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[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JOANN EICHINGER, SHELBY L. HIGLEY, JOHN REID BARNETT, PEGGY GIBSON, as individuals, on behalf of the State of California, as a private attorney general,

PLAINTIFFS,

v.

TRACTOR SUPPLY COMPANY; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CHERI STRINGER, on behalf of herself and the general public,

Plaintiff,

v.

TRACTOR SUPPLY COMPANY, a Delaware corporation; and DOES 1 through 50, inclusive,

Case No. 23CV010299
[Consolidated with Case No. 23CV002894]

[Case Assigned for All Purposes to Hon. Jill H. Talley in Dept. 23]

NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with Declarations of Eric B. Kingsley, Kane Moon of Moon Law Group, Shaun Setareh of Setareh Law Group, Sean Hartranft of Apex Class Action Administration, and Plaintiffs Joann Eichinger, Shelby L. Higley, John Reid Barnett, Peggy Gibson, Cheri Stringer, in Support of Plaintiffs' Motion for Approval of Representative Action Settlement; [Proposed] Order, and Judgment]

Reservation: # A-10299-002

Defendants.	Date: September 12, 2025 Time: 9:00 AM Dept.: 23 Complaint Filed: July 1, 2022 Actions Consolidated: April 12, 2024 Trial Date: June 23, 2025

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Attorneys for Plaintiff CHERI STRINGER and the aggrieved employees

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 12, 2025 at 9:00 AM in Department 23 of the above-entitled court, Plaintiffs JOANN EICHINGER, SHELBY L. HIGLEY, JOHN REID BARNETT, PEGGY GIBSON, and CHERI STRINGER will move the Court for an Order Granting Approval of Representative Action Settlement.

The Motion will be made on the grounds that the proposed Settlement is fair, adequate, reasonable, and in the best interest of Plaintiffs, all aggrieved employees, and the Parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Eric B. Kingsley, the PAGA Settlement Agreement (Exhibit "1" to the concurrently filed Kingsley Declaration), all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: July 21, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Attorneys for Plaintiffs and all aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs JOANN EICHINGER, SHELBY L. HIGLEY, JOHN REID BARNETT, PEGGY GIBSON, and CHERI STRINGER ("Plaintiffs") submit this Memorandum of Points and Authorities in support of their Motion for Approval of Representative Action Settlement. Plaintiffs and Defendant TRACTOR SUPPLY COMPANY ("Defendant") (collectively, the "Parties") have reached a proposed settlement documented in the PAGA Settlement Agreement ("Agreement"),[1] attached to the concurrently-filed declaration of Eric B. Kingsley.

This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699, et seq. ("PAGA"). The Gross Settlement Amount is $2,500,000.00. After deduction of attorney's fees and litigation expenses, litigation enhancement to Plaintiffs, and settlement administration costs as discussed in the Agreement, the remaining amount to be divided between the Labor and Workforce Development Agency ("LWDA") and the PAGA Group as required by Labor Code section 2699(i) is $1,529,676.67 with $1,147,257.50 (or 75%) going to the LWDA and $382,419.17 (or 25%) distributed to the PAGA Group.[2]

Plaintiffs request that the Court "review and approve any settlement of any civil action filed pursuant to this part" (*See* Lab. Code § 2699(1)(2).) If the Court deems the Settlement fair and acceptable, Plaintiffs requests that the Court: (1) enter an order approving the Settlement and ordering the Parties to carry the terms of the Settlement Agreement; and (2) and enter a Final Judgment thereon.[3]

II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

Defendant Tractor Supply Company is the largest rural lifestyle retailer in the United

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1 Unless otherwise, stated, all capitalized terms used herein shall have the same meaning ascribed to them in the Agreement.

2 Pursuant to PAGA, civil penalties recovered by aggrieved employees shall be distributed 75 percent to the Labor and Workforce Development Agency ("LWDA") and 25 percent to the aggrieved employee(s). Lab. Code § 2699(i).

3 Plaintiffs' Motion for Approval of Representative Action Settlement will be concurrently uploaded to the LWDA's website on the date this Motion is filed. Proof of submission of Plaintiffs' Motion for Approval of Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming receipt can be provided to the Court upon request. (Kingsley Decl. ¶123.)

States. It operates big box retail stores catered to rural communities, selling items such as lawnmowers, pet supplies, clothing, and furniture. It has 94 California stores.

On October 21, 2021, Plaintiff Eichinger commenced this Action by filing a class and PAGA action Complaint alleging causes of action against Defendant for violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199; and violation of Business & Professions Code § 17200 (Declaration of Eric B. Kingsley ¶5) ("Kingsley Decl."). Defendant removed the case to federal court on November 22, 2021. (Kingsley Decl. ¶6.) After the case was removed, Plaintiff Eichinger dismissed the case, and refiled as a PAGA-only action on July 1, 2022, with a stipulation to toll the PAGA limitations period back to the original filing date. (Kingsley Decl. ¶7.) Upon refiling, Defendant moved to compel an "individual PAGA" arbitration on August 19, 2022, which was denied by the Court. (Kingsley Decl. ¶8.) Defendant appealed but ultimately requested to dismiss its appeal, which was granted on June 13, 2023. (*Id.*)

On September 8, 2022, Plaintiffs Higley, Barnett, and Gibson filed their representative action complaint seeking PAGA penalties in Sacramento County Court. (Kingsley Decl. ¶9.)

Plaintiff Cheri Stringer filed her representative action complaint in Sacramento County Court on June 7, 2023. (Kingsley Decl. ¶10.)

On December 19, 2023, the Court consolidated the *Eichinger* and *Higley et al.* actions pursuant to a joint stipulation filed by the Parties. (Kingsley Decl. ¶11.) The Court designated Case No. 23CV010299 as the lead case number. (*Id.*)

On December 28, 2023, Plaintiffs Eichinger, Higley, Barnett, and Gibson filed an Amended Representative Action Complaint, consolidating the claims and plaintiffs in the *Eichinger* and *Higley* actions. (Kingsley Decl. ¶12.)

On or around April 12, 2024, on its own motion, the Court ordered the *Stringer* action to be consolidated with the *Eichinger* and *Higley* actions. (Kingsley Decl. ¶13.) The Amended Representative Action Complaint filed by Plaintiffs Eichinger, Higley, Barnett, and Gibson and the complaint filed by Plaintiff Stringer are the operative complaints in the Action (the "PAGA Complaints.") (Kingsley Decl. ¶14.)

B. <u>The Discovery Process and Mediation</u>

On July 26, 2023, Plaintiffs Eichinger, Higley, Barnett, and Gibson and Defendant attended mediation with respected wage and hour mediator Jonathan D. Andrews, Esq. (Kingsley Decl. ¶15.) The mediation was unsuccessful, and the parties began to engage in formal discovery. (Kingsley Decl. ¶16.) Plaintiff Eichinger served two sets of written discovery requests on Defendant. Defendant served two sets of written discovery requests on Plaintiff Gibson, and one set of requests on Plaintiffs Eichinger, Higley, Barnett, and Stringer. (Kingsley Decl. ¶17.)

On March 15, 2024, the Parties attended an Informal Discovery Conference, and after, Plaintiffs obtained contact information for the PAGA Group pursuant to a *Belaire-West* process, and a 15% sample of timekeeping and payroll data. (Kingsley Decl. ¶18.) Plaintiffs Eichinger, Gibson, and Barnett have sat for their depositions. (Kingsley Decl. ¶19.)

On December 23, 2024, the Parties attended a second all-day mediation with mediator Jonathan D. Andrews, Esq., which led to the Agreement to settle the Action. (Kingsley Decl. ¶20.)

Prior to mediation, Plaintiffs obtained, through formal and informal discovery, documents relating to Defendant's wage and hour policies and bonus plan policies, payroll, timekeeping, and meal and rest attestation data, meal waiver data, information about whether specific pay codes were included in the regular rate of pay, and Defendant's list of PAGA employees, among other things. (Kingsley Decl. ¶21.)

Thereafter, Plaintiffs engaged in good faith, arms-length negotiations with Defendant concerning possible resolution of the claims asserted in the Litigation. (Kingsley Decl. ¶22.) The Parties were able to reach a tentative settlement subject to finalization of a formal PAGA Settlement Agreement and the approval of the Court. (*Id.*)

Although Defendant denies that any of the allegations in the PAGA Complaints or PAGA Notices have merit or that Defendant has any liability for any claims asserted, the Parties recognized the potential risks and attendant costs of litigation and were able to reach a tentative settlement subject to finalization of a formal PAGA Settlement Agreement and the approval of the Court. (Kingsley Decl. ¶23.) The Parties negotiated the terms and conditions of the Agreement and now present the agreed-upon Settlement to the Court for Approval. (*Id.*)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of "deputizing" citizens as private attorney generals to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A plaintiff may not — and Plaintiffs here do not — bring a PAGA claim simply on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." *Id.*, at 986; *see also Reyes v. Macy's, Inc.* 202 Cal.App.4th 1119, 1123-1124(2011); *Iskanian v. CLS Transp. Los Angeles*, LLC, 59 Cal. 4th 348, 380).

When an aggrieved employee brings a PAGA claim, "the government is always the real party in interest." *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) ("[A] PAGA action is a dispute between an employer and the State agency."). Accordingly, a plaintiff that brings a PAGA claim represents "the same legal right and interest as state labor law enforcement agencies," in that the plaintiff is seeking to recover those civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias*, *supra*, 46 Cal.4th at 986; Lab. Code § 2699 (a) & (f); *Securitas*, *supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding "PAGA plaintiffs do not have property rights in their cases."). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties recovered; thus, recoveries are principally for the state and only secondarily for aggrieved employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is properly conceived of as a private attorney general prosecuting violations of California's labor laws on behalf of the state.

An employee may commence a PAGA action by fulfilling the requirements of Cal. Lab. Code § 2699.3 (a)(1), which simply states:

> "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

Lab. Code § 2699.3 (a)(1)

As explained above, Plaintiffs have complied with the notice requirements and have properly pled a PAGA cause of action. (Ex. 1, ¶ 2.2.)

B. The Court Has Discretion When Awarding the Amount of Penalties

PAGA provides for penalties in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. Lab. Code § 2699(f)(2).

"PAGA penalties...are mandatory, not discretionary" and must be awarded upon a showing that the defendant violated the Labor Code.[4] *Amaral v. Cintas Corp. No. 2* 163 Cal. App. 4th 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3.

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code §2699(e)(2) states that "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." Here, Defendant denies that it violated any law or that it engaged in any knowing or intentional conduct giving rise to liability, and expressly denies that any employees suffered harm.

C. Standards for Settlement Approval

When approving a settlement of a PAGA action, the statute simply requires the Court to "review and approve any settlement of any civil action filed pursuant to this part." (Lab. Code § 2699(*l*)(2).) PAGA does not set forth standards for evaluating such settlements, and the California appellate courts have not weighed in on the issue. However, trial courts have approved PAGA settlements where the penalties are "genuine and meaningful" and "consistent with the underlying purpose" of the statute. (See *O'Connor v. Uber Techs., Inc*. (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1113.) Additionally, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, class action procedural rules do not apply in PAGA cases, including the two-step preliminary and final approval process. Rather, the approval process consists of one step where the court decides if the

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[4] *See also Willner v. Manpower Inc., supra. 35 F. Supp. 3d at 1136*; *McKenzie v. Federal Exp. Corp*, *supra*, 765 F.Supp.2d at 1232.

settlement should go into effect.

IV. THE SETTLEMENT

Defendant will pay the total sum of $2,500,000.00 in full and final settlement of the PAGA claims alleged. (Kingsley Decl. ¶24., Exhibit 1, ¶3.1.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	$2,500,000.00
PAGA Counsel Fees Payment:	$833,333.33
PAGA Counsel Litigation Expenses Payment:	$70,000.00
Administrator Expenses Payment:	$26,990.00
Representative Service Payments to Plaintiffs:	$40,000.00
PAGA Penalties:	$1,529,676.67[5] *($1,147,257.50 allocated to the LWDA; $382,419.17 allocated to the Individual PAGA Payments)*

(Kingsley Decl. ¶25., Exhibit 1, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties. The Administrator will calculate each Individual PAGA Payment by dividing (a) the amount of the PAGA Group's 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all PAGA Group members during the PAGA Period, and (b) multiplying the result by each PAGA Group member's PAGA Period Pay Periods. (Kingsley Decl. ¶27., Exhibit 1, ¶3.2.4.1.)

For settlement purposes, the Aggrieved Employees are defined as: "all of Tractor Supply Company's non-exempt employees who worked in California during the PAGA Period" ("Aggrieved Employees" or "PAGA Group"). (Kingsley Decl. ¶28., Exhibit 1, ¶1.4.)

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[5] The Agreement sets forth an estimated allocation to the PAGA Penalties in the amount of $1,535,250.00, rather than $1,529,676.67 as set forth herein and the concurrently filed Proposed Order. (Kingsley Decl. ¶26., Exhibit 1, ¶3.2.4.) The amount referenced in the Agreement is an inadvertent miscalculation of the amount that should be allocated to the PAGA Penalties based on a last minute increase in the Administrator Expenses Payment. Counsel for all Parties agree that, as set forth above, the amount remaining for payment of the PAGA Penalties is $1,529,676.67 after deducting the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Administrator Expenses Payment, and Representative Service Payments to Plaintiffs from the Gross Settlement Amount (*Id.*)

The PAGA Period is the period from October 21, 2020 to October 26, 2024. (Kingsley Decl. ¶29., Exhibit 1, ¶1.19.)

V. ARGUMENT

A. The Court Should Approve the Agreement

The Parties recognize that in accordance with Labor Code §2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court* 46 Cal.4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for primary or final approval. Nonetheless, in order to comply with the requirements of Labor Code §2699, the Parties submit the instant Motion and the Agreement (Exhibit "1" to the Kingsley Declaration) for Court approval.

B. The Risks of Moving Forward with Plaintiff's PAGA Claim

To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation and discount taken follows. (Kingsley Decl. ¶30.) Plaintiffs believed that Defendant may persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. (Kingsley Decl. ¶31.) Pursuant to Labor Code §226.3, the Labor Commissioner has the discretion to "decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake." (Kingsley Decl. ¶32.) And in accordance with PAGA, the court in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] 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." (Labor Code § 2699(e)(1) and (e)(2)). (Kingsley Decl. ¶33.)

PAGA Counsel anticipated that, at trial, Defense Counsel could make a potentially persuasive argument: (1) the PAGA Group was properly paid in accordance with Defendant's lawful policies and practices, and that any alleged failure to compensate or reimburse the PAGA Group was the result of inadvertence and clerical error; (2) the PAGA Group was provided with the opportunity to take meal and rest breaks in compliance with California law; (3) until this Action was filed, no employees had complaints about any alleged failure to pay wages, provide meal and/or rest breaks, failure to reimburse necessary business expenses, issue accurate itemized wage statements; and (4) none of Defendant's employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiffs' allegations. (Kingsley Decl. ¶34.) All of which, Defense Counsel would argue, should mitigate in factor of significantly reducing or waiving any PAGA penalties. (*Id.*) While Plaintiffs disagree that this analysis is legal correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded to the PAGA Group if the Court were persuaded by them. (Kingsley Decl. ¶35.)

1. The Risks Associated with the Wages/Overtime Claim

California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11080(2)(G); *see Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified on denial of reh'g (Aug. 29, 2018).) Time is compensable if an employee is "*subject to the control* of an employer" even if not working, or if an employee "is *suffered or permitted to work*" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020) (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (*Id.* at p. 1056; *Cf. Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying defendant's motion for summary judgment when plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

In *Troester*, employees spent four to ten minutes completing tasks to close up the store, such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held that California law prohibits employers from requiring employees to work off the clock, even for minutes, without compensation. (*Id.* at p. 848.) The Court explained:

> An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here demonstrate, a few extra minutes of work each day can add up. . . . . What Starbucks calls "de minimis" is not de minimis at all to many ordinary people who work for hourly wages.

(*Id.* at p. 847.)

Under state and federal law, overtime compensation is based on an employee's "regular rate of pay." (See *Huntington Mem'l Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.) "California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee is entitled to overtime pay at one and one-half times the 'regular rate' for work in excess of eight hours in one day and twice the 'regular rate' for work in excess of 12 hours in one day." (*Ibid.*) For hourly employees, the regular rate is generally the employee's straight-time hourly rate. (*See Huntington, Supra.* 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly employee earns other compensation in addition to hourly wages—such as a non-discretionary bonus, commission, or shift differential—the "regular rate" is computed by dividing the employee's total compensation by the total hours worked in that period. (*See Marin v. Costco Wholesale Corp*. (2008) 169 Cal.App.4th 804, 807.)

"Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned." (*See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542. 554.) "The . . . bonus must not be viewed in isolation; rather, it is a component of the employee's regular rate of pay for the entire pay period. And overtime worked at any point during the workweek must, by law, be compensated at a multiple of that regular rate of pay." (*Id*. at p. 570.)

"Where two rates of pay are paid during a workweek, the California method for determining the regular rate of pay for calculating overtime in that workweek [is] based upon the weighted average of all hourly rates paid." (DLSE Policies and Interpretations Manual § 49.2.5.)

This “blended’ rate is “established by adding all hours worked in the week and dividing that number into the total compensation for the week.” (*Ibid*.)

Here, Plaintiffs allege Defendant failed to pay overtime at the proper rate by not blending store bonuses and shift differentials into the employees’ regular rate of pay. (Kingsley Decl. ¶36.) When Plaintiffs worked overtime or earned meal or rest period premium wages or sick pay in the same pay periods as earning a store bonus or shift differential, Defendant used their base hourly rate as the regular rate of pay, rather than incorporating the bonus amount that would result in a higher rate. (Kingsley Decl. ¶37.) Plaintiffs’ wage statements show their overtime rate as 1.5 times their base hourly rates, even in pay periods where Plaintiffs earned hundreds of dollars in non-discretionary bonuses. (Kingsley Decl. ¶38.) By failing to incorporate bonuses and shift differentials before multiplying by the overtime rate, Plaintiffs allege that Defendant undercompensated them and other Aggrieved Employees, who were paid at an overtime rate less than the minimum rate required by California law. (Kingsley Decl. ¶39.) (See Labor Code § 510.)

However, Defendant vigorously contested this claim, arguing that its store bonuses were properly excludable from the regular rate calculation because bonuses on a percentage of total wages include proper overtime compensation as an arithmetic fact. (Kingsley Decl. ¶40.) *See* 29 C.F.R. §§ 778.210, 778.503; *Harris v. Best Buy Stores, L.P.*, 2016 WL 4073327 at * 3 (N.D. Cal. Aug. 1, 2016). Indeed, courts have dismissed regular rate claims predicated on valid percentage bonus plans. *See*, *e.g.*, *Russell v. Gov't Emps. Ins. Co.*, No. 17-CV-672 JLS (WVG), 2018 WL 1210763, at *5 (S.D. Cal. Mar. 8, 2018), *aff'd*, 787 F. App'x 953 (9th Cir. 2019). Moreover, Defendant argued that Plaintiffs' proffered overtime calculation would impermissibly provide a windfall to employees. (Kingsley Decl. ¶41.) *See Lemm v. Ecolab Inc.*, 87 Cal.App.5th 159, 173-74, 178 (2023) (rejecting plaintiff's proposed overtime calculation as "giving [] employee[s] a windfall"). Therefore, it was not at all certain that Plaintiffs would ultimately prevail on this substantive claim.

2. The Risks Associated with the Meal and Rest Period Claims

Employers must pay one hour at the employee’s “regular rate of compensation” as a penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor

Code section 512. (See Labor Code § 226.7(b).) The employer owes an additional penalty where it fails to provide an uninterrupted rest break for every four hours of work or major fraction thereof. (*Ibid*.)

Until recently, employers have argued that the meal and rest period premiums can be paid at a straight hourly rate instead of the blended "regular rate of pay" because the statute requiring meal premiums describes the obligation to pay at the "regular rate of compensation" instead of "regular rate of pay" (as applicable to overtime). However, the California Supreme Court recently decided that there is no distinction between the "regular rate of pay" and "regular rate of compensation": "We hold that the terms are synonymous: 'regular rate of compensation' under section 226.7(c), like 'regular rate of pay' under section 510(a), encompasses all nondiscretionary payments, not just hourly wages." (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 863.)

Here, for the same reasons that Plaintiffs allege Defendant's failure to blend bonuses into the regular rate caused an overtime violation, Plaintiffs also allege that this practice resulted in underpaid meal and rest period premium wages when such premiums were owed. (Kingsley Decl. ¶42.)

Defendant contested this claim for the same reasons it contested Plaintiffs' overtime claim. (Kingsley Decl. ¶43.) Defendant also argued that the employees did receive their meal and rest periods and, at trial, would present other employees who would testify to that fact. (Kingsley Decl. ¶44.) Defendant argued that its policies and practices ensured high compliance with meal and rest break laws because employees were required to document non-compliant meal and rest periods for every shift through its electronic timekeeping system. Defendant then issued a premium to all employees who report non-compliant meal or rest periods, or if the employee's time punches reflected a late, missed, or short meal period. Additionally, because Defendant maintained facially valid meal and rest period policies, Defendant argued that it would be entitled to inquire of each and every Aggrieved Employee whether his/her meal periods were provided, and if not, why not – essentially arguing that any untimely or short meal periods in the records were a result of an employee's volition rather than Defendant's own failure to provide them. Had the Parties proceeded to trial, Defendant would have retained an expert to analyze extrinsic evidence to rebut any alleged meal break violations by arguing that meal breaks were taken and not recorded, or were voluntarily missed. (Kingsley Decl. ¶45.) These presented risks on the meal and rest period claims that Plaintiffs considered when evaluating this settlement. (Kingsley Decl. ¶46.)

3. The Risks Associated with the Reimbursement Claim

Labor Code section 2802 provides that an employer must "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." (Lab. Code, § 2802, subd. (a).)

Plaintiffs allege that Defendant required the PAGA Group to use their personal cell phones to access an application called "Checkin2Work" wherein the PAGA Group would respond to questions relating to COVID as a condition of reporting to work on each shift. (Kingsley Decl. ¶47.) Defendant continued this program from the beginning of the limitations period through April 30, 2023. (Kingsley Decl. ¶48.) To Plaintiffs' knowledge, Defendant did not maintain an expense reimbursement policy, nor were Plaintiffs ever informed to seek reimbursement for Plaintiffs' cell phone use. (Kingsley Decl. ¶49.) Thus, Plaintiffs allege that Defendant owes penalties under PAGA for violations of Labor Code section 2802.

However, Defendant argued that it maintained a system for employees to submit business expenses for reimbursement. Moreover, because employees could have only used the application on days when they were scheduled to work, not every employee used the application every day—use would have been limited solely to the days each individual employee worked, which necessarily varies by employee. As a result, Plaintiffs would face an uphill battle proving a section 2802 violation in the pay periods while the program was in place because of the significant individualized experiences of every employee in every shift.

4. The Risks Associated with the Wage Statement Claims

California Labor Code §226(a) requires Defendant to provide its employees with an accurate, itemized written wage statement that shows, in relevant part, total hours worked by the employee, their name and address of the legal entity that is the employer, and all applicable hourly rates and the corresponding number of hours worked.

Plaintiffs allege that Defendant has intentionally and willfully failed to provide employees with complete and accurate wage statements. (Kingsley Decl. ¶50.) The alleged deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiffs and the PAGA Group, the failure to list the true "total hours worked by the employee," and the failure to list the true net wages earned. (Kingsley Decl. ¶51.) As part of Defendant' policies and practices, Plaintiffs further allege that Defendant routinely failed to maintain accurate records including, but not limited to, time records showing when Plaintiffs and the PAGA Group began and ended each work period, time records showing when Plaintiffs and the PAGA Group began and ended each meal period, time records showing the total daily hours Plaintiffs and the PAGA Group worked, payroll records showing the total wages paid to Plaintiffs and the PAGA Group including the value of all compensation actually furnished, and records showing the total worked during the payroll period and applicable rates of pay as required under California Labor Code §§ 226, 1174(d) and IWC Wage Order, § 7. (Kingsley Decl. ¶52.)

As this is a derivative claim, the same risks present for the above claims were present for this claim. (Kingsley Decl. ¶53.)

5. The Risks Associated with the Waiting Time Penalties Claim

Under Labor Code section 203, if an employer fails to provide wages at the time of an employee's termination or within seventy-two (72) hours of resignation, then the employee's wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Here, Plaintiffs and numerous Aggrieved Employees are no longer employed by Defendant. (Kingsley Decl. ¶54.) However, Plaintiffs allege that due to Defendant's failure to pay appropriate overtime wages which included shift differentials and meal period premiums, Defendant also failed to pay all wages owed and due upon their termination and/or resignation. (*See Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.)

The main inquiry here is whether Defendant's actions were willful under the law, specifically if it intentionally failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

Plaintiffs factored in the risk of establishing that any violation was "willful" and the fact that this claim is derivative. (Kingsley Decl. ¶55.)

In light of all these significant risks and given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement Amount of $2,500.000 was fair and reasonable. (Kingsley Decl. ¶56, Exhibit 1, ¶3.)

C. <u>A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty Awarded for Technical Violations of the Labor Code</u>

"PAGA penalties…are mandatory, not discretionary" and must be awarded upon a showing that the defendant violated the Labor Code. *Amaral v. Cintas Corp. No.* 2 163 Cal. App 4th 1157, 1213 (2008); *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3.

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code section 2699(e)(2) states that "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." (*See Fleming v. Covidien Inc*. (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047 [court awarded $18 per wage statement, reflecting 18% of the potential exposure]; *Carrington v. Starbucks Corp*. (2018) 30 Cal. App. 5th 504, 529 [awarding 10% of maximum civil penalty for meal break claims in light of Starbucks' "good faith attempts" to comply and because the violations were minimal]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135–1136, disapproved on another ground in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196, fn. 8 [considering the defendant's inability to pay as a factor in reducing the penalties imposed]; see also *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 681 [noting that a court should consider whether a violation was inadvertent when assessing penalties].) [6]

In *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047, the Court exercised its discretion to reduce the PAGA penalty amount. There, the plaintiff brought a PAGA claim for violations of section 226(a) based on the following issues: (a) the statements did not show either an employee identification number or the last four digits of the social security number of the employee; (b) the statements did not show the beginning date of the pay period for which the employee was paid; (c) the statements identified Covidien as the employee's employer. (*Id*. At *2). There were approximately 28,000 wage statements at issue. (*Id*. at *3). The *Fleming* court calculated the maximum potential civil penalty exposure at $2.8 million ($100 per wage statement). (*Ibid*; *see also* Labor Code § 2699(f)(2)). After a bench trial, the Court elected to exercise its discretion to reduce the civil penalty per wage statement to $18 per wage statements, reflecting 18% of the potential exposure. (*Id*. at *4). The Court reasoned:

> Here, the aggrieved employees suffered no injury due to the erroneous wage statements, and made no complaint of the errors or omissions contained therein prior to filing suit. Also, Defendants were not aware that the wage statements violated the law and took prompt steps to correct all violations once notified. Given these circumstances, the Court finds a $2.8 million penalty unjust according to § 2699(e)(2). Accordingly, in its discretion, the Court reduces the penalty to $500,000.

Id. at *4. A court exercising its discretion to significantly reduce the civil penalty awarded under PAGA is not a rare occurrence. *See e.g., Carrington v. Starbucks Corp*. (2018) 30 Cal. App. 5th 504, 529 (awarding 10% of maximum civil penalty for meal break claims in light of Starbuck's "good faith attempts" to comply and because the violations were minimal).

Here, as explained above, Plaintiffs' counsel anticipated that, at trial, Defendant would argue that: (1) the PAGA Group was properly paid and/or reimbursed in accordance with Defendant's lawful policies and practices, and that any alleged failure to compensate the PAGA

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[6] On May 11, 2016, following a bench trial, Los Angeles Superior Court Judge John Wiley reduced PAGA penalties from $409,950 to $53,294 after finding the maximum statutory penalty amount to be unjust, arbitrary, oppressive, and/or confiscatory. (*Kaanaana et al. v. Barrett Business Serv.s Inc., et al.,* L.A. Super. Ct., Case No. BC 496090.))

Group was the result of inadvertence and clerical error; (2) the PAGA Group was provided with the opportunity to take meal and rest breaks in compliance with California law; (3) until this Action was filed, no employees had compliance about any alleged failure to pay wages, provide meal and/or rest breaks, reimburse expenses, issue accurate itemized wage statements; (4) none of Defendant's employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiffs' allegations. (Kingsley Decl. ¶57.) All of which, Counsel for Defendant would argue, should mitigate in favor of significantly reducing the civil penalty. (Kingsley Decl. ¶58.)

After engaging in pertinent informal discovery in this Action, Plaintiffs' counsel determined that a settlement of $2,500,000 is reasonable given the above risks.

D. <u>There is a Strong Risk the Higher $200 Civil Penalty Triggered for "Subsequent" Violations Will Not Apply</u>

Plaintiffs believe there is a strong risk that the Court would not award the $200 civil penalty triggered for "subsequent" violations. Labor Code section 2699(f)(2). (Kingsley Decl. ¶59.) If this case were to proceed to trial, Plaintiffs would argue that a "subsequent" violation simply means that Defendant violated each Labor Code section more than once for a given employee. (*Id.*) Plaintiffs are not aware of any case law that interprets "subsequent" in the context of section 2699. (*Id.*) However, Defendant is likely to rely on *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008) because it rejected a purely temporal understanding of the term "subsequent" and interpreted its use in Labor Code sections 210 and 225.5 to require that "the employer has been notified that it is violated a Labor Code provision" before higher penalties are triggered. (*Id*. at 1209.) Defendant presumably would take the position that it has not been notified that it actually violated the alleged Labor Code sections until the Labor Commissioner has issued a formal citation or this Court made a finding that a violation existed. (Kingsley Decl. ¶60.)

E. <u>Based on the Risks Above and the Analysis of the Maximum Penalties Available, Plaintiff Believes this Settlement is Fair and Reasonable</u>

Based on these figures, Plaintiffs estimate the maximum potential exposure for the PAGA claims for the PAGA Group is $21,993,900 (219,939 pay periods at issue multiplied by $100 a pay period). (Kingsley Decl. ¶61.) While there is no authority available on this issue, a court could conceivably "stack" per pay period violations for each alleged Labor Code section, which would balloon Defendant's maximum exposure to an astronomical amount. (Kingsley Decl. ¶62.) However, the main risk taken into account with PAGA is the discretionary nature of the penalty award. (Kingsley Decl. ¶63.) For example, if a court were to disallow the "stacking" of PAGA penalties (given the lack of caselaw doing so), then Defendant's maximum exposure at trial would actually be $21,993,900, as Plaintiffs have done above. From there, a court has further discretion to reduce the amount accordingly.

The settlement here represents approximately 11.4% of the maximum exposure at trial, or $11.37 penalty per pay period ($2,500,000 divided by 219,939 pay periods = $11.37 per pay period) which is in line with judgments reached in other cases. (See e.g. *Carrington, supra,* 30 Cal.App.5th 504, 529 [affirming the trial court's reduction from the maximum penalty of $50 per initial violation to only $5]; *Thurman, supra,* at 203 Cal.App.4th at 1135–1136, [affirming trial court's decision to reduce penalties by 30%].)

Given that this settlement is for $2,500,000, Plaintiffs believe this is an exceptional settlement.

VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS

As detailed fully in the Settlement, the settlement provides for Defendant to create a Gross Settlement Amount of $2,500,000.00. (Kingsley Decl. ¶68; Ex. 1 at ¶¶3.1.) From that fund, Plaintiffs request an award of attorneys' fees for PAGA Counsel in the amount of $833,333.33, or 33.33% of the Gross Settlement Amount, and $70,000.00 in reimbursement for litigation costs. (*Id*; Ex. 1 at ¶3.2.2.)

A. Plaintiffs' Counsel are Entitled to a Fee from the Common Fund

On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half International,* which addressed the correct methodology for awarding fees in a class action settlement. (*Laffitte v. Robert Half Intern. Inc.* (Cal. 2016) 205 Cal.Rptr.3d 555, 573.) The *Laffitte* Court approved awarding fees as a percentage of the settlement fund in cases like the present one, where a settlement results in the creation of a common fund on behalf of a class:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Class Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

(*Id.* at 573.) The Court then set out several reasons why the percentage-of-the-fund method is preferred over the alternative lodestar-multiplier approach in California courts:

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

(*Id.* at 573.)

An award of 33.33% of the common fund is appropriate here under the "substantial benefit" theory. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1810; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) That theory permits a litigant who has sued in a representative capacity to recover fees when the litigant's efforts have created a substantial, actual, and concrete benefit for members of an ascertainable class and the court's jurisdiction over the subject matter makes possible an award which spreads the cost proportionately among the members of the benefitted class. (*See Ciani v. San Diego Trust & Sav. Bank* (1994) 25 Cal.App.4th 563, 578.)

This doctrine rests on the understanding that attorneys should normally be paid by their clients, and that unless attorneys' fees are paid out of the common fund, those who benefitted from the fund would be unjustly enriched. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 943; *Save El Toro Ass'n v. Days* (1979) 98 Cal.App.3d 544, 548-49.) To prevent this unfair result, courts exercise their inherent equitable powers to assess attorneys' fees against the entire fund, thereby spreading the cost of those fees among all those who benefitted. (*Serrano III*, 20 Cal.3d at p. 35.) "A court, in the exercise of its equitable discretion, may decree that those receiving the benefit should contribute to the costs of its production." (*Save El Toro Assn., supra*, 98 Cal.App.3d at 548.) As this approach "better approximates the workings of the marketplace than the lodestar approach," there is "a greater judicial willingness to evaluate a fee award as a percentage of the recovery" in common fund cases. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 31, 48.)

B. The Attorneys' Fees Request Are Well Within the Range of Fees in Comparable Cases

Courts historically award fees in the twenty-to-fifty percent range, depending on the circumstances of the case. As stated in Newberg:

> No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the Class, although somewhat larger percentages are not unprecedented.

(Newberg on Class Actions, 3rd Ed., 1992, § 14.03; *and see Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, fn 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."].) Thus, PAGA Counsel's requested fee of 33.33% is not only well within the range of reasonableness, but lower than the average fee award of 35% and is fair compensation for undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

C. PAGA Counsel's Fee Request is Reasonable Under a Lodestar Crosscheck

Courts may "cross-check" the results of the common fund method against the lodestar method. (*See In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) The lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. (*Serrano v. Priest,* 20 Cal.3d 25, 48-49 (1977) *("Serrano III")*.) Those rates reflect "the general local hourly rate for a fee-bearing case" and do "not include any compensation for contingent risk, extraordinary skill, or any other factors." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138.) The court may then enhance the lodestar with a multiplier. (*Wershba, supra*, 91 Cal.App.4th at 254; *Serrano III, supra*, 20 Cal.3d at 49.)

i. Requested Multiplier

The purpose of using the lodestar/multiplier method is to mirror the legal marketplace.

Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an enhancement is often awarded so that the fee received is commensurate with what attorneys could expect to be compensated for services in similar circumstances. (*See Tulare Valley Audubon Soc., Inc. v. County of Tulare* (1984) 155 Cal.App.3d 738, 755 [an award must be large enough "to entice competent counsel to undertake difficult public interest cases"].) No specific findings reflecting the court's calculations are required. (*Wershba*, *supra*, 91 Cal.App.4th at 254; *Rebney*, *supra*, 232 Cal.App.3d at p. 1349.) "The record need only show that the attorney fees were awarded according to the 'lodestar' or 'touchstone' approach." (*Ibid.*)

Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Kingsley Decl. ¶77.) PAGA Counsel have an aggregate lodestar in the amount of $594,534.50 which represents 826 hours of attorney work on this litigation from its inception through the date of this filing of Plaintiffs' instant Motion. (*Id.*) As such, PAGA Counsel is asking for a lodestar multiplier of 1.4. (Kingsley Decl. ¶78.) Typically, the lodestar is merely the starting point of the calculation of a reasonable fee, and courts often multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work, and the novelty and difficulty of the issues involved. (*See Radar v. Thrasher,*(1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank,* (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors,* (1997) 76 Cal.App.3d 24 1, 251.)

This case dealt with difficult legal and factual questions. (Kingsley Decl. ¶79.) Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses as discussed in detail above. *(Ibid.)* Were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. *(Ibid.)* There are genuine issues in dispute. *(Ibid.)* Furthermore, PAGA Counsel was able to obtain exceptional value for this case that is in line with other PAGA cases that proceeded to trial. (Kingsley Decl. ¶80.)

As discussed above, PAGA Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter. (Kingsley Decl. ¶81.) To achieve the ultimate result in this case, PAGA Counsel had to incur substantial risk and expense, and were precluded from taking other fee generating employment for 826 hours of attorney time. (Kingsley

Decl. ¶82.) This matter had been handled purely on a contingency fee basis and PAGA Counsel have advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting significant firm resources to prosecution of this matter. (Kingsley Decl. ¶83.) PAGA Counsel believe this is an exceptional result that has been well received by the PAGA Group. (Kingsley Decl. ¶84.)

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

In addition to their request for fees, PAGA Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this litigation, in the amount of $70,000.00. (Kingsley Decl. ¶111.) To date, PAGA Counsel has incurred $71,141.14 in costs. (Kingsley Decl. ¶112.) PAGA Counsel anticipates incurring an additional $600.00 in costs to file and serve this motion, but the Settlement provides for a reimbursement of litigation costs of up to $70,000.00. (Kingsley Decl. ¶113.) As such, counsel is requesting a cost reimbursement of $70,000.00. (Kingsley Decl. ¶114.)

All of the requested costs are reasonable in amount and were necessarily incurred by PAGA Counsel in prosecuting this litigation. (Kingsley Decl. ¶115.); Exhibit "5" [Cost Report].) Expenses in this matter to date include costs for filing fees, research, mediation, and additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to the Declaration of Eric B. Kingsley. All of these costs have been incurred in the course of this litigation, and all costs advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of filing the present motion. (Kingsley Decl. ¶116.)

Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court should approve the request for reimbursement in the amount of $70,000.00. (Kingsley Decl. ¶117.)

VIII. ENHANCEMENT TO PLAINTIFFS

The Settlement calls for enhancement payments of $40,000.00 total to the named Plaintiffs, to be paid from the Gross Settlement Amount. (Kingsley Decl. ¶118; Ex. 1 at ¶3.2.1.) The

Settlement calls for payments of $10,000.00 each to the named Plaintiffs Joann Eichinger, John Reid Barnett, and Peggy Gibson; and $5,000.00 each for named Plaintiffs Shelby Higley and Cheri Stringer. (*Id*.)

Incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. "[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

Here, the enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of the PAGA Group. (Kingsley Decl. ¶119; Declaration of Joann Eichinger ¶4; Declaration of John Reid Barnett ¶14; Declaration of Peggy Gibson ¶14; Declaration of Shelby Higley ¶14; Declaration of Cheri Stringer ¶13.) The time spent by Plaintiffs includes identifying competent counsel, providing information to PAGA Counsel regarding Plaintiffs' relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently to discuss the status of the case and the theories of liability, reviewing settlement documents, attending their depositions, and making themselves available for two days of mediation. (Kingsley Decl. ¶120; Declaration of Joann Eichinger ¶4; Declaration of John Reid Barnett ¶14; Declaration of Peggy Gibson ¶14; Declaration of Shelby Higley ¶14; Declaration of Cheri Stringer ¶13.)

PAGA Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl. ¶121.) The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of the PAGA Group. (Kingsley Decl. ¶122.) Accordingly, Plaintiffs should be awarded the agreed-upon enhancement of $40,000.00.

IX. CONCLUSION

Plaintiffs and Plaintiffs' Counsel submit that the proposed Settlement as documented in the Agreement is fair, adequate, reasonable, and in the best interest of the Parties and the State of California. Plaintiffs respectfully request that the Court approve the Settlement and Order that the Settlement is carried out according to the terms of the Agreement.

DATED: July 21, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Eric B. Kingsley
Attorneys for Plaintiffs and all aggrieved employees

81776065;1
81992932;1

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On July 23, 2025, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

[XX] **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/315) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] **(BY ELECTRONIC MAIL TRANSMISSION)**: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 23, 2025, at West Hollywood, California.

Taylor Gregg

SERVICE LIST

Joann Eichinger, et. al v. Tractor Supply Company
Superior Court of California, County of Sacramento

Case No: 23CV010299
[Consolidated with Case No. 23CV002894]

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