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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

GEICO WAGE AND HOUR CASES

CASE NO. JCCP N0.5221

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF *UNOPPOSED* MOTION
RE: PAGA SETTLEMENT APPROVAL**

Included actions:

Date: February 7, 2025

Time: 1:30 p.m.

Dept.: C-63

Judge: Hon. Katherine Bacal

*Michael Herzog v. Government Employees
Insurance Company*

Superior Court of California, County of San
Diego No. 37-2020-00045064

*Conrad Reloj v. Government Employees
Insurance Company*

Superior Court of California, County of
Alameda No. 21CV003563

*Saul Gonzalez v. Government Employees
Insurance Company*

Superior Court of California, County of San
Diego No. 37-2022-00011726

*Nonesto Mabini v. Government Employees
Insurance Company*

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TABLE OF CONTENTS

I.	Summary of Motion..	1
II.	Summary of Settlement Terms.....	1
III.	Controlling Authority.....	3
IV.	Discussion.....	4
A.	The Nature and Scope of the Alleged Violations.....	4
B.	Analysis of Potential Liability, on a Representative Basis.....	4
1.	The Parameters of the Proposed PAGA Group	5
2.	The Analysis of the Claims and Scope of Liability	5
i.	Meal and Rest Period Claims	6
ii.	Unpaid Wage Claims	6
iii.	Wage Statements and Other Derivative Penalties	7
iv.	The Arguments for Mitigation of PAGA Penalties	7
3.	Counsel Are Well Experienced in PAGA Matters and Recommend the Settlement.....	7
C.	The Allocation of Penalties, and <i>Limited Release</i> of Claims	8
D.	The Request for Attorneys’ Fees, Costs & Enhancement Awards.....	9
1.	Request for Reasonable Costs of Litigation	9
2.	Request for Reasonable Attorneys’ Fees	9
3.	A Lodestar Cross Check Further Confirms the Reasonableness of the Fee	11
4.	Request for PAGA Representative Enhancement	12
5.	CAC Services Group, LLC Will Serve as the Settlement Administrator	13
E.	The LWDA Was Notified and Does <u>Not</u> Object	14
IV.	Conclusion.....	14

TABLE OF AUTHORITIES

CASES

<i>Amaral vs. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157, 1213-1214.....	4,9
<i>Bank of America v. Cory</i> 164 Cal. App. 3d 66, 91 (1985)	10
<i>Beasley v. Wells Fargo Bank</i> 235 Cal. App. 3d 1407, 1419 (1991).....	9
<i>Billinghausen v. Tractor Supply Co.</i> 306 F.R.D. 245, 267-68 (N.D. Cal. 2015)	12
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504.....	4,7
<i>Chavez v. Netflix</i> (2008) 162 Cal. App. 4 th 66	10
<i>Coalition for Los Angeles County Planning v. Board of Supervisors</i> (1977) 76 Cal. App. 3d 241, 251	11
<i>Donohue v. AMN Servs., LLC</i> (2021) 11 Cal.5th 58.....	8
<i>Downey Cares v. Downey Community Development Commission</i> (1987) 196 Cal. App. 3d 983, 994	11
<i>Fernandez v. Victoria Secret Stores, LLC,</i> No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008).....	11
<i>Fleming v. Covidien Inc.</i> 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011)	4
<i>Flores v. Starwood Hotels & Resorts Worldwide, Inc.</i> 253 F. Supp. 3d 1074, 1076–77 (C.D. Cal. 2017).....	8
<i>In re Rite Aid Corp. Securities Litig.</i> 396 F.3d 294, 300 (3d Cir. 2005)	10
<i>In re Toys ‘R’ Us-Del FACTA Litig.</i> 295 F.R.D. at 471 (C.D. Cal. 2014).....	12
<i>Iskanian v. CLS Trans. Los Angeles, LLC</i> (2014) 59 Cal. 4th 348, 360.....	3,9,12
<i>Kern Rivet Public Access Committee v. City of Bakersfield</i> (1985) 170 Cal. App. 3d 1205, 1228	11,12
<i>Laffitte v. Robert Half Int’l Inc.</i> 1 Cal. 5th 480, 506 (2016)	10

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<i>Lealao v. Beneficial Cal. Inc.</i> 82 Cal. App. 4th 19, 47 (2000)	11
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal. App. 4th 56, 77	3
<i>O'Connor v. Uber Techs., Inc.</i> 201 F.Supp.3d 1110, 132-35 (N.D. Cal. 2016)	3
<i>Olson v. Automobile Club of Southern Calif.</i> 42 Cal. 4th 1142 (2008)	9
<i>Conrad Reloj v. Government Employees Insurance Company Inc.</i> Southern District of California, Case No. 3:21-cv-01751-L-MSB.....	1
<i>Turrieta v. Lyft, Inc.</i> (2024) 16 Cal.5th 664, 715.....	4
<i>Sakkab v. Luxottica Retail N. Am., Inc.</i> (9th Cir. 2015) 803 F.3d 425, 430.....	3
<i>Sternwest Com. v. Ash</i> (1986) 183 Cal. App. 3d 74, 75.....	12
<i>Stratham v. Acacia Research Corp.</i> 210 Cal. App. 4th 487, 501 (2012).....	10,13
<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. at 299	12
STATUTES, RULES AND REGULATIONS	
Cal. Civ. Pro. Code § 1033.5(c)(4)	9
California Labor Code §2698 <i>et seq.</i>	1,4
California Labor Code § 2699(e)(2)	4,7
California Labor Code § 2699(l).....	8
California Labor Code § 2699(g)(l).....	9
California Labor Code § 2802.....	7

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The Total Value of the proposed Settlement is **\$5,250,000.00**. The Monetary Terms are found in Exhibit 1, Paragraph 3, and are summarized as follows:

- * **\$1,750,000.00** PAGA Counsel Fees Payment (1/3 of total amount)
- * **\$60,164.40** PAGA Counsel Costs
- * **\$30,000.00** Plaintiffs' Enhancement Awards (4 total \$7,500 each)
- * **\$13, 506.99** Administration Expenses
- * Sub-Total of **\$3,396,328.61 (PAGA Payment)**
- * 75% (**\$2,547,246.46**) shall be assigned/paid to the LWDA as penalties.
- * The remaining 25% (**\$849,082.15**) will be disbursed among all employees based on pay periods employed during the PAGA period.

Defendant has verified there were at least **4,504** "PAGA Settlement Employees" who worked approximately **287,036** pay periods. **Exhibit 1: ¶ 3(b)**. The "PAGA Settlement Employees" are all current and former non-exempt employees who worked in California during the PAGA Period, with the exception of non-exempt employees working as Auto Damage Adjusters (including similar roles with different titles). **Exhibit 1: ¶ 3(a)(6)**. The "PAGA Period" is from October 2, 2019 through November 1, 2024. (*Id.*)

Given the above, the average payment to each individual employee would be approximately **\$188.52**. This is an "average" only. Pursuant to the parties agreement the exact payments will be determined by the amount of pay periods worked by each employee during the entire PAGA Period. (**Exhibit 1: ¶ 7(b)**).

Further, there are no restrictions for any of the employees to file individual actions, as the settlement agreement only covers PAGA claims. (Yaeckel Decl., ¶7); **Exhibit 1: "Release of PAGA Claims" ¶ 9 (a)**).

The Plaintiffs' counsel authoring the instant motion is well versed in class and representative (PAGA) litigation. Based on that experience, counsel submits this settlement represents a fair and adequate payment to the LWDA and aggrieved employees. (Yaeckel Decl., ¶16; Perlman decl. ¶ 25; Castro decl.).

Should the Court deem it necessary, a lodestar cross-check confirms the propriety of the

1 requested attorneys fees. Given the actual fees incurred, in the amount of approximately **\$1,604,647.50**
2 a modest lodestar multiplier of 1.09 is requested and is justified given the excellent result, and for the
3 additional reasons set forth below.

4 Plaintiffs also seek reimbursement for reasonable litigation expenses incurred in the amount
5 of **\$60,164.40**. (See Yaeckel Decl. ¶ 25; Perlman decl. ¶ 26; Castro decl.).

6 The parties proposed notice, to accompany the settlement checks following approval, is
7 attached to the parties Settlement Agreement as **Exhibit F**.

8 **III. CONTROLLING AUTHORITY**

9 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state
10 against his or her employer for Labor Code violations committed against the employee and fellow
11 employees.” *Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “To compensate
12 for the lack of [a]dequate financing of essential labor law enforcement functions,’ the California
13 legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect
14 civil penalties for violations of the Labor Code.” *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir.
15 2015) 803 F.3d 425, 430.

16 Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA
17 settlement:

18 We therefore hold that **a trial court should evaluate a PAGA settlement to**
19 **determine whether it is fair, reasonable, and adequate in view of PAGA's**
20 **purposes to remediate present labor law violations, deter future ones, and to**
21 **maximize enforcement of state labor laws.** (See *Williams* , *supra* , 3 Cal.5th at p.
22 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present
violations and deter future ones"]; *Arias* , *supra* , 46 Cal.4th at p. 980, 95 Cal.Rptr.3d
588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement
efforts to achieve maximum compliance with labor laws].) *Moniz v. Adecco USA,*
Inc., (2021) 72 Cal. App. 4th 56, 77.

23 Prior to *Moniz*, other Courts followed the rationale in *O'Connor v. Uber Techs.*, 201 F.Supp.3d
24 1110, 132-35 (N.D. Cal. 2016), which states a court is permitted to approve a PAGA settlement if the
25 settlement is “fair and adequate in view of the purposes and policies of the statute.” *Id.*

26 The California Supreme Court recently confirmed that, unlike in a Class Action, in a PAGA
27 only settlement other employees do not have a right to notice, or to object to the settlement:

28 nothing in PAGA's text, statutory scheme, or legislative history suggests the Legislature

1 understood or intended an aggrieved employee's authority to commence and prosecute a PAGA
2 action on the state's behalf to include the power to file objections to the settlement reached by
3 another aggrieved employee representing the same state interest and also acting on the state's
4 behalf. *Turrieta v. Lyft, Inc.*, (2024) 16 Cal.5th 664, 715.

5 As to penalties in a PAGA case, a court may award a lesser amount than the maximum civil
6 penalty amount if, based on the facts and circumstances of the particular case, to do otherwise would
7 result in an award that is unjust, arbitrary and oppressive, or confiscatory. Lab. Code, § 2699(e)(2);
8 *Amaral vs. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214. *See e.g., Fleming v. Covidien*
9 *Inc.*, 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 82%).

10 **Please Note:** Plaintiffs' counsel personally experienced the mitigation of "PAGA" penalties
11 before this Court in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. In *Carrington*,
12 following a successful trial for the Plaintiff, the Court significantly mitigated PAGA penalties (\$5 per
13 violation), due to the efforts made by the employer to comply with the law. Please See *Carrington v.*
14 *Starbucks Corp.* San Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and published
15 appellate opinion 30 Cal.App.5th 504.

16 **IV. DISCUSSION**

17 The parties reached the terms of their proposed settlement agreement following the completion
18 of discovery and extensive expert analysis of employment records. The parties submit the proposed
19 settlement of PAGA penalties is fair, adequate, and reasonable.

20 **A. THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS**

21 The Complaint alleges Labor Code violations which triggered penalties under the PAGA
22 statute (Labor Code §2698 et seq.), (See ROA #1). Plaintiffs specifically alleged employees were
23 denied compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements,
24 reimbursements, and suffered waiting time violations. (See e.g. ROA #1, **Exhibits A-E** to the
25 Settlement Agreement which contain Plaintiffs' LWDA Notice letters).

26 Specifically, Plaintiffs allege that they - and other employees - received "short," "late," or
27 "missing" Meal Periods, including those documented within Defendant's Time Records. (Decl.
28 Yaeckel, ¶26). Plaintiffs also challenged whether Defendant maintained lawful rest period policies.
Plaintiffs alleged they - and other employees - were not properly compensated due to Defendant's

1 failure to maintain accurate time records and failure to pay for all time under employer control. (Decl.
2 Yaeckel, ¶27).

3 **B. ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS**

4 The catalyst of this litigation concerned allegations that the aggrieved employees were denied
5 legally compliant meal and rest periods, and were not paid for all hours worked. Investigations
6 (including expert analysis) completed by Plaintiffs’ counsel revealed that Defendant’s timekeeping
7 policies and employee records were not in compliance with California law. (Decl. Yaeckel, ¶27).
8 However, these investigations also revealed that the “rate of violation” by Defendant was significantly
9 less than 100%. (*Id.*). On many of those occasions, it appears that Defendant did, in fact, comply with
10 the law. (*Id.*)

11 **1. The Parameters of the Proposed PAGA Group**

12 To confirm, this settlement is meant to encompass all current and former non-exempt
13 employees who worked in California during the “PAGA period,” with the exception of non-exempt
14 employees working as Auto Damage Adjusters (including similar roles with different titles). (**Ex. 1:**
15 **¶ 3(a)(6)**).

16 Geico has confirmed, and Plaintiffs’ expert has independently verified, that there are
17 approximately **4,504** employees who worked a total of **287,036** as of July 1, 2025. **Exhibit 1: ¶ 3(b)**
18 These number will increase slightly as the PAGA Period continues through November 1, 2024.
19 (Yaeckel Decl. ¶ 6).

20 If the Court approves the “contingent costs” as requested in the moving papers, the total
21 amount of PAGA penalties will be **\$3,396,328.61**. 75% (**\$2,547,246.46**) shall be assigned/paid to the
22 LWDA as penalties. The remaining 25% (**\$849,082.15**) will be disbursed among all employees based
23 on pay periods worked during the PAGA period. If you divide the \$849,082.15 in penalties between
24 the 4,504 employees, it results in an average payout of **\$188.52** per employee. (Yaeckel Decl. ¶ 6).
25 **Please Note:** This is an average only. The actual payout per employee will vary based on the total pay
26 periods worked during the PAGA period.

1 **2. The Analysis of the Claims and Scope of Liability**

2 Prior to settlement, Plaintiffs and retained experts conducted a thorough expert analysis of the
3 documents and data produced by Defendant. This included an analysis of all relevant written policies
4 and *all* time and wage records and phone records, computer log records and emails for other putative
5 aggrieved employees). Given the expert report Plaintiffs' Counsel were able to realistically assess the
6 value of Plaintiffs' claims, and intelligently engage Defense Counsel in settlement discussions that
7 culminated in the proposed settlement now before the Court. Plaintiffs expert calculated the estimated
8 maximum scope of liability as being between **\$12,000,000.00** and **\$13,000,000.00**. (Yaeckel Decl.
9 ¶30). However, as is set forth more fully below, all counsel are aware "maximum" awards in PAGA
10 only cases are exceedingly rare. Moreover, most trial Courts (including this Trial Court, in the
11 *Carrington* matter) decline to "stack" PAGA penalties. "Stacking" refers to imposing multiple
12 penalties for one alleged "harm." *E.g.* one single late meal period could arguably violate at least four
13 Labor Code provisions that allow for separate penalties pursuant to PAGA. (Yaeckel Decl.¶ 31).

14 **i. Meal and Rest Period Claims**

15 Plaintiffs allege Geico required its employees to falsely report meal period compliance "across
16 the board." Expert investigation confirmed that many pay periods show falsely reported (and/or
17 interrupted) meal periods as well as late meal periods based on separate phone and computer data.
18 Geico argued that employees were given the opportunity for breaks and self reported their meal
19 periods. (Yaeckel Decl. ¶ 26).

20 Plaintiffs also alleged the Geico written rest period policies are illegal. One Geico policy stated
21 that Geico paid employees an improper rate of pay for rest period penalty payments and another policy
22 restricted employees from leaving the premises during rest periods. Geico countered that there were
23 no such restrictions in practice. The rest period claims would have been harder to prove on a
24 representative basis given that rest breaks were not recorded on the time records. (Yaeckel Decl. ¶ 27).

25 **ii. Unpaid Wage Claims**

26 Plaintiffs' claim for unpaid wages was based on a (1) forensic analysis of Geico's phone
27 records showing unreported work time and (2) forensic analysis of Geico's computer "log-in and log-
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1 out” records which showed that on occasion unpaid work time existed. Analysis of Geico’s security
2 “badge swipe” records also confirm additional unpaid work time in almost every pay period. Geico
3 argued that it was the employees responsibility to accurate document all time worked and that Geico
4 paid for all time reported on the time records.(Yaeckel Decl. ¶ 28).

5 **iii. Wage Statements, Reimbursement and Other Derivative Penalties**

6 The remaining claims are largely derivative, in that Wage Statement and Labor Code § 203
7 penalties would only be permissible if the above claims are proven. Plaintiffs had also alleged
8 violations for failure to reimburse business expenses pursuant to Labor Code § 2802. However, it
9 appeared Geico had compliant reimbursement policies and any un-reimbursed expenses would have
10 been very minimal. (Yaeckel Decl. ¶ 29).

11 **iv. The Arguments for Mitigation of PAGA Penalties**

12 Plaintiffs’ counsel is aware of the Court’s discretion to mitigate penalties pursuant to California
13 Labor Code section 2699(e)(2). (Decl. Yaeckel, ¶31). To confirm, Plaintiffs’ counsel experienced the
14 mitigation of “PAGA” penalties before this Trial Court, in *Carrington v. Starbucks Corp.* (2018) 30
15 Cal.App.5th 504. (*Id.*) In *Carrington*, the Court significantly mitigated PAGA penalties (to \$5 per
16 violation), due to the efforts made by the employer to comply with the law. (*Id.*)

17 Plaintiffs’ counsel agrees that penalties *should* be mitigated where violations are minimal (or
18 rare), or where the employer makes significant efforts to comply with the Labor Code. (Dec. Yaeckel,
19 ¶32-33).

20 As many of the above factors could be argued by Defendant in this case, it is the opinion of
21 Plaintiffs’ counsel that the settlement is fair, adequate, and reasonable. Specifically, Plaintiffs’
22 counsel’s understanding is that Defendant has reviewed its policies and practices, and made updates
23 to attempt to ensure future compliance with California law. (Decl. Yaeckel, ¶34).

24 **3. Counsel Are Well Experienced in PAGA Matters and Recommend the Settlement**

25 The Lead Trial Counsel for Herzog, Mr. William Sullivan, has been a California-licensed
26 attorney for 30 years. He has approximately 29 years of experience in "class action" litigation, both
27 as plaintiff and defense counsel. Mr. Sullivan has acted as Trial Counsel (for Plaintiff) in multiple
28

1 "Wage and Hour" Class/Representative actions, including the (San Diego Superior Court) Trial which
2 is the subject of the Published decision entitled *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504.
3 Mr. Sullivan estimates that, throughout the course of his 30-year career, he has acted as Lead Plaintiff's
4 counsel on "Wage and Hour" Class/Representative actions that have collected more than \$300 million
5 for employees and/or the State of California, either through judgment following trial, or via negotiated
6 settlement. (Decl. Yaeckel, ¶10).

7 Plaintiffs' counsel, Eric K. Yaeckel, has over 14 years of experience prosecuting class and
8 representative action claims under the California Labor Code. (Decl. Yaeckel, ¶11-14). Plaintiffs'
9 counsel are the attorneys of record in a matter that was recently heard (and favorably decided) before
10 the California Supreme Court, titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The
11 *Donohue* matter was a certified class and PAGA action. (*Id.*)

12 Counsel for Mabini, Solis and Yorba also well experienced in Class Action and PAGA matters
13 and similarly support the settlement. (Perlman decl.; Castro decl.)

14 Based on said experience, it is the opinion of all Plaintiffs' counsel that this settlement
15 represents a fair and adequate payment. (Decl. Yaeckel, ¶16).

16 **C. THE ALLOCATION OF PENALTIES, AND *LIMITED RELEASE OF CLAIMS***

17 While Labor Code section 2699(*l*) requires a court to "review and approve any penalties sought
18 as part of a proposed settlement agreement," it does not provide any guidance as to what is considered
19 an 'adequate' allocation of these penalties. However, Trial Courts have held that *where the* division
20 of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved
21 the settlement. *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1076–77
22 (C.D. Cal. 2017).

23 After subtracting the contingent costs set forth above, the parties seek to allocate **\$3,396,328.61**
24 of the total settlement to the Total Value of the PAGA Fund. 75% (**\$2,547,246.46**) shall be
25 assigned/paid to the LWDA as penalties. The remaining 25% (**\$849,082.15**) will be allocated and
26 distributed among the current or ex-employees within the PAGA Period.

27 The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Decl.
28 Yaeckel, ¶31). Moreover, the PAGA settlement does not bar any employee from pursuing their own

individual Labor Code claims. (Decl. Yaeckel ¶7; **Exhibit 1**: “Release of PAGA Claims” ¶9 (a)). The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff’s operative Complaint. (*Id.*)

D. REQUEST FOR ATTORNEYS’ FEES, COSTS & ENHANCEMENT AWARDS

Plaintiffs also request the Court approve the requested attorneys’ fees, costs reimbursement and plaintiffs’ enhancement awards for the reasons set forth below.

1. Request for Reasonable Costs of Litigation

Plaintiffs’ Counsel are 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).

As itemized in Plaintiff’s Counsel’s declaration, Counsel advanced **\$60,164.40** in out-of-pocket costs to the State for, among other things, filing fees, expert fees, deposition costs and mediation fees. (Yaeckel Decl. ¶ 25; Castro decl.; Perlman decl.) 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.”)

2. Request for Reasonable Attorneys’ Fees

For the reasons discussed in detail below, an award of attorneys’ fees in the amount of one third of the gross settlement fund is fair and reasonable, and in line with what other California courts, both state and federal, have awarded in settlements of similar litigation.

The PAGA statute provides that a plaintiff is entitled to recover reasonable attorneys’ fees, expenses, and costs. Section 2699(g)(1) of the California Labor Code provides that “[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” In a qui tam action, reasonable attorneys’ fees and costs are typically awarded under the common fund

1 doctrine where, as here, the litigation creates a common fund of money in a specific amount for the
2 benefit of others. PAGA "is a type of qui tam action." *See Iskanian*, 59 Cal. 4th at 382. "A qui tam
3 action 'is a type of private attorney general lawsuit' [citation], in which 'the qui tam plaintiff stands in
4 the shoes of the state or political subdivision [citation].'" *People ex rei. Stratham v. Acacia Research*
5 *Corp.*, 210 Cal. App. 4th 487, 501 (2012).

6
7 Where, as here, a common fund is created in a qui tam action by the successful litigation of a
8 plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common
9 fund:

10 Those benefitting from the recovery of the fund, in this case some depositors and eventually
11 the People of the State of California, must bear their share of the cost of litigation. Fees for
12 taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced
13 proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney
14 fees, it must be modified to confine the award of fees to the common fund theory.
15 *Bank of America v. Cory*, 164 Cal. App. 3d 66, 91 (1985) (authorizing common fund fees in a qui tam
16 taxpayer suit against certain banks).

17 Likewise, through the successful efforts of Plaintiffs and their attorneys, a common fund was
18 created in the amount of **\$5,250,000.00** for the benefit of the employees and the State of California.

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

California state and federal courts routinely award attorneys' fees approximating one-third of
the common fund. See, e.g. *Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App. 4th 860, 871 (2016)

1 ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class
2 action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that, regardless
3 whether the percentage method or the lodestar method is used, fee awards in class actions average
4 around one-third of the recovery.")

5 A fee award in the amount of one-third of the common fund is also reasonable because it best
6 reflects the market rate for contingency fees. See *Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19,
7 47 (2000) ("attorneys providing the essential enforcement services must be provided incentives
8 roughly comparable to those negotiated in the private bargaining that takes place in the legal
9 marketplace. . . ."). Fees representing one-third of the recovery reflect the rate negotiated in "typical
10 contingency fee agreements [which] provide that class counsel will recover 33% if the case is resolved
11 before trial and 40% if the case is tried." *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149
12 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (citing an academic study collecting
13 contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable
14 on that basis). Because the negotiated fee structure mimics the marketplace, it is reasonable and should
15 be approved.
16

17 **Please Note:** The attorneys in this JCCP proceeding and each of the respective Plaintiffs
18 entered into a joint prosecution and attorney fee split agreement. (Yaeckel decl. ¶ 43). The division of
19 fees and costs is broken down in the proposed Order accompanying this motion.

20 For all of these reasons, a common fund fee award in the amount of one third of the total
21 settlement (**\$1,750,000.00**) is fair and reasonable.

22 **3. A Lodestar Cross Check Further Confirms the Reasonableness of the Fee**

23 Should the Court deem it necessary, lodestar cross-check confirms the propriety of the
24 requested attorneys fees. Given the actual fees incurred, in the amount of **approximately**
25 **\$1,604,647.50** a modest lodestar multiplier of 1.09 would be required to support the requested fee.
26 (See Yaeckel Decl. ¶ 17(e)).

27 California courts and the Ninth Circuit hold that the trial court in determining whether to apply
28 a multiplier should look at the case and its results as a whole. Historically California courts have

1 approved multipliers of 1.5 to 4. See *Coalition for Los Angeles County Planning v. Board of*
2 *Supervisors* (1977) 76 Cal. App. 3d 241, 251 (multiplier of 2+); *Kern Rivet Public Access Committee*
3 *v. City of Bakersfield* (1985) 170 Cal. App. 3d 1205, 1228 (multiplier of 1.5); *Downey Cares v.*
4 *Downey Community Development Commission* (1987) 196 Cal. App. 3d 983, 994 (multiplier of 1.5);
5 *Sternwest Com. v. Ash* (1986) 183 Cal. App. 3d 74, 75.

6 Counsel submits its fees are reasonable and in line with (or lower) than rates charged in the
7 community by attorneys with similar experience. (See Yaeckel Decl. ¶¶ 18-24).

8
9 Moreover, the multiplier requested (to the extent the Court even deems such a lodestar
10 cross-check necessary) is within the range of what California and federal courts often apply in Class
11 Action cases. **Please Note:** there is no authority Plaintiff is aware of requiring a lodestar analysis in
12 a PAGA only matter, which is why Plaintiff cited to Class Action authority above. Moreover, the
13 results obtained here, including the average net recovery per PAGA Member exceed those normally
14 observed in PAGA only settlements. (See Yaeckel Decl. ¶ 17(e)).

15 **4. Request for PAGA Representative Enhancement**

16 The named Plaintiffs request an enhancement payment of \$7,500 each (\$30,000 total) for their
17 service as the PAGA representatives and for recognition that they were also required to release all of
18 their underlying Labor Code claims via a full section 1542 release. There is no such restriction on the
19 other alleged aggrieved employees.

20 An enhancement is justified in light of the “reputational risk” that Plaintiffs assumed by
21 litigating claims against a former employer. See *Billinghausen v. Tractor Supply Co.*, 306 F.R.D. 245,
22 267-68 (N.D. Cal. 2015) (finding “personal detriment” upon testimony that future employers can easily
23 learn that a prospective employee served as a plaintiff through the internet).

24 Second, the separate settlement payment is reasonable because Plaintiffs “remained fully involved and
25 expended considerable time and energy during the course of the litigation.” See *In re Toys ‘R’ Us-Del FACTA*
26 *Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiffs devoted their time and effort toward assisting their attorneys
27 with the prosecution of the claims, and assisted counsel with finalizing the settlement. (Yaeckel Decl. ¶ 35).

28 The separate payment is also appropriate because Plaintiffs otherwise “will not gain any benefit beyond

1 that [he] would receive as an ordinary [Aggrieved Employee].” *In re Toys “R” Us FACTA Litig.*, 295 F.R.D. at
2 472; *Van Vranken*, 901 F. Supp. at 299 (holding that a substantial award is appropriate where a [representative’s]
3 claim made up “only a fraction of the common fund.”).

4 Lastly, because PAGA is a “type of qui tam action,” it is appropriate for the Plaintiffs to receive
5 a modest additional payment from the settlement as a “bounty” for their special effort in vindicating
6 the State’s interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 (“A PAGA
7 representative action is therefore a type of qui tam action.”); *see also People ex rel. Strathmann v.*
8 *Acacia Research Corp.*, 210 Cal. App. 4th 487, 500 (2012) (“The person who brings the qui tam
9 action, called the ‘relator,’ stands in the shoes of the People of the State of California, who are deemed
10 to be the real party in interest . . . The relator in a qui tam action under section 1871.7 does not
11 personally recover damages but, if successful, receives [a portion] of the recovery as a bounty.”)
12 (internal citations omitted).

13
14 The Plaintiffs each contributed extensive time and resources in the prosecution of this cases.
15 (Yaeckel Decl. ¶ 37; Castro decl.; Perlman decl.).

16 Here, by "sticking out their neck out" as PAGA Representatives in a publicly filed lawsuit,
17 Plaintiffs took a substantial risk that may adversely impact their ability to work in this field in the
18 future. Any company who does a detailed background check, will be able to determine that Plaintiffs
19 asserted legal claims against their former employer. An entire industry exists that allows employers
20 to run extensive background searches on potential employees. Companies who provide these services
21 specifically highlight the fact that their services allows employers to weed out litigious employment
22 candidates. (Yaeckel Decl. ¶¶ 37-40).

23 Plaintiffs also risked personally owing a large cost award, into the tens of thousands of dollars,
24 had their claims been unsuccessful. (Yaeckel Decl. ¶ 41).

25 The enhancement also recognizes that although this involves a PAGA only settlement,
26 Plaintiffs agreed to release all claims (e.g., a full 1542 release) as a part of the proposed settlement.
27 (**Exhibit 1: “Release of PAGA Claims”** ¶ 9 (a)). In addition to the PAGA claims, Plaintiffs possessed
28

1 individual Labor Code violations that were required to be released as a result of this settlement. All
2 other employees are subjected to a limited release of PAGA claims only.

3 The Enhancement Award Payment will be issued using an IRS 1099 Form. (**Exhibit 1** at 3 (c)).

4 **5. CAC Services Group, LLC Will Serve as the Settlement Administrator**

5 The parties have agreed to engage CAC Services Group, LLC (“CAC”) as the Settlement
6 Administrator. CAC has agreed to carry out all Administration duties for an amount not to exceed
7 **\$13, 506.99**. (Yaeckel Decl. ¶ 9. **Exhibit 1: ¶ 3 (a)(4)**).

8 CAC has extensive experience acting as a Settlement Administrator and is prepared to carry
9 out all Settlement Administration duties consistent with the parties Agreement and the Final Order of
10 this Court. (Yaeckel Decl. ¶ 9).

11 **E. THE LWDA WAS NOTIFIED AND DOES NOT OBJECT**

12 On January 15, 2025, Plaintiffs have uploaded this entire motion to the LWDA, concurrent
13 with the filing. (See the concurrently submitted Proof of Service on the LWDA.) To date, Plaintiffs
14 have not received a response from the LWDA regarding the proposed settlement. If the LWDA
15 contacts Plaintiffs’ counsel at any time prior to the hearing, Plaintiffs’ counsel will provide an updated
16 declaration to the Court. (Yaeckel Decl. ¶35).

17 **IV. CONCLUSION**

18 The parties respectfully request that the Court approve their settlement and proposed allocation
19 of PAGA penalties to the LWDA and the represented employees.
20

21
22
23 Dated: January 15, 2025

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Attorneys for Plaintiff MICHAEL HERZOG, in a
Representative capacity, and on behalf of other
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