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SUPERIOR COURT OF STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

JESSICA VASQUEZ, YANETH RODRIGUEZ
MELGAR, and KAHLIL MARTIN in a
Representative capacity only, and on behalf of
other members of the general public similarly
situated

Plaintiffs,

v.

SALKHI FAMILY HOLDINGS, INC., a
California Corporation; SALKHI
PETROLEUM, INC., a California Corporation;
and DOES 1-10, inclusive

Defendants.

Case No. MSC21-02223

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

Date:

Time:

Dept.: 12

Judge: Hon. Edward G. Weil

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

4 **PLEASE TAKE NOTICE** that in Department 12 of the above-captioned court, located at
5 725 Court Street, Martinez, California 94533, the Honorable Edward G. Weil presiding, Plaintiffs
6 JESSICA VASQUEZ, YANETH RODRIGUEZ MELGAR and KAHLIL MARTIN will, and
7 hereby do, move this Court for entry of an order and judgment approving the Parties' PAGA
8 settlement pursuant to Labor Code section 2699(l)(2).

9 **Please Note:** Pursuant to the instructions from the Court's Clerk, the Court will assign a
10 hearing date *after* the filing of this Motion. Plaintiffs will therefore provide the parties with
11 separate notice of the hearing date once assigned.

12 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
13 Points and Authorities in Support of Motion for Court approval of the PAGA Settlement; (3) the
14 Declaration of Eric K. Yaeckel, which attaches the PAGA Settlement Agreement; (4) the
15 Declarations of Carolyn H. Cottrell and Raul Perez; (4) the Declarations of Plaintiffs Jessica
16 Vasquez, Yaneth Rodriguez Melgar, and Kahlil Martin; (5) the records, pleadings, and papers filed
17 in this action; and (6) upon such other documentary and oral evidence or argument as may be
18 presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the
19 Parties respectfully request relief from the page limit requirement set by California Rules of Court,
20 Rule 3.1113(d).

21 Dated: June 2, 2025

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22
23 By:



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Ryan T. Kuhn

24 Attorneys for JESSICA VASQUEZ and YANETH
25 RODRIGUEZ MELGAR, in a Representative capacity
26 only, and on behalf of other members of the general public
27 similarly situated
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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 Jessica Vasquez, Yaneth Rodriguez Melgar and Kahlil Martin (“Plaintiffs”) seek Court approval of the settlement of their claim for PAGA civil penalties with Defendants Salkhi Family Holdings, Inc. and Salkhi Petroleum, Inc. (“Defendants”) (collectively with Plaintiffs, the “Parties”).

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). Recently, the Court of Appeal in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021) explained that, similar to class action settlements, the trial court should satisfy itself that the settlement is “fair, adequate, and reasonable” in view of PAGA’s “purposes and policies.” The statute does not, however, 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). Nothing in the PAGA changes the strong judicial preference in support of approving settlements.

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

- (1) A non-reversionary Gross Settlement Amount of \$575,000, which includes payments to the LWDA and Aggrieved Employees for their respective shares of the Net PAGA Settlement Amount, Plaintiffs’ attorneys’ fees and litigation costs, consideration for Plaintiffs’ service on behalf of the LWDA and Aggrieved Employees, and settlement administration costs.
- (2) The creation of a Net PAGA Settlement Amount of \$335,872.32, which will be paid to aggrieved employees and the LWDA in full satisfaction of all Released PAGA Claims

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 Eric Yaeckel filed in conjunction with this motion.

1 (“Net PAGA Settlement Amount”).

2
3 (a) Seventy-five percent of the Net PAGA Settlement Amount, or \$251,904.24, will be
4 paid to the LWDA pursuant to Labor Code section 2699(I).

5 (b) Twenty-five percent of the Net PAGA Settlement Amount, or \$83,968.08, will be
6 paid to all non-exempt, hourly-paid persons who were employed by Defendants
7 during the Settlement Period. (“Aggrieved Employees”). The Settlement Period is
8 from August 25, 2020, through June 1, 2024. There are approximately 1,500
9 Aggrieved Employees.

10 (3) Reasonable attorneys’ fees and costs under Labor Code section 2699(g) for
11 Plaintiffs’ Counsel’s prosecution and resolution of this action. Plaintiffs request
12 \$191,667 in attorneys’ fees and \$9,610.68 in costs for their counsel, Sullivan Law
13 Group, APC, Capstone Law APC and Schneider Wallace Cottrell Konecky LLP
14 (“Plaintiffs’ Counsel”).

15 (4) Settlement administration costs of no more than approximately \$7,850 to ILYM
16 Group, Inc.

17 (5) Service awards of \$10,000 each (\$30,000 total) to Plaintiffs for general releases of
18 all claims Plaintiffs have against Defendants, and/or Defendants’ past or present
19 parents, subsidiaries, affiliated companies, officers, owners, directors, employees,
20 partners, agents or insurers, arising out of their employment, and for their service
21 on behalf of the LWDA and Aggrieved Employees.

22 The civil penalties secured by the settlement represent a fair compromise of Plaintiffs’
23 PAGA claim in view of the risks of continued litigation and the hotly contested issues of law and
24 fact relating to PAGA claims. The Settlement accomplishes PAGA’s objectives by imposing
25 sufficient civil penalties “to punish and deter” employers from committing any of the Labor Code
26 violations alleged, while also ensuring that the penalties are not “unjust, arbitrary and oppressive,
27 or confiscatory.” Cal. Lab. Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.
28 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.

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II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

On August 25, 2021, plaintiffs Jessica Vasquez and Yaneth Rodriguez Melgar submitted notice of their PAGA claims with the LWDA. (Declaration of Eric K. Yaeckel [“Yaeckel Decl.”] ¶ 3.) On November 3, 2021, Vasquez and Rodriguez commenced this Action by filing a Complaint alleging causes of action against Defendants for penalties pursuant to Labor Code section 2698, *et seq.* for violations of Labor Code sections 1198 and 1199 and the California Code of Regulations, Title 8, Sections 11070(3), (11) and (12). (*Id.*).

On March 22, 2022, Plaintiff Kahlil Martin gave written notice to the LWDA and to Defendants of his intent to pursue civil penalties pursuant to the PAGA. On June 8, 2022 Martin filed his initial PAGA complaint alleging the following seven causes of action for penalties pursuant to §§ 2699(a) and (f) of the California Labor Code Private Attorneys General Act of 2004: (1) Violations of Cal Lab. Code §§ 226.7 and 512 (Meal Periods); (2) Violations of Cal Lab. Code §§ 226.7 (Rest Breaks); (3) Violations of Cal Lab. Code §§ 204, 1194 and 1198 (Failure to Pay for all Hours Worked); (4) Violations of Cal Lab. Code §§ 1182.12, 1194, and 1197 (Failure to Pay Minimum Wage); (5) Violations of Cal Lab. Code §§ 510 and 1194 (Failure to Pay Overtime Wages); (6) Violations of Cal Lab. Code §§ 226 (Failure to Provide Accurate, Itemized Wage Statements); and (7) Violations of Cal Lab. Code §§ 201-203 (Waiting Time Penalties) (the “Martin Action.”). [Cotrell Decl. ¶¶10-11].

As part of this settlement, the parties have agreed to separately file an amended complaint which will add all of the PAGA allegations asserted by Martin into this action.

B. The Parties Settled After Mediation and Continuing Negotiations

Following years of litigation, the Parties participated in full-day mediation with Anthony F. Pantoni, Esq., on August 15, 2023. (Yaeckel Decl. ¶ 5.) Mr. Pantoni is an experienced mediator of wage and hour actions and helped to manage the Parties’ expectations and provided a useful,

1
2 neutral analysis of the issues and risks to both sides. (*Id.*) The parties were unable to settle that day
3 and litigation and discovery continued. (*Id.*) However, the parties continued with arm's length
4 negotiations that finally resulted in the instant settlement. The terms of the settlement are now set
5 forth in complete and final form in the PAGA Settlement Agreement. (*Id.*, Ex. 1.) At all times, the
6 Parties' negotiations were adversarial and non-collusive. (*Id.*) The Settlement therefore constitutes
7 a fair, adequate, and reasonable compromise of the claims at issue. (*Id.*)

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

10 Plaintiffs' Counsel conducted a thorough investigation into the factual and legal issues
11 implicated by the claims, and were able to objectively assess the settlement's reasonableness.
12 (Yaeckel Decl. ¶ 6).
13

14 Following the filing of the Complaint, Plaintiffs' Counsel propounded sets of Requests for
15 Admission, Form Interrogatories, Special Interrogatories, and Requests for Production to
16 Defendants on January 5, 2022. (*Id.* at ¶ 7.) In response, Defendants produced nearly 400 pages of
17 Plaintiffs' employment documents, including time records, wage statements, and employee
18 handbooks. (*Id.*). Moreover, prior to mediation, Defendants also produced identities of the
19 Aggrieved Employees, Data points including the number of employees and pay periods at issue,
20 all applicable employment policies and a large sampling of time and payroll data for various
21 payroll periods throughout the limitations period. (*Id.*)
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24 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims,
25 Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth
26 in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the
27 LWDA and the Aggrieved Employees in light of all known facts and circumstances, including the
28

1 risk of significant delay and uncertainty associated with litigation, and various defenses asserted
2 by Defendants. (*Id.* at ¶ 8; Cottrell Decl. ¶¶15, 18).

3 4 5 **D. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiffs' Claims**

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

7 The Settlement Agreement provides that Defendants will pay a total of \$575,000 to settle
8 this Action. (Settlement Agreement ¶ 13.) From this amount, payments will be made to the LWDA
9 and Aggrieved Employees, to Plaintiffs' Counsel for their attorneys' fees and litigation costs, to
10 Plaintiffs for service awards, and to the Settlement Administrator (ILYM) for settlement
11 administration costs. (*Id.*)

12 The resulting balance will be distributed to the LWDA and Aggrieved Employees.
13 Assuming the contingent costs are approved, as is set forth above, the LWDA will receive 75%
14 (\$251,904.24). Aggrieved Employees will receive 25% (\$83,968.08). (*Id.* at ¶ 14). The Aggrieved
15 Employees encompassed by the proposed Settlement are all non-exempt employees who were
16 employed by Defendants at any time between August 25, 2020, through June 1, 2024. (*Id.* at ¶ 2
17 and ¶ 11.) There are approximately 1,500 Aggrieved Employees. (*Id.* at ¶ 18).

18 The Settlement has a payment plan wherein Defendant will deposit one-half of the
19 settlement within 30 days of the approval and the remainder of balance will be paid within 240
20 days of the initial payment. The administrator will issue all payments within 14 days of receipt of
21 the second installment. (Settlement Agreement ¶ 20.)

22 23 **2. Allocations to the LWDA and Aggrieved Employees**

24 Payments to Aggrieved Employees will be made from the Net PAGA Settlement Amount.
25 The individual allocations will be calculated on a pro-rata basis using the number of pay periods
26 worked by each employee.
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2 Defendants will calculate each Aggrieved Employee's payment using the proportional
3 number of pay periods during which the employee worked. (*Id.*) Specifically, each Aggrieved
4 Employee's pro rata share of the Individual PAGA Amount (the amount paid to Aggrieved
5 Employees, which is the Net PAGA Settlement Amount less the LWDA PAGA Payment) will be
6 calculated by: (a) dividing the number of PAGA Pay Periods the Aggrieved Employee worked by
7 the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
8 Period and then; (b) multiplying the resulting percentage by the Individual PAGA Amount.
9 (Settlement Agreement ¶ 14(b)).

10 This is a fair and equitable means of allocating the penalties. Aggrieved Employees who
11 worked for a longer duration during the Settlement Period will receive proportionally larger
12 payments than those employees who worked for shorter durations.
13

14 **3. The Settled PAGA Claims**

15 Upon entry of the Order and Judgment, the LWDA and Plaintiffs, on behalf of themselves
16 and the Aggrieved Employees to the fullest extent allowed by law, will be forever barred from
17 pursuing against Defendants and/or Defendants' past or present parents, subsidiaries, affiliated
18 companies, officers, directors, owners, employees, partners, agents or insurers, any and all Settled
19 Claims during the Settlement Period. (Settlement Agreement ¶ 23).

20 Additionally, Plaintiffs Jessica Vasquez, Yaneth Rodriguez Melgar, and Kahlil Martin
21 have agreed to a broader general release of all claims of any kind against Defendants. (*Id.* at ¶16).
22

23 **III. ARGUMENT**

24 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and** 25 **Fulfill PAGA's Underlying Purpose to Benefit the Public**

26 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other
27 current or former employees to recover civil penalties for Labor Code violations. *Iskanian*, 59 Cal. 4th at
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2 380. Seventy-five percent of any penalties recovered go to the LWDA, leaving the remaining twenty-five
3 percent for aggrieved employees. *Id.* PAGA is intended “to augment the limited enforcement capability of
4 [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” *Id.* at
5 383. A judgment in a PAGA action binds all those, including non-party aggrieved employees, who would
6 be bound by a judgment in an action brought by the government. *Id.* at 381.

7 A superior court must review and approve any PAGA settlement. Cal. Lab. Code § 2699(l)(2). The
8 court’s review “ensur[es] that any negotiated resolution is fair to those affected.” *Williams v. Superior*
9 *Court*, 3 Cal. 5th 531, 549 (2017). The Court’s evaluation of the settlement must “determine whether it is
10 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter
11 future ones, and to maximize enforcement of state labor laws.” *Moniz, Inc.*, 72 Cal. App. 5th at 77.

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

16
17 **B. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and Legal**
18 **Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness**

19 Based on their analysis of documents and employee data produced by Defendants, including
20 Defendants’ California labor policies and procedures manuals, Plaintiffs’ personnel files, the number of
21 aggregate pay periods, and a sample of Aggrieved Employees’ time and wage records, Plaintiffs’ Counsel
22 were able to realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in
23 settlement discussions that culminated in the proposed settlement now before the Court. (Yaeckel Decl.¶
24 7).

25 By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Plaintiffs’ Counsel
26 can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement,
27 is fair, reasonable, and adequate, and is in the best interests of the LWDA and Aggrieved Employees in
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2 light of all known facts and circumstances, including the risk of significant delay and uncertainty associated
3 with litigation, and various defenses asserted by Defendant. (*Id.* at ¶ 8; Cottrell Decl. ¶¶15, 18).

4 Specifically, Defendants assert it had lawful wage and hour policies and practices that required all
5 employees to record all work time, take lawful meal and rest breaks, and provided for prompt
6 reimbursement of all reasonable business expenses. Defendants maintained that they strictly enforced these
7 policies at all times relevant to this litigation, that they had conducted an investigation that (according to
8 Defendants) confirmed that no systematic policy violations were taking place, and that any Labor Code
9 violations that may have occurred would have been isolated incidents. Therefore, Defendants contended
10 that Plaintiffs' claims were based on highly individualized facts that did not uniformly apply to other
11 employees, rendering the claims difficult to manage in the context of a representative action and therefore
12 also difficult to prove across the workforce. (Yaeckel Decl. ¶ 26).

13 Plaintiffs first contend Defendants failed to pay all wages due because it rounded employee time
14 punches, which resulted in the Plaintiffs and Aggrieved Employees losing a few minutes of compensable
15 hours worked on many shifts. Defendants argue its time keeping and rounding policy is entirely neutral in
16 effect and did not deprive employees of compensable hours worked over time and, accordingly, does not
17 violate California law. *See's Candy Shops, Inc. v. Super. Ct.* (2012) 210 Cal. App. 4th 889, 901. Beyond
18 that, Defendants argued its timekeeping and payroll policies fully comply with California law. (Yaeckel
19 Decl. ¶ 27).

20 Plaintiffs also alleged employees were not paid all overtime wages due because Defendants did not
21 include certain forms of compensation, such as bonuses in the regular rate of pay used to calculate the
22 correct overtime, sick pay, and meal period premium rates. "Regular rate of pay, which can change from
23 pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift
24 differentials and the per-hour value of any non-hourly compensation the employee has earned." *Alvarado*
25 *v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 554. As a result, Plaintiffs contend Defendants
26 frequently underpaid the Class Members for their overtime, sick pay, and meal period premium payments.
27 While Plaintiffs believe this is one of the stronger claims, they also recognize the exposure is nominal, as
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2 the bonuses that should factor into the regular rate of pay are infrequently paid. (Yaeckel Decl. ¶ 28).

3 Next, Plaintiffs contend their review of the sampling produced shows frequent (1) missing, (2) late
4 and/or (3) short meal periods without the payment of a meal period premium. Defendants offered multiple
5 defenses. First, it emphasizes it authorized and permitted all necessary breaks, and that employees received
6 full uninterrupted lunch periods as reflected in Defendants' time records. Defendants also argued that it had
7 valid on-duty meal period agreements for certain employees who worked alone, without someone to relieve
8 them from their duties. Defendants further argued that even to the extent meal breaks were missed or
9 arguably non-compliant, it was in violation of company policy and aberrational, and would require
10 significant individual inquiries to determine the reasons underlying any such alleged violations and whether
11 it was by an employee's voluntary choice or some other reason. Thus, per Defendants, any trial on this
12 issue would be unmanageable because of these individualized issues. (Yaeckel Decl. ¶ 29).

13 Plaintiffs further contend that Defendants' rest break policy violates California law, insofar as they
14 claim Defendants require employees to remain on-call and on premises. Defendant maintains its policies
15 comport with California law and that the evidence would demonstrate employees are relieved of all duties
16 during rest breaks and are provided with lawful rest breaks. (Yaeckel Dec. ¶ 30).

17 Plaintiffs assert that they and the Aggrieved Employees regularly had to use their personal phones
18 while on the clock and for work purposes to, inter alia, communicate with supervisors. Per Plaintiffs,
19 Defendants did not pay any reimbursement for use of personal phones. On the other hand, Defendants
20 argue that any use of personal mobile devices was unnecessary to perform the job and therefore was purely
21 for personal convenience. Defendants argue that if so, then the expense was neither reasonable nor
22 necessary, and therefore no reimbursement was required. Labor Code § 2802. (Yaeckel Decl. ¶ 31).

23 Plaintiffs alleged derivative violations of Labor Code § 226 (wage statement violations) and §§
24 201-203 (waiting time penalties). Both claims, since they are entirely derivative, will rise or fall along with
25 the primary claims, in addition to being subject to "good faith" and other defenses available to Defendants.
26 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully
27 fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying
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2 claim for failing to pay living wages). Accordingly, Plaintiffs had to discount the value of these claims
3 significantly in light of these multiple potential defenses. Defendants also contended a substantial discount
4 should be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be unfair
5 to penalize Defendants multiple times for the same violation. (Yaeckel Decl. ¶ 32).

6 Finally, Defendant contends they had acted in good faith and at all relevant times had taken
7 measures to ensure compliance with workplace policies and the Labor Code. Thus, Defendants assert, even
8 if Plaintiffs were able to establish some violations, these would likely be technical or minor in nature, and
9 therefore the Court would exercise its discretion to award much less than the maximum amount of potential
10 penalties. (Yaeckel Decl. ¶ 33).

11 **C. Total Amount of Penalties for Which Defendant Is Potentially Liable If Plaintiff’s**
12 **Allegations Were All Proven As to All Alleged Labor Code Violations**

13 Statutory penalties are calculated according to Labor Code 2699(f)(2): If, at the time of the alleged
14 violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
15 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
16 employee per pay period for each subsequent violation (the “subsequent violation penalty”).

17 However, a growing number of courts have found that the “subsequent” penalty under PAGA applies
18 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
19 *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened
20 civil penalties” because the defendant was not given notice by the Labor Commissioner when the
21 “subsequent” violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL
22 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court
23 or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered
24 evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s
25 heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in
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1 controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL
2 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice that
3 they are committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine*
4 *Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19,
5 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations
6 unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”),
7 citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).
8

9
10 Given the above authorities, Plaintiff conservatively estimated Defendant’s exposure by assessing \$100
11 penalties for all pay periods worked during the Settlement Period. Accordingly, the total amount of penalties
12 for which Defendant is potentially liable if Plaintiffs’ allegations were all proven as to all alleged Labor Code
13 violations is as follows:

- 14 - **Meal Period and Rest Period Violations:** Plaintiff alleges that all pay periods had either
15 meal period or rest period violations. Defendant’s exposure for PAGA penalties would
16 therefore be \$4,204,800= 21,024 Pay Periods x \$100 penalties x 2 Labor Code Violations.
- 17 - **Minimum Wage Violations:** Plaintiff alleges that all pay periods had minimum wage
18 violations. Defendant’s exposure for PAGA penalties would therefore be \$2,102,400=
19 21,024 Pay Periods x \$100 penalties.
- 20 - **Overtime Violations:** Plaintiff alleges that all pay periods had overtime violations.
21 Defendant’s exposure for PAGA penalties would therefore be \$2,102,400= 21,024 Pay
22 Periods x \$100 penalties.
- 23 - **Wage Statement Violations:** Plaintiff alleges that Defendant issued Aggrieved
24 Employees non-compliant wage statements during every pay period. Defendant’s exposure
25 for PAGA penalties would therefore be \$2,102,400= 21,024 Pay Periods x \$100 penalties.
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2 - **Business Expense Reimbursement Violations:** Plaintiff alleged that Aggrieved
3 Employees had unreimbursed business expenses for Defendants' standard policies which
4 required its employees to incur mileage and to use their own cell phones for work-related
5 purposes without reimbursement. Defendant's maximum potential exposure for PAGA
6 penalties would be \$2,102,400= 21,024 Pay Periods x \$100 penalties.

7 - **Pay Wages Upon Separation/Termination Violations:** Plaintiff alleges that Defendant
8 is liable for penalties in connection with its failure to pay all wages upon
9 separation/termination. Defendant's exposure for PAGA penalties would therefore be
10 \$91,000= 910 Former Aggrieved Employees x \$100 penalties.
11

12 In summary, the total amount of penalties for which Defendant is potentially liable if Plaintiff's
13 allegations were all proven at trial is approximately \$12,705,400. (Yaeckel Decl. ¶ 34). However,
14 Plaintiff estimated that their odds of prevailing at trial on all of the alleged Labor Code violations
15 at 15%. Discounting by the risks of continued litigation, therefore, Plaintiff would have recovered
16 only approximately \$1,905,810 in penalties. (*Id.* at ¶ 35).
17

18 **D. The Settlement Is Reasonable Given the Risks of Further Litigation**

19 In assessing whether the amount of civil penalties is genuine and meaningful, the Court may
20 balance the amount in penalties against the risks of further litigation. Here, Plaintiffs obtained a
21 meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on
22 information and evidence produced by Defendants during discovery, Plaintiffs' Counsel
23 determined that Aggrieved Employees worked during an aggregate total of approximately 21,024
24 pay periods during the PAGA Statute of limitations period (16,542 pay periods for Salkhi
25 Petroleum and 4,482 for Salkhi Family Holdings). (Yaeckel Decl. ¶4).

26 Assuming all pay periods had violations, statutory penalties would be calculated according to
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2 Labor Code section 2699(f)(2): If, at the time of the alleged violation, the person employs one or
3 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
4 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
5 per pay period for each subsequent violation.

6
7 However, a number of courts have found that the “subsequent” penalty under PAGA applies
8 only after a court or the Labor Commissioner determines that the employer has violated the Labor
9 Code. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) (“the increased \$200
10 civil penalty for ‘subsequent violation[s]’ does not apply unless [Plaintiff] presents evidence that
11 the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code.”);
12 *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to
13 “heightened civil penalties” because the defendant was not given notice by the Labor
14 Commissioner when the “subsequent” violations occurred).³ Under this line of cases, and
15 assuming full stacking of penalties for every pay period, Defendants’ exposure would be
16 approximately \$12,705,400 = 127,054 total violative pay periods (between all claims) × \$100. (See
17 Yaeckel Decl. ¶34; 21,204 total pay periods with 6 violations per pay period + 910 additional pay
18 periods with violations for the 203 claims).

19 After calculating Defendants’ maximum exposure under PAGA, Plaintiffs then discounted that
20 exposure for settlement purposes to account for the risks of continued litigation, including: (i) the

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22 *See also Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
23 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer
24 that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor Commission or a court
25 has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not
26 be calculated to determine the amount in controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-
27 01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer
does not have notice that they are committing a violation, they are not subject to the heightened penalties.”); *Trang*
v. Turbine Engine Components Technologies Corp., No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal.
Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations
unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”), citing
Amaral v. Cintas Corp. No. 2, 163 Cal. App. 4th 1157 (2008).

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2 strength of Defendants’ defenses on the merits; (ii) the risk of losing at trial; (iii) the risk that the
3 Court would exercise its discretion under PAGA to significantly reduce the maximum civil
4 penalties available by statute, and/or would refuse to stack penalties;⁴ (iv) the chances of a
5 favorable verdict being reversed on appeal; and (v) the difficulties attendant to collecting on a
6 judgment. Taking into account the above contingencies, Plaintiffs determined that a \$575,000
7 settlement was warranted by the circumstances of the case. (Yaeckel Decl. ¶38; Cottrell Decl.
8 ¶¶14-19).

9
10 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
11 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would
12 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code §
13 2699(h). In reducing PAGA penalties, courts have considered issues including whether the
14 employees suffered actual injury from the violations, whether the defendant was aware of the
15 violations, and the employer’s willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30
16 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum); *see also*
17 *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No.
18 ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011) (reducing the
19 potential penalties by over 82%, awarding \$500,000 instead of maximum penalties of \$2.8
20 million).¹

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23 *See* Lab. Code § 2699(e) (“In any action by an aggrieved employee seeking recovery of a civil penalty available
24 under subdivision (a) or (f), a court may award a lesser amount than the maximum civil 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.”).

25 ¹ *See also* *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
26 under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v.*
27 *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

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2 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
3 penalties in the amount of approximately \$70 million. The trial court instead awarded only
4 \$150,000—or 0.21% of the maximum—and stated that this reduction was warranted because
5 imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s
6 “good faith attempts” to comply with meal period obligations and because the court found the
7 violations were minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the
8 lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction
9 was applied here, Plaintiffs would recover only approximately \$26,681.34 ($\$12,705,400 \times 0.0021$
10 reduction).

11 Considering the issues, defenses, and the risks, a \$575,000 settlement for a limited release of
12 PAGA penalties—no individual wage and hour claims will be extinguished by the Settlement—is
13 a fair and just result and furthers PAGA’s objectives, and is not “unjust, arbitrary, and oppressive.”
14 (Yaeckel Decl. ¶¶ 38-39; see also Settlement Agreement, ¶23).

15
16 **E. The Court Should Award the Requested Attorneys’ Fees in the Amount of**
17 **Approximately One-Third of the Gross Settlement Fund**

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

21 The PAGA provides that a plaintiff is entitled to recover reasonable attorneys’ fees, expenses,
22 and costs. Section 2699(g)(1) of the California Labor Code provides that “[a]ny employee who
23 prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” In a
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26 Labor Code section 226 as redundant with recovery on a class basis pursuant to California Labor Code section 226,
27 directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal.
28 Dec. 30, 2013) (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
other PAGA claims).

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

8
9 A PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as
10 the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code
11 violations and recover civil penalties that otherwise would have been assessed and collected by
12 the LWDA. *See Iskanian*, 59 Cal. 4th at 382. Indeed, the majority of the civil penalties recovered
13 in a PAGA action are paid to the State, with a smaller portion paid to the aggrieved employees
14 (e.g., 75% paid to the state; 25% paid to the aggrieved employees). *See* Cal. Lab. Code § 2699(i).
15 Where, as here, a common fund is created in a *qui tam* action by the successful litigation of a
16 plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the
17 common fund:

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

23 Likewise, through the successful efforts of Plaintiffs and their attorneys, a common fund was
24 created in the amount of \$575,000 for the benefit of the employees and the State of California.
25 Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from
26 the gross settlement fund under the common fund theory. *Id.* Such fees are deducted as a
27 percentage of the settlement amount. *See, e.g., Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482

(1980); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

The California Supreme Court recently upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016). In *Laffitte*, the settlement created a common fund of \$19 million. The Court approved the award of attorneys' fees in the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible. *Id.* at 492-494. Indeed, "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) (internal quotations omitted).

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

Consistent with that observation, California state and federal courts routinely award attorneys' fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Int'l Inc.*, 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Eisenberg & Miller, Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue

1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v. Robert Half Int'l Inc.* affirmed a fee award representing one-third of the fund. *Laffitte*, 231 Cal. App. 4th at 506.

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

A one-third common fund⁵ attorneys’ fee award is also consistent with what courts have awarded in other representative action cases. The following list shows PAGA actions where attorneys’ fees were awarded on a common fund basis:

5

Court have also approved fees in amounts greater than one-third of the common fund. *See Charles v. JPMorgan Chase Bank*, No. CGC-14-538933 (San Francisco County Superior Court June 18, 2019) (awarding plaintiffs \$2.88 million in attorneys’ fees on PAGA penalties totaling \$2.7 million); *Boseman v. VXI Global Solutions, LLC*, No. BC602442 (Los Angeles County Superior Court Jan. 3, 2019) (awarding plaintiff \$750,000 in attorneys’ fees and costs on general PAGA penalties totaling \$585,000); *Salas v. Hallmark Aviation Services LP*, No. BC586585 (Los Angeles County Superior 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
2 •*Cruz v. Wal-Mart Associates, Inc.*, Los Angeles Superior Court, No. 18STCV03128 (May 28,
3 2021) (approving fee award from PAGA-only settlement of \$5 million against a common fund
4 of \$15 million);

5 •*Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823 (April
6 20, 2017) (approving fee award from PAGA-only settlement of \$1.375 million against a
7 common fund of \$3.2 million (42%));

8 •*Garcia v. Macy's*, San Bernardino County Superior Court, Case No. CIVDS1516007 (Sept.
9 13, 2017) (33.33% fee awarded on \$12,500,000 settlement of a PAGA only case);

10 •*Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-
11 CJC (July 14, 2016) (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);

12 •*Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-
13 CU-OC-CXC (June 15, 2017) (33.33% fee awarded on a PAGA only case);

14 •00852123-CU-OC-CXC (June 15, 2017) (33.33% fee awarded on a PAGA only case);

15 •*Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No.
16 MCC1401137 (May 23, 2016) (33.33% fee awarded on a \$650,000 settlement of a PAGA only
17 case).

18 An award of fees from the gross settlement amount under the common fund doctrine prevents
19 unjust enrichment of those who benefit from the common fund created through the successful
20 efforts of plaintiff's counsel and furthers the important goal of attracting competent counsel to
21 handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal. 5th at 503. In
22 affirming the use of the common fund doctrine in California, the California Supreme Court
23 summarized the benefits of the percentage method of recovery stating: "The recognized
24 advantages of the percentage method—including relative ease of calculation, alignment of
25 incentives between counsel and the class, a better approximation of market conditions in a
26 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
27

unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

For all of these reasons, a common fund fee award in the amount of \$191,667 is fair and reasonable.

F. A Lodestar Cross-Check Confirms that the Requested Attorneys’ Fees Are Fair and Reasonable

The trial court may use an abbreviated lodestar “cross-check” for common fund awards if the court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly instructed that “the lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the fee award.” *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in *Laffitte II* emphasized that only where the “multiplier calculated by means of a lodestar cross-check is **extraordinarily high or low**” should the court “consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* (emphasis added). Accordingly, when the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not “required to closely scrutinize each claimed attorney-hour.” *Laffitte II*, 1 Cal. 5th at 505. An evaluation may be done by reviewing “counsel declarations summarizing overall time spent.” *Id.*

In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent

1
2 geographic region. *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing
3 hourly rate in community for comparable legal services even though party used in-house counsel).
4 Here, Plaintiffs' Counsel's hourly rates are comparable to, or less than, those charged by other
5 representative action plaintiffs' counsel and the firms defending PAGA actions, and have been
6 approved by numerous federal and state courts. (Yaeckel Decl. ¶¶ 18-22, Ex. 2; Perez Decl. ¶¶ 12-
7 14; Cottrell Decl. ¶22).

8
9 Likewise, the total attorney hours expended on this action are reasonable and in line with
10 comparable cases. In determining the reasonableness of the hours expended, "the court should
11 defer to the winning lawyer's professional judgment as to how much time he was required to spend
12 on the case; after all, he won, and might not have, had he been more of a slacker." *Kerkeles v. City*
13 *of San Jose*, 243 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d
14 1106, 1112 (9th Cir. 2008)). Plaintiffs' Counsel billed a total of approximately 324.8 hours.
15 (Yaeckel Decl. ¶ 17; Perez Decl. ¶11; Cottrell Decl. ¶21).

16 Multiplying the total hours billed by Plaintiffs' Counsel to the litigation by their reasonable
17 hourly rates yields a lodestar of \$215,288.50. (*Id.*) When plaintiffs seek an amount in fees that is
18 less than what they actually billed, the requested fee amount is generally considered reasonable.
19 *See, e.g., Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (finding
20 that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is a
21 reasonable and fair valuation of the services rendered to the class by Plaintiff's Counsel.").

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

24
25 **G. The Requested Recovery In Litigation Expenses Is Reasonable**

26 Plaintiffs' Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab.
27 Code § 2699(k)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed

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2 to a fee-paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in*
3 *part on other grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such
4 discretionary costs may be claimed as part of an attorneys' fees motion when seeking statutory fees under
5 the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding
6 costs that are necessarily incurred).

7 As itemized in Plaintiffs' Counsel's declaration in support of the Motion, Plaintiffs' Counsel
8 advanced \$9,610.68 in out-of-pocket costs to the State for, among other things, court fees, courier fees,
9 legal research databases, consultant fees, and mediation fees. (Yaeckel Decl. ¶ 25; Perez Decl. ¶ 15; Cottrell
10 Decl. ¶ 24). Because these reasonable costs were necessarily incurred during the case's pendency, these
11 costs are reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) ("[i]tems not
12 mentioned in this section and items assessed upon application may be allowed or denied in the court's
13 discretion."); *Hsu v. Semiconductor Sys., Inc.*, 126 Cal. App. 4th 1330, 1341 (2005) ("[W]hile it is
14 reasonable to interpret a general contractual cost provision by reference to an established statutory definition
15 of costs, we do not discern any legislative intent to prevent sophisticated parties from freely choosing a
16 broader standard authorizing recovery of reasonable litigation charges and expenses.").

17 **H. The Court Should Approve the Negotiated Service Award Payment**

18
19 Paragraph 16 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiffs the
20 sum of \$10,000, each, for their service on behalf of the LWDA and Aggrieved Employees.

21 These additional settlement payments are justified in light of the reputational risk that Plaintiffs
22 assumed by litigating claims against a former employer. *See Billingshausen v. Tractor Supply Co.*, 306
23 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding "personal detriment" upon testimony that future employers
24 can easily learn that a prospective employee served as a plaintiff through the internet); *see also Guippone*
25 *v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct.
26 28, 2011) ("[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become
27 known to prospective employers when evaluating the person . . . Even where there is not a record of actual
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2 retaliation, notoriety, or personal difficulties, [representative Plaintiffs] merit recognition for assuming the
3 risk of such for the sake of absent [parties].”).

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

12 Second, the service payments are reasonable because Plaintiffs “remained fully involved and
13 expended considerable time and energy during the course of the litigation.” *See In re Toys ‘R’ Us-Del*
14 *FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiffs devoted their time and effort toward assisting
15 their attorneys with the prosecution of the claims, and assisted counsel with finalizing the settlement.
16 (Declaration of Jessica Vasquez ¶¶3-7; Declaration of Yaneth Rodriguez Melgar ¶¶3-7; Declaration of
17 Kahlil Martin ¶¶5-11).

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

26 Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM*
27 *Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) (“The bounty advances the public purpose and
28

benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only means of inducing such private parties to come forward with their information.”) (internal quotations omitted). This is especially important in this context, as “the lack of government resources to enforce the Labor Code led to a legislative choice to deputize and incentivize employees uniquely positioned to detect and prosecute such violations through the PAGA.” *Iskanian*, 59 Cal. 4th at 390. Absent the incentive payment, fewer employees would be willing to step forward, and PAGA’s primary purpose—enforcement of the Labor Code—would be substantially undermined.

IV. CONCLUSION

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

Dated: June 2, 2025

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general public similarly situated