recoverable in litigation.").

D. The Court Should Award the Requested Attorneys' Fees in the Amount of Approximately One-Third of the Gross Settlement Fund

For the reasons discussed in detail below, an award of attorneys' fees in the amount of approximately one-third of the gross settlement fund is fair and reasonable, and in line with what other

1 California courts, both state and federal, have awarded in settlements of similar litigation.

2 The PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses,
3 and costs. Section 2699(g)(1) of the California Labor Code provides that "[a]ny employee who prevails
4 in any action shall be entitled to an award of reasonable attorney's fees and costs." In a *qui tam* action,
5 reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as
6 here, the litigation creates a common fund of money in a specific amount for the benefit of others. PAGA
7 "is a type of *qui tam* action." See *Iskanian*, 59 Cal. 4th at 382. "A *qui tam* action 'is a type of private
8 attorney general lawsuit' [citation], in which 'the *qui tam* plaintiff stands in the shoes of the state or
9 political subdivision [citation].'" *People ex rei. Stratham v. Acacia Research Corp.*, 210 Cal. App. 4th
10 487, 501 (2012).

11 A PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as
12 the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code
13 violations and recover civil penalties that otherwise would have been assessed and collected by the
14 LWDA. See *Iskanian*, 59 Cal. 4th at 382. Indeed, majority of the civil penalties recovered in a PAGA
15 action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g., 75% paid to the
16 state; 25% paid to the aggrieved employees). See Cal. Lab. Code § 2699(i). Where, as here, a common
17 fund is created in a *qui tam* action by the successful litigation of a plaintiff and her attorneys, the
18 plaintiff's attorneys are entitled to recover their fees from the common fund:

19 Those benefiting from the recovery of the fund, in this case some depositors and
20 eventually the People of the State of California, must bear their share of the cost of
21 litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each
22 claimant's share reduced proportionately. To the extent the judgment relies upon section
1021.5 for recovery of attorney fees, it must be modified to confine the award of fees to
the common fund theory.

23 *Bank of America v. Cory*, 164 Cal. App. 3d 66, 91 (1985) (authorizing common fund fees in a *qui tam*
24 taxpayer suit against certain banks).

25 Likewise, through the successful efforts of Plaintiffs and their attorneys, a common fund was
26 created in the amount of \$405,000 for the benefit of the employees and the State of California. Thus,
27 these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the gross
28 settlement fund under the common fund theory. *Id.* Such fees are deducted as a percentage of the

1 settlement amount. *See, e.g., Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican*
2 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe*
3 *Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th
4 Cir. 2003).

5 The California Supreme Court recently upheld the use of the common fund theory of recovery
6 for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016). In *Laffitte*, the
7 settlement created a common fund of \$19 million. The Court approved the award of attorneys' fees in
8 the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the
9 common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based
10 on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the
11 best results possible for the class. *See Laffitte*, 1 Cal. 5th at 492-494. Indeed, "the percentage method is
12 generally favored in common fund cases because it allows courts to award fees from the fund in a
13 manner that rewards counsel for success and penalizes it for failure. *Id.* at 493 (quoting *In re Rite Aid*
14 *Corp. Securities Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

15 Courts routinely award attorneys' fees equaling one-third of the common fund.³ *See, e.g., Laffitte*
16 *v. Robert Half Int'l*, 180 Cal. Rptr. 3d 136, 149 (2016) ("33 1/3 percent of the common fund is consistent
17 with, and in the range of, awards in other class action lawsuits"); *Chavez v. Netflix, Inc.*, 162 Cal. App.
18 4th 43, 66 n.11 (2008) (accord); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An*
19 *Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent
20 studies of class action litigation nationwide conclude that fees representing one-third of the total recovery
21 is consistent with market rates). Notably, the California Supreme Court in *Laffitte* affirmed a fee award

22 ³ Court have also approved fees in amounts greater than one-third of the common fund. *See*
23 *Charles v. JPMorgan Chase Bank*, No. CGC-14-538933 (San Francisco County Superior Court June 18,
24 2019) (awarding plaintiffs \$2.88 million in attorneys' fees on PAGA penalties totaling \$2.7 million);
25 *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los Angeles County Superior Court Jan. 3,
26 2019) (awarding plaintiff \$750,000 in attorneys' fees and costs on general PAGA penalties totaling
27 \$585,000); *Salas v. Hallmark Aviation Services LP*, No. BC586585 (Los Angeles County Superior
28 Court February 17, 2017) (awarding plaintiff \$600,000 in attorneys' fees on PAGA penalties totaling
\$605,000); *Monroe v. Continental Design Co., Inc.*, No. RG16817667 (Alameda County Superior Court
June 21, 2017) (awarding plaintiff \$110,000 in fees on PAGA penalties totaling \$90,000); *Ramirez v.*
Benito Valley Farms, LLC, No. 16-CV-04708-LHK, 2017 WL 3670794, at *6 (N.D. Cal. Aug. 25,
2017) (awarding attorneys' fees under the lodestar method with no regard to the proportion of the fees to
civil penalties).

1 representing 33 1/3 percent of the fund. *See Laffitte*, 1 Cal. 5th at 506.

2 California state and federal courts regularly award a third of the common fund in attorneys' fees for
3 PAGA settlements. *See Porras v. Chipotle Services, LLC*, No. CV-19-000937 (Stanislaus County
4 Superior Court) ("The Court finds that the requested award of attorneys' fees is reasonable for a
5 contingency fee in a PAGA action such as this; i.e., one-third of the Maximum Settlement Amount.");
6 *Garcia v. Macy's*, No. CIVDS1516007 (San Bernardino County Superior Court) (33.33% fee awarded
7 on \$12,500,000 settlement of a PAGA only case); *Brewer v. Connell Chevrolet*, No. 30-2016-00852123-
8 CU-OC-CXC, (Orange County Superior Court) (33.33% fee awarded on a PAGA only case); *Perez v.*
9 *Staffmark Investment, LLC*, No. MCC1401137 (Riverside County Superior Court) (33.33% fee awarded
10 on a \$650,000 settlement of a PAGA only case); *Basilioli v. Allegiant Air, LLC*, No.
11 218CV03888RGKMRW, 2019 WL 8107885, at *4 (C.D. Cal. July 1, 2019) (awarding one-third fees
12 from PAGA settlement); *Garrido v. J.C. Penney Corp., Inc.*, No. 5:18-cv-02051-JVS-SP (C.D. Cal. Jan.
13 25, 2019) (awarding one-third fees from PAGA settlement).⁴

14 For example, in *Basilioli v. Allegiant Air*, the district court awarded one-third of the common
15 fund in attorneys' fees expressly on the basis of *Laffitte II*:

16 PAGA also allows a prevailing plaintiff to collect attorneys' fees and costs. Cal.
17 Labor Code § 2699(g). The Settlement Agreement includes Attorneys' Fees not
18 to exceed 33 1/3 percent of the Gross Settlement Amount and costs. Allegiant
19 does not oppose the amount. In cases where an action brought by one party
20 "creates a fund in which other persons are entitled to share," courts often apply
the common fund doctrine for attorneys' fees. *City and County of San Francisco*
v. Sweet, 12 Cal. 4th 105, 110 (1995). California hour and wage settlements
begin with an analysis of the percentage of the total fund. *Laffitte v. Robert Half*
Int'l, 1 Cal. 5th 480, 503 (2016).

21 *Basilioli*, 2019 WL 8107885, at *4

22
23 ⁴ *See also Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823
(approving fee award from PAGA-only settlement of \$1.375M against a common fund of \$3.2M
(42%)); *Price v. Uber Technologies*, Los Angeles Superior Court, Case No. BC554512 (awarding fee
24 from PAGA-only settlement of \$2,325,000 against a common fund settlement of \$7,750,000 (30%));
Garcia v. Macy's, San Bernardino County Superior Court, Case No. CIVDS1516007 (33.33% fee
25 awarded on \$12,500,000 settlement of a PAGA only case); *Garcia v. Pep Boys*, Orange County Superior
Court, Case No. 30-2014-00720574-CU-OE-CJC (33.33% fee awarded on a \$1,030,000 settlement of a
26 PAGA only case); *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-
00852123-CU-OC-CXC (33.33% fee awarded on a PAGA only case); *Perez v. Staffmark Investment,*
27 *LLC*, Riverside County Superior Court, Case No. MCC1401137 (33.33% fee awarded on a \$650,000
28 settlement of a PAGA only case).

1 Likewise, in *Garrido v. J.C. Penney Corp., Inc.*, the district court observed that, “California
2 courts have applied the common fund theory to PAGA” settlements:

3 Where, as here, a common fund is created in a qui tam action through successful
4 litigation, the plaintiff’s attorneys are entitled to recover their fees as a percentage
5 of the common fund. *See Bank of America v. Cory*, 164 Cal. App. 3d 66, 91
6 (1985) (authorizing common fund fees in qui tam taxpayer suit against certain
7 banks). Furthermore, the California Supreme Court recently upheld the use of the
8 common fund theory of recovery for attorneys’ fees, at least in class actions.
9 *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 506 (2016) (approving fee award
10 of \$6.33 million from the \$19 million common fund created by settlement).
11 Moreover, the “percentage method is generally favored in common fund cases
because it allows courts to award fees from the fund in a manner that rewards
counsel for success and penalizes it for failure.” *Id.* at 493 (quoting *In re Rite Aid
Corp. Securities Litig.*, 396 F.3d 294, 300 (3d Cir. 2005)). Finally, California
courts have applied the common fund theory to PAGA settlements. E.g., *Steven
Price v. Uber Technologies, Inc.*, Los Angeles County Superior Court, Case No.
BC554512 (2018) (approving percentage of the common fund fee award against
common fund PAGA-only settlement of \$7,750,000). Therefore, the Court finds
that the common fund method of fee recovery is appropriate in this case.

12 *See* Order Granting Plaintiff’s Motion for Approval of Settlement, ECF No. 16.

13 An award of fees from the gross settlement amount under the common fund doctrine prevents
14 unjust enrichment of those who benefit from the common fund created through the successful efforts of
15 plaintiff’s counsel and furthers the important goal of attracting competent counsel to handle
16 representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal. 5th at 503. In affirming the use
17 of the common fund doctrine in California, the California Supreme Court summarized the benefits of the
18 percentage method of recovery stating: “The recognized advantages of the percentage method—
19 including relative ease of calculation, alignment of incentives between counsel and the class, a better
20 approximation of market conditions in a contingency case, and the encouragement it provides counsel to
21 seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the
22 percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

23 For all of these reasons, a common fund fee award in the amount of \$135,000 is fair and
24 reasonable.

25 **E. A Lodestar Cross-Check Confirms that the Requested Attorneys’ Fees Are Fair**
26 **and Reasonable**

27 The trial court may use an abbreviated lodestar “cross-check” for common fund awards if the
28 court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to

1 displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly
2 instructed that “the lodestar calculation, when used in this manner, does not override the trial court’s
3 primary determination of the fee as a percentage of the common fund and thus does not impose an
4 absolute maximum or minimum on the fee award.” *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in
5 *Laffitte II* emphasized that only where the “multiplier calculated by means of a lodestar cross-check is
6 **extraordinarily high or low**” should the court “consider whether the percentage should be adjusted so
7 as to bring the imputed multiplier within a justifiable range.” *Id.* (emphasis added). Accordingly, when
8 the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for
9 a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not
10 “required to closely scrutinize each claimed attorney-hour.” *Laffitte II*, 1 Cal. 5th at 505. An evaluation
11 may be done by reviewing “counsel declarations summarizing overall time spent.” *Id.*

12 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
13 multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re*
14 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested
15 rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region.
16 *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community
17 for comparable legal services even though party used in-house counsel). Here, Plaintiffs’ Counsel’s
18 hourly rates are comparable to, or less than, those charged by other class action plaintiffs’ counsel and
19 the firms defending class actions, and have been approved by numerous federal and state courts. (Perez
20 Decl. ¶¶ 9-11.)

21 Likewise, the total attorney hours expended on this action are reasonable and in line with
22 comparable cases. In determining the reasonableness of the hours expended, “the court should defer to
23 the winning lawyer’s professional judgment as to how much time he was required to spend on the case;
24 after all, he won, and might not have, had he been more of a slacker.” *Kerkeles v. City of San Jose*, 243
25 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.
26 2008)). Plaintiffs’ Counsel billed a total of approximately 215 hours. (Perez Decl. ¶ 9.)

27 Multiplying the total hours billed by Plaintiffs’ Counsel to the litigation by their reasonable
28 hourly rates yields a lodestar of approximately \$112,400. (*Id.*) Applying a 1.2 multiplier to that lodestar

1 yields the requested fees. A 1.2 multiplier is not “extraordinarily high”—to the contrary, the normal
2 range for a multiplier on a lodestar cross-check “can range from 2 to 4 or even higher.” *Wershba v.*
3 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d
4 1043, 1047 (9th Cir. 2002) (multipliers “ranging from one to four are frequently awarded ... when the
5 lodestar method is applied”; affirming fees where the cross-check multiplier is 3.65).

6 Courts routinely accept multipliers ranging from 2 to 4 on a lodestar cross-check. *See, e.g., Sutter*
7 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
8 lodestar cross-check); *Chavez.*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier in a consumer class
9 action); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22,
10 2015) (approving a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells*
11 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in
12 lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
13 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

14 Indeed, courts following *Laffitte* have reaffirmed that a multiplier between 2 and 4 to be
15 reasonable and not so “extraordinarily high” as to require greater judicial scrutiny. *See Spann v. J.C.*
16 *Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (finding that a 3.07 multiplier is
17 “well within the range for reasonable multipliers” under *Laffitte II*); *Beaver v. Tarsadia Hotels*, No. 11-
18 CV-01842-GPC-KSC, 2017 WL 4310707, at *13 (S.D. Cal. Sept. 28, 2017) (“The one-third fee Class
19 Counsel seeks reflects a multiplier of 2.89 on the lodestar which is reasonable for a complex class action
20 case.”).

21 The lodestar cross-check thus confirms that Plaintiffs’ fee request is fair and reasonable and
22 should be approved.

23 **F. The Court Should Approve the Negotiated Service Award Payment**

24 Paragraph 17 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiffs the
25 sum of \$3,000, each, for their service on behalf of the LWDA and Aggrieved Employees.

26 The additional settlement payment is justified in light of the reputational risk that Plaintiffs
27 assumed by litigating claims against a former employer. *See Billingshausen v. Tractor Supply Co.*, 306
28 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding “personal detriment” upon testimony that future

1 employers can easily learn that a prospective employee served as a plaintiff through the internet); *see*
2 *also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at **4, 20
3 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the
4 internet and may become known to prospective employers when evaluating the person . . . Even where
5 there is not a record of actual retaliation, notoriety, or personal difficulties, [representative Plaintiffs]
6 merit recognition for assuming the risk of such for the sake of absent [parties].”).

7 Employers commonly screen employee candidates to determine whether they have ever filed
8 suit, and employee candidates who might be branded “litigious” are likely to be screened out of the
9 process. In fact, an entire industry has developed for providing employers with background information
10 on employee candidates. By bringing this action against an employer, Plaintiffs have assumed
11 considerable reputational risk that may impact their ability to find employment in the future. *La Fleur v.*
12 *Medical Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, *8 (C.D. Cal. June 25,
13 2014) (awarding \$15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will
14 harm their future job prospects in the industry).

15 Second, the separate settlement payment is reasonable because Plaintiffs “remained fully
16 involved and expended considerable time and energy during the course of the litigation.” *See In re Toys*
17 *‘R’ Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiffs devoted their time and effort
18 toward assisting their attorneys with the prosecution of the claims, and assisted counsel with finalizing
19 the settlement.

20 The separate payment is also appropriate because Plaintiffs otherwise “will not gain any benefit
21 beyond that [they] would receive as an ordinary [Aggrieved Employee].” *In re Toys “R” Us FACTA*
22 *Litig.*, 295 F.R.D. at 472; *Van Vranken*, 901 F. Supp. at 299 (holding that a substantial award is
23 appropriate where a [representative’s] claim made up “only a fraction of the common fund.”). Here,
24 absent the separate payment, Plaintiffs will recover no more than other Aggrieved Employees, despite
25 undergoing personal sacrifice in bringing this suit on behalf of the State of California and Aggrieved
26 Employees.

27 Lastly, because PAGA is a “type of qui tam action,” it is appropriate for the Plaintiffs to receive
28 a modest additional payment from the settlement as a “bounty” for their special effort in vindicating the

1 State's interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 (“A PAGA representative
2 action is therefore a type of qui tam action.”); *see also People ex rel. Strathmann v. Acacia Research*
3 *Corp.*, 210 Cal. App. 4th 487, 500 (2012) (“The person who brings the qui tam action, called the
4 ‘relator,’ stands in the shoes of the People of the State of California, who are deemed to be the real party
5 in interest . . . The relator in a qui tam action under section 1871.7 does not personally recover damages
6 but, if successful, receives [a portion] of the recovery as a bounty.”) (internal citations omitted).

7 Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM*
8 *Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) (“The bounty advances the public purpose and
9 benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only means of
10 inducing such private parties to come forward with their information.”) (internal quotations omitted).
11 This is especially important in this context, as “the lack of government resources to enforce the Labor
12 Code led to a legislative choice to deputize and incentivize employees uniquely positioned to detect and
13 prosecute such violations through the PAGA.” *Iskanian*, 59 Cal. 4th at 390. Absent the incentive
14 payment, fewer employees would be willing to step forward, and PAGA’s primary purpose—
15 enforcement of the Labor Code—would be substantially undermined.

16 **IV. CONCLUSION**

17 The Parties have negotiated a fair and reasonable settlement of Plaintiffs’ PAGA claims. Having
18 appropriately presented the materials and information necessary for approval, the Parties request that the
19 Court approve the PAGA Settlement Agreement.

20
21 Dated: March 9, 2021

Respectfully submitted,

Capstone Law APC

22
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25 Robert J. Drexler, Jr.
26 Molly Ann DeSario
Jonathan Lee

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28 Ramos

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11
12 DINORA GONZALES and ANITA RAMOS,
as aggrieved employees pursuant to the Private
13 Attorneys General Act ("PAGA"), on behalf of
the State of California and other aggrieved
14 employees,

15 Plaintiffs,

16 vs.

17 GROWERS EXPRESS (DE), LLC, a Delaware
limited liability company; and DOES 1 through
18 10, inclusive,

19 Defendants.
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Case No. 20CV001103

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION FOR COURT
APPROVAL OF THE PARTIES' PAGA
SETTLEMENT**

Date: April 6, 2021
Time: 8:30 a.m.
Place: Department 13

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1 for failure to provide personal protective equipment.

2 3. On November 19, 2020, the Parties participated in full-day mediation with the Hon.
3 Steven M. Vartabedian (Ret.), an experienced mediator of wage and hour class actions. Justice
4 Vartabedian helped to manage the Parties' expectations and provided a useful, neutral analysis of the
5 issues and risks to both sides. With Justice Vartabedian's guidance, the Parties were eventually able to
6 negotiate a complete settlement of Plaintiffs' claims. The terms of the settlement are now set forth in
7 complete and final form in the PAGA Settlement Agreement, attached as Exhibit 1 (a copy has been
8 provided to the LWDA). At all times, the Parties' negotiations were adversarial and non-collusive. The
9 Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue.

10 **PLAINTIFFS' COUNSEL CONDUCTED A THOROUGH INVESTIGATION OF THE FACTUAL AND LEGAL**
11 **ISSUES AND WERE THUS ABLE TO OBJECTIVELY ASSESS THE SETTLEMENT'S REASONABLENESS**

12 4. Beginning shortly after counsel was retained to represent the Plaintiffs, and continuing
13 over the next 14.5 months until a settlement in principle was reached, Plaintiffs' Counsel conducted a
14 thorough investigation of the factual and legal issues.

15 5. At the outset of the litigation, Plaintiffs provided Plaintiffs' Counsel with a detailed
16 summary of their experiences working for Defendant, and the circumstances that gave rise to the alleged
17 Labor Code violations. Plaintiffs were able to share their intimate understanding of Defendant's policies
18 and practices, and how these policies and practices were instituted on a daily basis. In addition to
19 informing Plaintiffs' Counsel's initial evaluation of the lawsuit, the information that Plaintiffs provided
20 also influenced Plaintiffs' Counsel's discovery efforts.

21 6. In response to Plaintiffs' discovery requests, Plaintiffs' Counsel received a large number
22 of documents including employee demographic data, time and pay records, including the policies and
23 practices directly at issue, as well as those policies and procedures that potentially affected Defendant's
24 ability to comply with the Labor Code. The document and data exchanges allowed Plaintiffs' Counsel to
25 fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery,
26 so as to make an independent assessment of the reasonableness of the terms to which the parties have
27 agreed.

28 7. In summary, Plaintiffs' Counsel performed a thorough investigation into the claims at

issue, which included: (1) determining Plaintiffs' suitability as private attorneys general through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiffs' potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and wage records; (5) reviewing Defendant's employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation.

8. By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendant.

ATTORNEYS' FEES AND COSTS

9. I have reviewed a summary of the billing records for this action, which are maintained during the regular course of business and billed contemporaneously. The bill for attorneys' fees is summarized in the chart below:

Attorney	Title	CA Bar Yr.	Rate	Hours	Fees
Raul Perez	Partner	1994	\$775	31.9	\$24,722.50
Robert Drexler	Partner	1985	\$745	35.5	\$26,447.50
Eduardo Santos	Senior Counsel	2007	\$545	12	\$6,540.00
Jonathan Lee	Senior Counsel	2009	\$485	54.3	\$26,335.50
Anthony Castillo	Senior Counsel	2009	\$485	22.1	\$10,718.50
Mao Shiokura	Senior Counsel	2009	\$485	12.6	\$6,111.00
Michelle Kennedy	Associate	2018	\$265	14.9	\$3,948.50
Alexander Lima	Associate	2019	\$250	30.3	\$7,575.00
Total				213.6	\$112,398.50

10. While adjusting our rates to track market increases, Capstone's rates have steadily remained reasonable and competitive, and have been consistently approved by many federal and state courts over the past several years. *See, e.g., Martinez v. Stumps Market, Inc.*, No. 37-2018-00035669-CU-OE-CTL (San Diego County Superior Court Dec. 18, 2020) (approving Capstone's rates for

1 Associates (\$295 to \$485) and Senior Counsel/Partners (\$485 to \$775)); *Pride v. Pride Industries*, No.
2 STK-UOE-2017-7110 (San Joaquin County Superior Court Dec. 14, 2020) (approving Capstone's rates
3 for Associates (\$295 to \$485) and Senior Counsel/Partners (\$545 to \$775)); *MV Transportation Wage*
4 *and Hour Cases*, No. JCCP No. 4993 (San Joaquin County Superior Court Oct. 20, 2020) (approving
5 Capstone's rates for Associates (\$485 to \$505) and Senior Counsel/Partners (\$545 to \$775)); *Hayes v.*
6 *Rent-A-Center West, Inc.*, No. 37-2018-00043861 (San Diego County Superior Court Aug. 28, 2020)
7 (approving Capstone's rates for Associates (\$265 to \$485) and Senior Counsel/Partners (\$545 to \$775));
8 *Vega v. JPMorgan Chase Bank, N.A.*, No. BC698750 (Los Angeles County Superior Court Aug. 20,
9 2020) (approving Capstone's rates for Associates (\$265 to \$505) and Senior Counsel/Partners (\$545 to
10 \$775)); *Wertz v. Dawn Food Products, Inc.*, No. CIV DS1811446 (San Bernardino County Superior
11 Court June 29, 2020) (approving Capstone's rates for Associates (\$295 to \$505) and Senior
12 Counsel/Partners (\$545 to \$775)); *Reyes v. Verifi, Inc.*, No. BC707889 (Los Angeles County Superior
13 Court March 16, 2020) (approving Capstone's rates for Associates (\$345 to \$485) and Senior
14 Counsel/Partners (\$545 to \$775)); *Vargas v. Ford Motor Co.*, No. CV12-08388 AB (FFMx) (C.D. Cal.
15 March 5, 2020) (approving Capstone's rates for Associates (\$245 to \$445) and Senior Counsel/Partners
16 (\$495 to \$775)); *Wylie v. Hyundai Motor America*, No. 8:16-cv-02102-DOC-JCG (C.D. Cal. March 2,
17 2020) (approving Capstone's rates for Associates (\$295 to \$445) and Senior Counsel/Partners (\$545 to
18 \$775)); *Campbell v. AEG Management Oakland, LLC*, No. RG17859830 (Alameda County Superior
19 Court Feb. 7, 2020) (approving Capstone's rates for Associates (\$345 to \$485) and Senior
20 Counsel/Partners (\$545 to \$775)); *Scoggins v. Crossmark, Inc.*, No. 56-2017-00492936-CU-OE-VTA
21 (Ventura County Superior Court) (approving Capstone's rates for Associates (\$435) and Senior
22 Counsel/Partners (\$495 to \$725)); *Brown v. Harris v. Mr. C Manager LLC*, No. CIV DS1721484 (San
23 Bernardino County Superior Court Aug. 21, 2019) (approving Capstone's rates for Associates (\$295 to
24 \$434) and Senior Counsel/Partners (\$495 to \$725)); *Black v. T-Mobile USA, Inc.*, No. 4:17-cv-04151-
25 HSG (N.D. Cal. July 24, 2019) (approving Capstone's rates for Associates (\$295 to \$435) and Senior
26 Counsel/Partners (\$495 to \$725)); *Rodas v. Petroleum Sales, Inc.*, No. CIV1703590 (Marin County
27 Superior Court July 19, 2019) (approving Capstone's rates for Associates (\$395 to \$435) and Senior
28 Counsel/Partners (\$495 to \$725)); *Aguilar v. Marriott Int'l, Inc.*, No. BC513197 (Los Angeles County

1 Superior Court Apr. 9, 2019) (approving Capstone's rates for Associates (\$295 to \$435) and Senior
2 Counsel/Partners (\$495 to \$725)); *Garrido v. J. C. Penney Corporation, Inc.*, No. 5:18-cv-02051-JVS-
3 SP (C.D. Cal. Jan. 25, 2019) (approving Capstone's rates for Associates (\$435 to \$455) and Senior
4 Counsel/Partners (\$495 to \$725)); *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los Angeles
5 County Superior Court Jan. 3, 2019) (approving Capstone's rates for Associates (\$295 to \$435) and
6 Senior Counsel/Partners (\$495 to \$725)); *Mansilla v. XPO Logistics Worldwide, Inc.*, No. RG17865271
7 (Alameda County Superior Court Nov. 16, 2018) (approving Capstone's rates for Associates (\$295 to
8 \$435) and Senior Counsel/Partners (\$495 to \$725)); *Carbajal v. Tom's Famous Family Restaurants*, No.
9 CIVDS1601821 (San Bernardino County Superior Court July 31, 2018) (approving Capstone's rates for
10 Associates (\$295 to \$395) and Senior Counsel/Partners (\$495 to \$725)); *Williams v. Marshalls of CA,*
11 *LLC*, No. BC503806 (Los Angeles County Superior Court Feb. 15, 2018) (approving Capstone's rates
12 for Associates and Senior Counsel/Partners (\$570 to \$725)); *Grove v. Halston Operating Co.*, No. 37-
13 2016-00029271-CU-OE-CTL (San Diego County Superior Court Feb. 9, 2018) (approving Capstone's
14 rates for Associates and Senior Counsel/Partners (\$470 to \$725)); *Lopez v. Kmart Corp.*, No.
15 CIVMSC15-00134 (Contra Costa County Superior Court Nov. 29, 2017) (approving Capstone's rates
16 for Associates (\$395 to \$470) and Senior Counsel/Partners (\$595 to \$725)); *Chambless v. Islands*
17 *Restaurants, L.P.*, No. BC458426 (Los Angeles County Superior Court Aug. 22, 2017) (approving
18 Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$725)); *Linares v.*
19 *Ann Inc.*, No. BC605635 (Los Angeles County Superior Court Aug. 22, 2017) (approving Capstone's
20 rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$570 to \$725)); *Grillo v. Key Energy*
21 *Services, LLC*, No. 2:14-cv-00881-AB-AGR (C.D. Cal. Oct. 13, 2017) (approving Capstone's rates for
22 Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$725)); *Carter v. GMRI, Inc.*, No.
23 RIC1506085 (Riverside County Superior Court Jan. 10, 2017) (approving Capstone's rates for
24 Associates (\$345 to \$470) and Senior Counsel/Partners (\$570 to \$695)); *Rodriguez v. Swissport North*
25 *America, Inc.*, No. BC441173 (Los Angeles County Superior Court April 17, 2017) (approving
26 Capstone's rates for Associates (\$370 to \$470) and Senior Counsel/Partners (\$520 to \$695)); *Emmons v.*
27 *Quest Diagnostics Clinical Laboratories, Inc.*, No. 1:13-cv-00474-DAD-BAM (E.D. Cal. Feb. 27, 2017)
28 (approving Capstone's rates for Associates (\$370 to \$495) and Senior Counsel/Partners (\$545 to \$695));

1 *Rickerd v. OneWest Resources LLC*, No. BC562538 (Los Angeles County Superior Court Jan. 19, 2017)
2 (approving Capstone's rates for Associates (\$245 to \$470) and Senior Counsel/Partners (\$595 to \$695));
3 *Nunnally v. Dave & Busters, Inc.*, No. 8:16-cv-00855-DOC-KES (C.D. Cal. Jan. 9, 2017) (approving
4 Capstone's rates for Associates (\$395 to \$495) and Senior Counsel/Partners (\$545 to \$695)); *Ford v.*
5 *CEC Entertainment, Inc.*, No. 3:14-cv-01420-RS (N.D. Cal. Nov. 18, 2016) (approving Capstone's rates
6 for Associates (\$420 to \$470) and Senior Counsel/Partners (\$545 to \$695)); *Lutin v. Lerner New York,*
7 *Inc.*, No. BC498443 (L.A. County Super. Ct. Sept. 20, 2016) (approving Capstone's rates for Associates
8 (\$370-470) and Senior Counsel/Partners); *The Children's Place Retail Stores Wage & Hour Cases*, No.
9 JCCP4790 (L.A. County Super. Ct. Sept. 1, 2016) (approving Capstone's rates for Associates (\$245 to
10 \$470) and Senior Counsel/Partners (\$520 to \$695)); *Coffey v. Beverages & More, Inc.*, No. BC477269
11 (L.A. County Super. Ct. July 26, 2016) (L.A. County Super. Ct. Sept. 1, 2016) (approving Capstone's
12 rates for Associates (\$370 to \$470) and Senior Counsel/Partners (\$545 to \$695)); *Guitar Center Stores*
13 *Wage and Hour Cases*, No. JCCP 4818 (San Francisco Superior Court June 7, 2016) (approving
14 Capstone's rates for Associates (\$370 to \$470) and Senior Counsel/Partners (\$545 to \$695)); *Berry v.*
15 *Urban Outfitters Wholesale, Inc.*, No. Case 4:13-cv-02628-JSW (N.D. Cal. April 7, 2016) (approving
16 Capstone's rates for Associates (\$370 to \$470) and Senior Counsel/Partners (\$545 to \$695)

17 11. Capstone's rates are comparable to those judicially approved for other plaintiff's firms,
18 such as Baron & Budd (rates ranging from \$775 for the requested partner to \$390-\$630 for non-
19 partners), Wasserman Comden Casselman & Essensten (rates ranging from \$670-750 for partners and
20 \$300-500 for associates), and Blood Hurst & Reardon (\$510-695 for partners). *See Aarons v. BMW of*
21 *North America*, No. 11-7667-PSG, 2014 U.S. Dist. LEXIS 118442, *40-41 (C.D. Cal. Apr. 29, 2014)
22 (also approving rates of Strategic and Capstone). Other courts have approved hourly rates in this range
23 for plaintiff's side law firms in the Southern California area. *See, e.g., Kearney v. Hyundai Motor Am.*,
24 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650-\$800 for
25 senior attorneys in consumer class action); *Parkinson v. Hyundai Motor America*, 796 F. Supp. 2d 1160,
26 1172 (C.D. Cal. 2010) (approving hourly rates between \$445 and \$675); *Faigman v. AT&T Mobility*
27 *LLC*, 2011 U.S. Dist. LEXIS 15825, * 2 (N.D. Cal. Feb. 15, 2011) (approving hourly rates of \$650 an
28 hour for partner services and \$500 an hour for associate attorney services); *Richard v. Ameri-Force*

Mgmt. Servs., Inc., No. 37-2008-00096019 (San Diego Super. Ct., Aug. 27, 2010) (\$695 to \$750 an hour for partners; \$495 an hour for associates); *Barrera v. Gamestop Corp.*, No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) (\$700 an hour for partners; \$475 an hour for associates); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010) (\$655 to \$750 an hour for partners; \$300 to \$515 an hour for associates); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Super. Ct.) (approving 2012 partner rates between \$550 and \$850 per hour); and *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.) (approving 2011 partner rates of \$825 to \$700 an hour, associate rates between \$355 and \$405 per hour).

12. As summarized in the table below, counsel has incurred a total of \$7,322.59 in costs and expenses to date.

Cost & Expense Categories	Amount
Copying, Printing & Scanning and Facsimiles	\$222.00
Court Fees, Filings & Service of Process	\$671.85
Delivery & Messenger (UPS, FedEx, messenger)	\$35.44
Desmond, Marcello & Amster, LLC (consultants)	\$1,947.50
Interpreters & Translators	\$1,075.59
Legal Research Services (PACER, Westlaw, etc.)	\$76.78
Mediation Fees	\$2,000.00
Postage & Mailings	\$30.54
Simpluris, Inc. (skip-tracing)	\$187.50
Telephone (Long distance, conference calls)	\$6.35
Travel-Related Costs and Expenses	\$1,069.04
Total	\$7,322.59

CAPSTONE LAW APC FIRM PROFILE

13. Capstone is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

14. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over \$200 million in recovery for employees and consumers. The firm's accomplishments include:

- a. In February 2015, Ryan H. Wu and I were honored with the prestigious California Lawyer of the Year (CLAY) award in labor and employment for our work in the

1 landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348
2 (2014), which preserved the right of California workers to bring representative
3 actions under the Labor Code Private Attorneys General Act (“PAGA”)
4 notwithstanding a representative action waiver in an arbitration agreement.

- 5 b. Recognized as a leading firm in the prosecution of PAGA enforcement actions,
6 Capstone is responsible for some of the most important decisions in this area. In
7 *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone
8 attorneys achieved a landmark decision before the California Supreme Court as to
9 the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs.*
10 *Corp*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone
11 attorneys successfully argued that PAGA actions are state enforcement actions not
12 covered by the Class Action Fairness Act.

- 13 15. Attached as Exhibit 2 is a true and correct copy of Capstone’s firm resume.
14

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this 9th day of March, 2021, at Los Angeles, California.

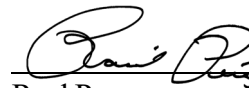
17 
18 Raul Perez

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY

DINORA GONZALES and ANITA RAMOS,
as aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”), on behalf of
the State of California and other aggrieved
employees,

Plaintiffs,

vs.

GROWERS EXPRESS (DE), LLC, a Delaware
limited liability company; and DOES 1 through
10, inclusive,

Defendants.

Case No. 20CV001103

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Monterey (“Court”), Plaintiffs Dinora Gonzales and Anita Ramos (“Plaintiffs”) and Defendant Growers Express (DE), LLC (“Defendant”) (collectively with Plaintiffs, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the action entitled *Gonzales v. Growers Express*, No. 20CV001103 (Monterey County Superior Court) (the “Action”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Gonzales v. Growers Express*, No. 20CV001103 (Monterey County Superior Court).
2. “Aggrieved Employees” are all persons who were employed by Defendant as non-exempt, hourly-paid, employees at Defendant’s fresh vegetable processing facility, who received at least one wage statement, in the State of California at any time from January 10, 2019 through February 1, 2020.
3. “Court” is the Superior Court for the State of California, County of Monterey.
4. “LWDA” means the California Labor and Workforce Development Agency.
5. “Maximum Settlement Amount” means the maximum settlement amount of Four Hundred Five Thousand Dollars (\$405,000) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action, which includes all payments to Aggrieved Employees, Plaintiffs, Plaintiffs’ Counsel, the LWDA, and the Settlement Administrator, but excluding the individual General Release Payments.
6. “PAGA Penalties Fund” means the Maximum Settlement Amount less the Attorneys’ Fees and Costs, Service Awards, and Settlement Administrator Costs.
7. “Plaintiffs’ Counsel” means Capstone Law APC.
8. “Service Awards” means the amounts to be paid to Plaintiffs as payment for their service on behalf of the LWDA and Aggrieved Employees.

9. “Settlement” is the settlement set forth in this Agreement.

10. “Settled Claims” means any and all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or could have been alleged to have been violated in the Actions with respect to Aggrieved Employees based on the facts alleged in the Action during the Settlement Period.

11. “Settlement Period” means January 10, 2019 through February 1, 2020.

TERMS

12. Maximum Settlement Amount. In consideration for Plaintiffs’ promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will to pay a maximum amount of Four Hundred Five Thousand Dollars (\$405,000) (“Maximum Settlement Amount”), which represents the maximum amount payable in this Settlement by Defendant, and includes all attorneys’ fees, litigation costs and expenses, Service Awards, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Maximum Settlement Amount will be retained by, or revert to, Defendant.

13. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

13(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

13(b) To determine each Aggrieved Employee’s payment from the PAGA Penalties Fund, Defendant will use the following formula: Settlement

Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

14. Escalator Clause. This Settlement is based on Defendant's representation that Aggrieved Employees worked during a total of approximately 6,288 pay periods during the Settlement Period. If the number of pay periods worked during the Settlement Period is greater than 6,600, then Defendant will proportionally increase the Maximum Settlement Amount according to the following formula: Adjusted Maximum Settlement Amount = Total Number of Pay Periods $\div$ 6,600 Pay Periods $\times$ Maximum Settlement Amount.

15. Attorneys' Fees and Costs. Plaintiffs' Counsel will apply to the Court for an award of up to One Hundred Thirty Five Thousand Dollars (\$135,000) for attorneys' fees (33^{1/3}% of the Maximum Settlement Amount), and an application to the Court for an award of up to Ten Thousand Dollars (\$10,000) for litigation costs, to compensate Plaintiffs' Counsel for the work already performed in this case and all work remaining to be performed in documenting the Settlement, securing Court approval of the Settlement, and ensuring that the Settlement is fairly administered and implemented. The Settlement Administrator will issue to Plaintiffs' Counsel a Form 1099 with respect to their award of attorneys' fees and costs. If the Court does not award the requested amount, the difference, if any, shall be allocated to the PAGA Penalties Fund.

16. Additional Attorney's Fees Released by Plaintiffs' Counsel: In consideration for an award of attorney's fees, expenses and costs in accordance with this Settlement, Plaintiffs' Counsel waive any and all claims to any further attorney's fees and costs in connection with the Action. This limitation, however, does not apply to any work Plaintiffs' Counsel may reasonably undertake to enforce the terms of this Settlement.

17. Service Awards. For their service on behalf of the LWDA and Aggrieved Employees, Plaintiffs will request the Court award Three Thousand Dollars (\$3,000) to each Plaintiff ("Service Awards"), in addition to any payment they may otherwise receive as an Aggrieved Employee. The

Settlement Administrator will issue to Plaintiffs a Form 1099 for their Service Payment. If the Court does not award the requested amount, the difference, if any, shall be allocated to the PAGA Penalties Fund.

18. Individual General Release Payments. For general releases of all claims Plaintiffs may have against Defendant arising out of their employment, Defendant agrees to pay Plaintiffs the sum of Five Thousand Dollars (\$5,000), each (“General Release Payments”) subject to the execution of an individual settlement agreement upon the date of entry of the Order and Judgment. The General Release Payments will be paid separately from the Maximum Settlement Amount. In consideration of the General Release Payments, and in furtherance of settlement, Plaintiffs agree that they shall not commence any other action, suit, proceeding, investigation, complaint, claim, grievance or charge with any court, administrative agency, arbitrator or any other body or person, whether Federal, State, contractual or otherwise, or aid or assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance or charge on their behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against any of Company’s Releasees, based in whole or in part upon, or arising out of or in an way connected with their employment with Defendant.

19. Settlement Administration Costs. The Parties will retain ILYM, Group, Inc. as the third-party settlement administrator (“Settlement Administrator”). The Settlement Administrator will be responsible for establishing a qualified settlement fund (“QSF”) and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiffs, and Plaintiffs’ Counsel. The Settlement Administration Costs will be paid from the Maximum Settlement Amount. Based on the estimate that there are approximately Two Hundred and Sixteen (216) Aggrieved Employees, Settlement Administration Costs are estimated at Four Thousand Dollars (\$4,000).

20. Court Approval of the Settlement and Distribution of Settlement Payments. Plaintiffs shall promptly move the Court for the entry of an Order Granting Approval of the Settlement incorporating by reference the terms and conditions of the Settlement Agreement (the “Order and Judgment”). Plaintiffs shall submit the Settlement Agreement to the LWDA at the same time Plaintiffs file the Motion for Settlement Approval with the Court.

21. List of Aggrieved Employees. Within ten (10) calendar days after entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all Aggrieved Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments.

22. Funding of the Settlement. Within ten (10) calendar days after entry of the Order and Judgment, Defendant will deposit a total of \$202,500 into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator. Within fifty-five (55) calendar days after entry of the Order and Judgment, Defendant will deposit another \$202,500 into the QSF. Within ten (10) calendar days after the entire Maximum Settlement Amount and General Release Payments have been deposited into the QSF, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiffs; (d) Plaintiffs’ Counsel; and (e) itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

23. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter, in English and Spanish, which will be mutually approved by the parties. 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. 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. 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 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing

of the Settlement checks by the Settlement Administrator will be tendered to the unclaimed property fund of The State Controller's Office. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

24. Settled Claims. Upon entry of the Order and Judgment, Plaintiffs, the LWDA and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the Settlement Period. Aggrieved Employees, other than Plaintiffs, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

25. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

26. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

27. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

28. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

29. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding

on the Parties.

30. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

31. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

32. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

33. California Law Governs. All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California.

34. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

35. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

36. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that

Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement's terms.

37. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

38. Captions. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

39. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

40. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

41. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

42. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

43. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good

faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

44. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

45. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

READ CAREFULLY BEFORE SIGNING

Dated: 2/11/2021

PLAINTIFF

DocuSigned by:

Dinora Gonzales

6D4D74E11FD4433

Dinora Gonzales

PLAINTIFF

Dated: _____

Anita Ramos

faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

44. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

45. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Dinora Gonzales

PLAINTIFF

DocuSigned by:

Dated: 1/21/2021

Anita Ramos

DEFENDANT

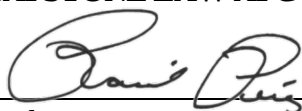
Dated: _____

Kirk Wagner
Name of Authorized Signatory for Growers Express
(DE), LLC

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: February 12, 2021


Raul Perez

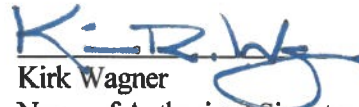
NOLAND, HAMERLY, ETIENNE & HOSS

Dated: _____

Ana C. Toledo

DEFENDANT

Dated: January 29, 2021



Kirk Wagner

Name of Authorized Signatory for Growers Express
(DE), LLC

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

Raul Perez

NOLAND, HAMERLY, ETIENNE & HOSS

Dated: 1/29/21



Ana C. Toledo

Exhibit 2

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531 (2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

Robert Drexler. Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims

such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2020.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

Jamie Greene is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

Senior Counsel

Theresa Carroll Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Anthony Castillo. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Molly DeSario. Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

Robert Friedl. Robert Friedl is a senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Daniel Jonathan. Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

Jonathan Lee. A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Mark A. Ozzello. Mark A. Ozzello is a senior counsel with Capstone Law, where he leads the firm's consumer team. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

Steven Weinmann. Steven Weinmann is a senior counsel with Capstone Law and leads the consumer rights team. His practice encompasses complex and class action litigation, including consumer product and services cases under California's Unfair Competition Law (UCL), data privacy breach cases, and a special emphasis on vehicle defect litigation. He has a background in securities litigation, antitrust, environmental law, and consumer class action cases.

Prior to joining Capstone, Steven's experience included litigating class actions on behalf of employees and consumers, in addition to representing individuals and small and large companies in various types of litigation, from business disputes to personal injury, financial fraud, construction defects, and products liability. Steven has been instrumental in achieving favorable results for numerous certified classes, including cases against Home Depot USA (for wage and hour and UCL claims); LegalZoom.com, Inc. (claims involving illegal practice of law); Wells Fargo Bank, N.A. (UCL, CLRA, federal Truth in Lending Act [TILA] claims). Steven briefed and help bring about numerous reported decisions including *Fraleigh v. Facebook*, 830 F.Supp.2d 785 (N.D. Cal. 2011) (defeating a motion to dismiss on claims involving the right to publicity); *Ceja v. Rudolph & Sletten*, 194 Cal.App.4th 584 (Sixth Appellate Div. 2011), affirmed, California Supreme Court, 56 Cal. 4th 1113 (2013) (confirming the test for determining putative spouse status is a subjective one). He also helped brief and obtained a decision favorable to plaintiffs in a seminal case under California's UCL, *McAdams v. Monier, Inc.*, 182 Cal.App.4th 174 (2010) (deciding only the named class representative needed to satisfy Proposition 64 standing requirements). He received his J.D. with distinction from the Hofstra University School of Law, where he was an associate editor on the Hofstra Law Review, and earned his undergraduate degree in English Literature and Political Science from Rutgers University.

Tarek Zohdy. A senior counsel with Capstone Law, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

Associates

Brandon Brouillette. Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Brouillette's entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, he served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California, where he majored in Business Administration and spent a semester abroad in Budapest, Hungary. In 2016, Brandon was selected as one of Super Lawyers' "Rising Stars" in Southern California.

Joseph Hakakian. Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Michelle Kennedy. Michelle Kennedy is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as a contract attorney in the Utah Attorney General's Civil Litigation Division handling torts, civil rights, and employment law matters. She later founded her own firm handling business and intellectual property matters, where she settled a copyright infringement suit. Prior to moving to Southern California, Ms. Kennedy was recognized by Super Lawyers as a Mountain States Rising Star in 2017 and 2018. She also served as President of the Utah Minority Bar Association and as an Ex-Officio Member of the Utah State Bar Commission. Michelle graduated from the University of Utah S.J. Quinney College of Law in 2013, where she served as President of the Art Law Alliance and Vice President of the Minority Law Caucus. She earned her undergraduate degree from Brigham Young University in 2010, where she majored in Philosophy. Ms. Kennedy is an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Los Angeles County Bar Association. Michelle is admitted to practice law in Utah and California.

Alexander Lima. Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. He graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American

Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Julian Quattlebaum. Julian Quattlebaum is an associate with Capstone. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. He began his career at an entertainment law firm, handling intellectual property matters, copyright infringement disputes, and contract litigation. During his time at the firm, he authored an amicus brief that was quoted in oral argument before the Ninth Circuit Court of Appeals during en banc review. Later, he helped author an appellate brief regarding the rights to the storyline of a successful Disney film franchise. Mr. Quattlebaum graduated from Emory University School of Law in 2019. While there, he was a member of the Moot Court Society, representing the school at the NYU Immigration Law competition in his second year, and the National Competition in his third year. He was given the Society's Award for Excellence in Oral Advocacy and was inducted into the Order of Emory Advocates. He earned his undergraduate degree from the University of Colorado Boulder in 2015, where he majored in Evolutionary Biology.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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8 Attorneys for Plaintiffs Dinora Gonzales and Anita Ramos

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11
12 DINORA GONZALES and ANITA RAMOS,
as aggrieved employees pursuant to the Private
13 Attorneys General Act ("PAGA"), on behalf of
the State of California and other aggrieved
14 employees,

15 Plaintiffs,

16 vs.

17 GROWERS EXPRESS (DE), LLC, a Delaware
limited liability company; and DOES 1 through
18 10, inclusive,

19 Defendants.
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Case No. 20CV001103

**DECLARATION OF ANITA RAMOS IN
SUPPORT OF MOTION COURT APPROVAL
OF THE PARTIES' PAGA SETTLEMENT
AGREEMENT**

Date: April 6, 2021
Time: 8:30 a.m.
Place: Department 13

DECLARATION OF ANITA RAMOS

I, Anita Ramos, hereby declare as follows:

1. I am over eighteen years old and unless the context indicates otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I am a Plaintiff in the above-captioned action, and a representative for the LWDA and Aggrieved Employees. I make this declaration in support of the Motion for Court Approval of the Parties' PAGA Settlement.

2. I was employed by Defendant Growers Express (DE), LLC ("Defendant" or "Growers Express") as a non-exempt Packer from approximately September 2015 to February 2019 at its facilities in Salinas, California (until it ceased operations prior to the start of the claims period in 2018) and in Gonzales, California. I decided to file this lawsuit to redress multiple employment-related grievances that I had against Defendant. These grievances are set forth in detail in my letter to the California Labor and Workforce Development Agency ("LWDA") and my Complaint.

3. Prior to filing the action, my attorneys and I had multiple conferences about the factual bases for the claims that I wanted to pursue against Defendant.¹ During those conferences, my attorneys provided me with an overview of how those claims would be litigated and generally educated me about the nature of complex/representative litigation and my role as the representative Plaintiff.

4. My attorneys provided me with a draft of the Complaint for my review and approval. I closely reviewed the Complaint to ensure accuracy and completeness. Following the filing of the Complaint, I collaborated with my attorneys on the prosecution of my claims, and I regularly contacted my attorneys to stay current on the status of the litigation, and to discuss my attorneys' progress in prosecuting the claims.

5. I worked closely with my attorneys during the discovery phase of the litigation, and in particular, I spent considerable time working with my attorneys to prepare responses to Defendant's discovery requests, including form interrogatories, special interrogatories, and document requests. I also made myself available to answer any questions my attorneys had stemming from Defendant's

¹ Although the preservation of my attorney-client privilege requires that I refrain from revealing the specifics of my communications with my attorneys, I understand that the privilege is not waived by stating generally the matters that I have discussed with my attorneys.

1 production of company documents.

2 6. I have carefully reviewed the terms of the proposed settlement. My attorneys explained
3 the specifics of how the settlement would work and I accepted the settlement only after I had spent time
4 evaluating the proposed outcome to assure that it was fair. Based on my attorneys' evaluation and
5 recommendation, and my own review, I believe the settlement is fair and reasonable and furthers
6 PAGA's objectives.

7 7. In summary, over the course of this litigation I have spent a significant amount of time
8 conferring and working with my attorneys on the prosecution of my claims and evaluating the settlement
9 and related documents. I estimate that I have spent between 30 and 40 hours assisting my attorneys in
10 the prosecution of this lawsuit.

11
12
13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct. Executed on [Date] 3/4/2021, at [City] Salinas, California.

DocuSigned by:

Anita SR

434408962602464...

Anita Ramos

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8 Attorneys for Plaintiffs Dinora Gonzales and Anita Ramos

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MONTEREY

11
12 DINORA GONZALES and ANITA RAMOS,
as aggrieved employees pursuant to the Private
13 Attorneys General Act ("PAGA"), on behalf of
the State of California and other aggrieved
14 employees,

15 Plaintiffs,

16 vs.

17 GROWERS EXPRESS (DE), LLC, a Delaware
limited liability company; and DOES 1 through
18 10, inclusive,

19 Defendants.
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Case No. 20CV001103

**[PROPOSED] ORDER APPROVING THE
PAGA SETTLEMENT AGREEMENT AND
JUDGMENT**

Date: April 6, 2021
Time: 8:30 a.m.
Place: Department 13

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1 finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order and
2 Judgment, the Settlement, nor any document referred to herein, nor any action taken to carry out the
3 Settlement, may be construed as, or may be used as, an admission of any fault, wrongdoing, omission,
4 concession, or liability whatsoever by or against Defendant.

5 8. The settlement of civil penalties under PAGA in the amount of approximately \$252,675
6 is hereby approved. Seventy-Five Percent (75%) shall be paid to the California Labor and Workforce
7 Development Agency. The remaining Twenty-Five Percent (25%) shall be paid to Aggrieved
8 Employees.

9 9. The Court hereby awards \$135,000 in attorneys' fees and \$7,325 costs to Plaintiffs'
10 Counsel, Capstone Law APC.

11 10. The Court approves Service Awards of \$3,000, each, to Dinora Gonzales and Anita
12 Ramos.

13 11. The Court appoints ILYM Group, Inc. to serve as the Settlement Administrator.

14 12. This Judgment shall be binding on all Aggrieved Employees and the State of California,
15 who are hereby barred by the doctrine of res judicata from re-litigating the Settled Claims during the
16 Settlement Period, as those terms are defined by the Settlement. *See Arias v. Superior Court*, 46 Cal. 4th
17 969, 986 (2009) (holding that a judgment in a representative action brought by an aggrieved employee
18 under PAGA is binding not only on the named employee plaintiff but also on state labor law
19 enforcement agencies and any aggrieved employee not a party to the proceeding).

20 13. Without affecting the finality of the Order and Judgment, the Court shall retain exclusive
21 and continuing jurisdiction under California Code of Civil Procedure § 664.6, over the above-captioned
22 action and the parties for purposes of enforcing the terms of the Judgment and the Settlement.

23 14. This document shall constitute a judgment under California Code of Civil Procedure §
24 664.6.

25
26 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

27 Date _____

Hon. Vanessa W. Vallarta
Monterey County Superior Court Judge