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8 PEDRO HUERTA, INDIVIDUALLY AND ON  
9 BEHALF OF ALL OTHER SIMILARLY  
10 SITUATED NON-EXEMPT CURRENT AND  
11 FORMER EMPLOYEES.

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF KINGS

15 PEDRO HUERTA, individually and on behalf  
16 of all other similarly situated non-exempt  
17 current and former employees,

18 Plaintiff,

19 v.

20 WASTE CONNECTIONS OF CALIFORNIA,  
21 INC., a California Corporation; WASTE  
22 CONNECTIONS US, INC.; and DOES 1 to  
23 100, inclusive,

24 Defendants.

Case No. 21C-0109

ASSIGNED FOR ALL PURPOSES TO  
DEPT. 7, JUDGE KATHY CIUFFINI

**STIPULATED REQUEST FOR PAGA  
SETTLEMENT APPROVAL**

Complaint Filing Date: April 8, 2021

1                                    **STIPULATED REQUEST FOR PAGA SETTLEMENT APPROVAL**

2            Plaintiff Pedro Huerta (“Plaintiff”) and Defendants Waste Connections US, Inc. and Waste  
3    Connections of California, Inc. (“Defendants”) (collectively with Plaintiff, the “Parties”), by and through  
4    their respective counsel of record, hereby seek Court approval of their settlement of Plaintiff’s claim for  
5    civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code  
6    sections 2698, *et seq.*:

7                                    **PROCEDURAL HISTORY**

8            **WHEREAS**, on January 21, 2021, Plaintiff, a former non-exempt employee who worked for  
9    Defendant Waste Connections US, Inc. as a driver, provided written notice to the Labor Workforce  
10   Development Agency (“LWDA”) and Defendants pursuant to California Labor Code section 2699.3 of,  
11   *inter alia*, alleged violations of the California Labor Code (“Labor Code”) and Industrial Welfare  
12   Commission Orders.

13           **WHEREAS**, On April 8, 2021, Plaintiff filed the instant Action under the PAGA with the Court  
14   on behalf of the State of California and other aggrieved employees alleging multiple violations of the  
15   California Labor Code and Industrial Welfare Commission Wage Orders by Defendants. “Aggrieved  
16   Employees” refers to Plaintiff and all other current and former non-exempt employees (in non-  
17   administrative positions) of Defendants in the State of California from November 27, 2018, to the  
18   Approval Date (the “PAGA Period.”)

19           **WHEREAS**, on November 8, 2022, the Parties participated in a meditation with David Phillips,  
20   Esq. Mr. Phillips helped to manage the Parties’ expectations and provided a useful, neutral analysis of  
21   the issues and risks to both sides. With Mr. Phillips’s guidance, the Parties were able to negotiate a  
22   complete settlement of Plaintiff’s PAGA claim. The terms of the settlement are now set forth in  
23   complete and final form in the Memorandum of Understanding (“MOU”), attached as Exhibit 1. At all  
24   times, the Parties’ negotiations were adversarial and non-collusive.

25           **WHEREAS**, the Parties have each independently analyzed and investigated the facts and law  
26   relevant to this case through informal discovery, including, but not limited to, the employment policies,  
27   procedures, and practices implicated by the Complaint and/or the LWDA Letter; a sampling of  
28   timekeeping records, payroll records, and wage statements relating to Plaintiff and other non-exempt

employees on whose behalf the Complaint and/or the LWDA Letter PAGA Representative Claims are asserted; and summaries of data pertaining to the number of employees allegedly affected by the policies, procedures, and practices implicated by the Complaint and/or the LWDA Letter.

**WHEREAS**, after evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm's-length settlement negotiations through informed counsel, the Parties agreed to fully and finally, and exclusively, resolve the Released Claims as to Plaintiff and the PAGA Settlement Employees, subject to Court approval.

### **SETTLEMENT TERMS**

**Allocation of Settlement Proceeds:** The Settlement provides that Defendants will pay a total of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) to settle this action. (MOU, ¶ 7.) No portion of this amount will revert to Defendants; rather, if, e.g., the Court does not grant the full amount of requested attorneys' fees/costs and/or the Service Awards, any amounts requested but not awarded will be added to the PAGA Penalties Fund. MOU, ¶ 18. From this amount, payments will be made to the LWDA and the PAGA Settlement Employees, to Plaintiff's Counsel for his attorneys' fees and litigation costs, and to the Settlement Administrator (ILYM Group, Inc.) for settlement administration costs. (MOU, ¶ 7.)

The resulting balance, approximately ----- One Hundred Thousand Five Hundred and Seventy Dollars and Thirty Cents (\$130,570.30), will be distributed to the LWDA and PAGA Settlement Employees. The LWDA will receive seventy-five percent (75%), approximately Ninety-Seven Thousand Nine Hundred and Twenty-Seven Dollars and Seventy-Two Cents (\$97,927.72). PAGA Settlement Employees will receive twenty-five percent (25%), approximately Thirty-Two Thousand Six Hundred and Forty-Two Dollars and Fifty-Eight Cents (32,642.58). The PAGA Settlement Employees encompassed by the proposed Settlement are any and all current and former non-exempt employees who worked for Defendants in the State of California in the positions of drivers, operators, mechanics, and dispatchers, during the PAGA Period. There are approximately 35,000.00 workweeks in the PAGA Period.

**Allocations to the LWDA and PAGA Settlement Employees:** Payments to PAGA Settlement

1 Employees will be made from the twenty-five percent (25%) portion of the PAGA Payment. The  
2 individual allocations will be calculated on a pro-rata basis using the number of pay periods worked by  
3 each PAGA Settlement Employee during the PAGA Period. (MOU, ¶ 8.) This is a fair and equitable  
4 means of allocating the penalties. PAGA Settlement Employees who worked for a longer duration  
5 during the PAGA Period will receive proportionally larger payments than those employees who worked  
6 for shorter durations.

7 As the Settlement payments to the PAGA Settlement Employees are for the compromise of  
8 claims for alleged PAGA civil penalties, the payments will be treated as non-wage income with no taxes  
9 withheld and will be reported by the Settlement Administrator on IRS Form 1099s to the respective  
10 PAGA Settlement Employee and governmental authorities. (*Id.*)

11 **The Settled PAGA Claims:** Upon entry of the Order and Judgment, Plaintiff and all PAGA  
12 Settlement Employees will be forever barred from pursuing against Releasees all claims, rights,  
13 demands, liabilities, and causes of action, for PAGA civil penalties arising from, or reasonably related to,  
14 the claims which were asserted in the Action and Complaint under PAGA based on facts alleged in the  
15 operative Complaint in the Action and LWDA Letter, including a PAGA claim against Defendants for  
16 civil penalties on behalf of Plaintiff and the LWDA based on the following underlying Labor Code  
17 violations: 201, 202, 203, 204, 206.5, 222.5, 226, 226.7, 510, 512, 516, 1174, 1182.12, 1194, 1197,  
18 1197.1, 1198, 2802, 2699, *et seq.*, violation of any Industrial Welfare Commission Order, and any other  
19 claims asserted in the Action and operative Complaint (“Released Claims”). (MOU, ¶ 15.) PAGA  
20 Settlement Employees, other than Plaintiff, will not be deemed to have released any separate Labor Code  
21 (other than PAGA) individual wage claims by virtue of this Settlement.

#### 22 **STANDARD FOR APPROVAL**

23 PAGA provides that “[t]he superior court shall review and approve any settlement of any civil  
24 action filed pursuant to this part.” Lab. Code §§ 2699(*l*)(2). Aside from the requirement that the Court  
25 “review and approve” a settlement in a civil action filed under PAGA (§ 2699(*l*)(2)), PAGA itself does  
26 not provide a standard for this review and approval in the majority of PAGA cases. *Flores v. Starwood*  
27 *Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075 (C.D. Cal. 2017) (“[PAGA] is  
28 surprisingly short on specifics”). However, given PAGA’s purpose to protect the public interest, the

1 California Court of Appeal has recently articulated a standard—the Court should satisfy itself that the  
2 settlement is “fair, adequate, and reasonable” in view of PAGA’s “purposes and policies.” *See Moniz v.*  
3 *Adecco USA, Inc.*, No. A159410, 2021 WL 5578298, at \*9 (Cal. Ct. App. Nov. 30, 2021).

4 In addition to the above standard, certain policy considerations should also guide the Court’s  
5 analysis of whether the relief provided by the settlement is “genuine and meaningful.” First, a “proposed  
6 settlement is not to be judged [strictly] against a hypothetical or speculative measure of what might have  
7 been achieved by the negotiators.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San*  
8 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). This is because, “[i]t is well-settled law that a cash  
9 settlement amounting to only a fraction of the potential recovery will not per se render the settlement  
10 inadequate or unfair.” *Id.* at 628.

11 Second, in weighing the strength of a plaintiff’s case against the benefits provided by the  
12 settlement, courts are not required to balance the “scales with the nicety of an apothecary.” *See Weiss v.*  
13 *Drew Nat. Corp.*, 465 F. Supp. 548, 551 (S.D.N.Y. 1979). Rather, the very object of compromise “is to  
14 avoid the determination of sharply contested and dubious issues.” *See In re Prudence Co.*, 98 F.2d 559,  
15 560 (2d Cir. 1938). The court’s analysis generally should not go beyond, “an amalgam of delicate  
16 balancing, gross approximations, and rough justice.” *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App.  
17 4th 734, 743 (2009); *see also In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

18 For the reasons discussed in more detail below, the civil penalties secured by the settlement  
19 represent a fair compromise of the PAGA claims in view of the risks of continued litigation, PAGA’s  
20 overall goals, and the hotly contested issues of law and fact relating to the PAGA claims. The settlement  
21 accomplishes PAGA’s objectives by imposing sufficient civil penalties effectuate the goals of labor law  
22 enforcement via PAGA, and PAGA’s overall purposes, while also not being “unjust, arbitrary and  
23 oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2) [allowing for court reduction of civil penalties  
24 if, in its discretion, it deems them to be “unjust, arbitrary and oppressive, or confiscatory”]; *Iskanian v.*  
25 *CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 384 (2014).

26 **Plaintiff’s Position On Why the Penalties Secured by the Settlement Are Genuine and**  
27 **Meaningful:** The civil penalties secured by the settlement represent a fair compromise of Plaintiff’s  
28 PAGA claim in view of the risks of continued litigation and the hotly contested issues of law and fact

1 relating to PAGA claims. The Settlement accomplishes PAGA’s objectives by imposing sufficient civil  
2 penalties “to punish and deter” Defendants from committing any of the Labor Code violations alleged,  
3 while also ensuring that the penalties are not “unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab.  
4 Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 384 (2014).

5 This result was reached after good-faith negotiation between the Parties. The amount was valued  
6 as follows: Based on information and evidence produced by Defendants during discovery, Plaintiff  
7 determined that aggrieved employees worked a combined total of approximately 35,000 pay periods  
8 during the PAGA statute of limitations period (“PAGA Period”). Statutory penalties would be calculated  
9 according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or  
10 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay  
11 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay  
12 period for each subsequent violation.

13 However, a number of courts have found that the “subsequent” penalty under PAGA applies  
14 only after a court, or the Labor Commissioner determines that the employer has violated the Labor Code.  
15 *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to  
16 “heightened civil penalties” because the defendant was not given notice by the Labor Commissioner  
17 when the “subsequent” violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX,  
18 2019 WL 2436998, at \*5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties .  
19 . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . .  
20 [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA  
21 violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not be calculated to  
22 determine the amount in controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-  
23 01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an  
24 employer does not have notice that they are committing a violation, they are not subject to the heightened  
25 penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx),  
26 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to  
27 heightened penalties for subsequent violations unless and until a court or commissioner notifies the  
28 employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App.

1 4th 1157 (2008). Under this line of cases, Defendants’ maximum exposure would be approximately  
2 \$3,500,000 = 35,000 violative pay periods × \$100.

3 After calculating Defendants’ maximum exposure under PAGA, Plaintiff then discounted that  
4 exposure for settlement purposes to account for the risks of continued litigation, including: (i) the  
5 strength of Defendants’ defenses on the merits; (ii) the risk of losing at trial; (iii) the risk that the Court  
6 would exercise its discretion under PAGA to significantly reduce the maximum civil penalties available  
7 by statute;<sup>1</sup> (iv) the chances of a favorable verdict being reversed on appeal; and (v) the difficulties  
8 attendant to collecting on a judgment. Taking into account the above contingencies, Plaintiff determined  
9 that a settlement for approximately Two Hundred Twenty-Five Thousand Dollars and Zero Cents  
10 (\$225,000.00) in PAGA penalties was warranted by the circumstances of the case.

11 It should be noted that PAGA gives the Court wide latitude to reduce the number of civil  
12 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result  
13 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In  
14 reducing PAGA penalties, courts have considered issues including whether the employees suffered  
15 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s  
16 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)  
17 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d  
18 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL  
19 7563047, at \*4 (C.D. Cal. Aug. 12, 2011).

20 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA  
21 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—  
22 **or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the  
23 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith  
24 attempts” to comply with meal period obligations and because the court found the violations were  
25 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced

26 <sup>1</sup> 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.”).

1 award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied here,  
2 Plaintiff would have recovered only approximately Six Thousand Three Hundred Dollars and Zero  
3 Cents (\$6,300.00 = \$3,000,000 × 0.0021 reduction).

4 Likewise, in *Covidien*, the court reduced the potential penalties by over 82%, awarding \$500,000  
5 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at \*4; *see also Thurman v.*  
6 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under  
7 specified PAGA claim where the employer produced evidence that it took its obligations seriously);  
8 *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at \*5-\*7 (Cal. Ct. App. May 12, 2011)  
9 (reversing trial court decision denying any civil penalties where violations had been proven, remanding  
10 for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect*  
11 *Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at \*17 (N.D. Cal. June 15, 2012)  
12 (denying PAGA penalties for violation of California Labor Code section 226 as redundant with recovery  
13 on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*,  
14 No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at \*2-\*3 (C.D. Cal. Dec. 30, 2013) (reducing  
15 penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA  
16 claims).

17 Moreover, Plaintiff executed an arbitration agreement which included a class and representative  
18 action waiver. Based on this arbitration agreement, the PAGA claims are likely barred. *Viking River*  
19 *Cruises, Inc. v. Moriana*, 142 S.Ct. 1906. 1925 (U.S. 2022) (“Viking River”). *Viking River* requires that  
20 the non-individual PAGA claims be dismissed. *Viking River*, 142 S.Ct. at 1925. Because Plaintiff must  
21 prosecute his individual PAGA claims in arbitration, he will therefore lack standing to prosecute any  
22 non-individual PAGA claims in Court. *Id.* In *Viking River*, the Supreme Court stated that “PAGA  
23 provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual  
24 claim has been committed to a separate proceeding.” *Id.* A plaintiff has standing to bring a PAGA action  
25 only when she also maintains an individual claim. *Id.*; Cal. Labor Code § 2699(a). When, however, “an  
26 employee’s own dispute is pared away from a PAGA action, the employee is no different from a  
27 member of the general public, and PAGA does not allow such persons to maintain suit.” *Id.* (citing *Kim*,  
28 9 Cal. 5th at 90). Therefore, a plaintiff compelled to arbitrate her individual PAGA claims “lacks

1 statutory standing to continue to maintain his non-individual claims in court, and the correct course is to  
2 dismiss her remaining claims.” *Id.* The result here is the same. Because Plaintiff’s individual PAGA  
3 claims are compelled to arbitration, he lacks statutory standing to pursue non-individual PAGA claims in  
4 this Court and the non-individual PAGA claims will likely be dismissed. Considering the issues,  
5 defenses, and the risks, a Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00)  
6 settlement for a limited release of PAGA penalties—no individual wage and hour claims will be  
7 extinguished by the Settlement—is a fair and just result and furthers PAGA’s objectives, and is not  
8 “unjust, arbitrary, and oppressive.”

9 **Defendants’ Position On Why the Penalties Secured by the Settlement Are Genuine and**  
10 **Meaningful:** Defendants maintain that they had, and continue to have, legally compliant employment  
11 policies and practices. Defendants do not admit that they ever violated any provision of the California  
12 Labor Code, including, but not limited to, those sections for which Plaintiff seeks penalties pursuant to  
13 PAGA, during the PAGA Period. Defendants recognize the expense and length of continued  
14 proceedings necessary to litigate the disputes through trial and through any possible appeals, and have  
15 also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties  
16 and delays inherent in such litigation.

17 **Plaintiff’s Position on Why the Negotiated Attorneys’ Fees and Costs Are Fair and**  
18 **Reasonable:** The PAGA provides that a plaintiff is entitled to recover reasonable attorneys’ fees,  
19 expenses, and costs. Section 2699(g)(1) of the California Labor Code provides that “[a]ny employee who  
20 prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” In a *qui tam*  
21 action, reasonable attorneys’ fees and costs are typically awarded under the common fund doctrine  
22 where, as here, the litigation creates a common fund of money in a specific amount for the benefit of  
23 others. PAGA “is a type of *qui tam* action.” *See Iskanian*, 59 Cal. 4th at 382. “A *qui tam* action ‘is a type  
24 of private attorney general lawsuit’ [citation], in which ‘the *qui tam* plaintiff stands in the shoes of the  
25 state or political subdivision [citation].” *People ex rei. Stratham v. Acacia Research Corp.*, 210 Cal.  
26 App. 4th 487, 501 (2012).

27 A PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as  
28 the proxy of the State’s labor law enforcement agency, to sue his or her employer for Labor Code

1 violations and recover civil penalties that otherwise would have been assessed and collected by the  
2 LWDA. *See Iskanian*, 59 Cal. 4th at 382. Indeed, majority of the civil penalties recovered in a PAGA  
3 action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g., 75% paid to the  
4 state; 25% paid to the aggrieved employees). *See* Cal. Lab. Code § 2699(i). Where, as here, a common  
5 fund is created in a *qui tam* action by the successful litigation of a plaintiff and her attorneys, the  
6 plaintiff's attorneys are entitled to recover their fees from the common fund:

7       Those benefiting from the recovery of the fund, in this case some depositors and  
8 eventually the People of the State of California, must bear their share of the cost of  
9 litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each  
10 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.

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

13       Likewise, through the successful efforts of Plaintiff and his attorney, a common fund was  
14 created in the amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00)  
15 for the benefit of the employees and the State of California. Thus, these beneficiaries must bear their  
16 share of the costs and attorneys' fees, to be deducted from the gross settlement fund under the common  
17 fund theory. *Id.* Such fees are deducted as a percentage of the settlement amount. *See, e.g., Boeing Co. v.*  
18 *Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904  
19 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027  
20 (9th Cir. 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

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

1 rewards counsel for success and penalizes it for failure. *Id.* at 493 (quoting *In re Rite Aid Corp. Securities*  
2 *Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

3 As a California appellate court very recently confirmed, “fee awards in class actions average  
4 around one-third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is  
5 used.” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v.*  
6 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)).

7 Consistent with that observation, California state and federal courts routinely award attorneys’  
8 fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App.  
9 4th 860, 871 (2016) (“33 1/3 percent of the common fund is consistent with, and in the range of, awards  
10 in other class action lawsuits”); *Chavez*, 162 Cal. App. 4th at 66 n.11 (“Empirical studies show that,  
11 regardless whether the percentage method or the lodestar method is used, fee awards in class actions  
12 average around one-third of the recovery.”); Eisenberg & Miller, *Attorney Fees in Class Action*  
13 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35  
14 (independent studies of class action litigation nationwide conclude that fees representing one-third of the  
15 total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v.*  
16 *Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte*, 231 Cal. App.  
17 4th at 506.

18 A one-third common fund<sup>2</sup> attorneys’ fee award is also consistent with what courts have  
19 awarded in other representative action cases. The following list shows PAGA actions where attorneys’  
20 fees were awarded on a common fund basis:

21  
22 <sup>2</sup> 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 • *Cruz v. Wal-Mart Associates, Inc.*, Los Angeles Superior Court, No. 18STCV03128 (May 28, 2021) (approving fee award from PAGA-only settlement of \$5 million against a common fund of \$15 million);
- 2
- 3 • *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823 (April 20, 2017) (approving fee award from PAGA-only settlement of \$1.375M against a common fund of \$3.2M (42%));
- 4
- 5 • *Garcia v. Macy's*, San Bernardino County Superior Court, Case No. CIVDS1516007 (Sept. 13, 2017) (33.33% fee awarded on \$12,500,000 settlement of a PAGA only case);
- 6 • *Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-CJC (July 14, 2016) (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);
- 7 • *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-OC-CXC (June 15, 2017) (33.33% fee awarded on a PAGA only case);
- 8 • *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137 (May 23, 2016) (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).
- 9

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

20 **NOW THEREFORE**, the Parties stipulate to settle this matter according to the terms and  
21 conditions set forth in the MOU attached hereto as Exhibit 1.

22 **IT IS SO STIPULATED.**

23 **THE SWEENEY LAW FIRM**

24 Dated: January 6, 2023

25 Brandon Sweeney  
Brandon Sweeney  
Attorneys for Plaintiff Pedro Huerta

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27 **LITTLER MENDELSON, P.C.**  
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Dated: \_\_\_\_\_

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Gregory G. Iskander  
Kate SM Pitzak  
Attorneys for Defendants Waste Connections, Inc.  
and Waste Connections of California, Inc.