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10 members of the general public similarly situated

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF RIVERSIDE

13 ELIZER PINEDA, in a Representative
14 capacity only, and on behalf of other
15 members of the general public similarly
16 situated,

17 Plaintiff,

18 v.

19 GOLDEN WEST TIRE CENTERS, LLC,
20 a California Limited Liability Company;
21 and DOES 1-10, inclusive,

22 Defendants.

Case No. CVRI2203246

Assigned to the Hon. Harold W. Hopp

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

Date: July 14, 2025

Time: 8:30 a.m.

Dept: 1

Reservation ID: 037596682746

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

3 **PLEASE TAKE NOTICE** that on July 14, 2025 at 8:30 a.m., or as soon thereafter as
4 counsel may be heard, in Department 1 of the above-captioned court, located at 4050 Main
5 Street, Riverside, California 92501, the Honorable Harold W. Hopp presiding, Plaintiff Elizer
6 Pineda will, and hereby do, move this Court for entry of an order and judgment approving the
7 Parties' PAGA settlement pursuant to Labor Code section 2699(1)(2).

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

16 Dated: May 28, 2025

Respectfully submitted,

17 By: 

18 Eric K. Yaeckel

19 Ryan T. Kuhn

20 **SULLIVAN & YAECKEL LAW GROUP, APC**
21 Attorneys for Plaintiff Elizer Pineda
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1 (b) Twenty-five percent of the PAGA Penalties Fund, or approximately
2 \$26,861.38, will be paid to all persons who, at any time during the period
3 from May 27, 2021 through the date of Approval of the Settlement, worked
4 for Defendant as a non-exempt, hourly employee in the State of California
5 (“Aggrieved Employees”). There are approximately 505 Aggrieved
6 Employees.

7 (3) Service Award of \$10,000 to Plaintiff as consideration for his service on behalf of the LWDA
8 and Aggrieved Employees, and for a **general** release of all claims he may have against
9 Defendant arising out of her employment.

10 (4) Reasonable attorneys’ fees and costs under Labor Code section 2699(g) for Plaintiff’s
11 Counsel’s successful prosecution and resolution of this action. Plaintiff requests \$66,666.67
12 in attorneys’ fees and up to \$10,887.81 in costs for their counsel, Sullivan & Yaeckel Law
13 Group, APC and Capstone Law APC (“Plaintiff’s Counsel”).

14 (5) Settlement Administration Costs of approximately \$5,000 to ILYM Group, Inc.

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

21 For these reasons, Plaintiff respectfully requests that the Court approve the Settlement and enter the
22 proposed Order Approving the PAGA Settlement Agreement and the proposed Judgment.

23 **II. FACTS AND PROCEDURE**

24 **A. Brief Overview of the Litigation**

25 Defendant is a California Limited Liability Company headquartered in Los Alamitos, California.
26 Defendant is a tire retailer. Plaintiff worked for Defendant as a non-exempt employee from approximately
27 September 30, 2021 through November 11, 2021 in Riverside, California. (Yaeckel Decl. ¶4).
28

1 Plaintiff filed this action against Defendant on August 3, 2022 in the California Superior Court, County
2 of Riverside. The Complaint seeks civil penalties under the PAGA for violations of the following Labor Code²
3 sections: (1) Sections 1198 and 512 for Defendant's alleged violation of establishing workings conditions
4 below the standard of the applicable Wage Order and alleged violation of meal and rest periods; (2) Section
5 1197 and 510 for Defendant's alleged failure to provide all compensation, including minimum wage and
6 overtime compensation; (3) Section 510 for Defendant's alleged failure to provide aggrieved employees with
7 full and accurate compensation, including overtime compensation; (4) Section 226(a) for Defendant's alleged
8 failure to provide accurate and complete wage statements to Plaintiff and all other aggrieved employees; (5)
9 Section 2802 for Defendant's alleged failure to reimburse aggrieved employees for all business expenses
10 necessarily incurred; (6) Sections 201, 202, 203 for Defendant's alleged failure to pay all earned wages upon
11 termination and Sections 226.7, 510, 512, 1197, and 2802 for Defendant's alleged failure to provide accurate
12 and complete compensation to aggrieved employees; (7) Section 1198 and California Code of Regulations, title
13 8, section 11040(14)(A) for Defendant's alleged failure to provide suitable seats to all working employees when
14 the nature of the work reasonably permitted the use of seats; and (8) Sections 221 and 450 for Defendant's
15 alleged violation of requiring Plaintiff and other employees to purchase company products, such as uniforms.
16 (Yaeckel Decl. ¶12).

17 **B. Plaintiff's Counsel Conducted a Thorough Investigation Into the Factual and Legal**
18 **Issues Implicated by Plaintiff's Claims**

19 The Parties' settlement is the product of a thorough investigation into the factual and legal
20 issues implicated by Plaintiff's claims and Defendant's defenses. For example, prior to filing the
21 action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing their action
22 against Defendant for Labor Code violations. Plaintiff was intimately familiar with Defendant's labor
23 policies and practices, and over the course of multiple interviews, knowledgeably summarized those
24 policies and practices to Plaintiff's Counsel. During those conversations, they explained how the
25 policies and practices were instituted and provided valuable insight into how they gave rise to the
26 alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff's Counsel
27
28

²Unless indicated otherwise, further statutory references are to the California Labor Code.

1 determined that there were legally sufficient grounds for pursuing an action against Defendant.
2 (Yaeckel decl. ¶5).

3
4 Plaintiff's Counsel also prepared detailed letters to notify the LWDA of Plaintiff's intent to
5 seek civil penalties recoverable under PAGA for Labor Code violations. Significant research and
6 effort were expended to prepare PAGA notices that was consistent with the developing legal
7 requirements so as to withstand any challenge from Defendant regarding the notice's sufficiency.
8 And in preparation for drafting the Complaints, Plaintiff's Counsel conducted their own preliminary
9 investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
examination of Plaintiff's personnel files and associated records. (Yaeckel decl. ¶7).

10 Following the filing of the actions, and in response to Plaintiff's formal and then informal discovery
11 requests, Plaintiff's Counsel received a considerable amount of documents and data, including employee
12 demographic data, a sample of time and pay records, and Defendant's policies and procedures manuals which
13 covered a broad range of topics including, *inter alia*, employee clock-in policies and procedures, meal
14 periods/rest periods, overtime & premium pay, etc. The document and data exchanges allowed Plaintiff's
15 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to
16 recovery, and ultimately enabled Plaintiff's Counsel to make an independent assessment of the reasonableness
17 of the settlement's terms. (YaeckelDecl. ¶8).

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

26 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
27 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
28 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Aggrieved

1 Employees in light of all known facts and circumstances, including the risk of significant delay and
2 uncertainty associated with litigation, and various defenses asserted by Defendant. (Yaeckel Decl.
3 ¶¶ 25, 31, 32).

4 **C. The Parties Settled After Mediation and Continued Litigation**

5 Following the above investigation and evaluation of their respective claims and defenses, the Parties
6 participated in full-day mediation with Michael Young, Esq., an experienced mediator of wage and hour
7 actions, on December 2, 2022. (Yaeckel Decl. ¶ 6). Mr. Young helped to manage the Parties' expectations and
8 provided a useful, neutral analysis of the issues and risks to both sides. While the case did not initially settle,
9 follow up efforts by Mr. Young eventually led to an agreement to settle the Action in November of 2024. The
10 terms of the settlement are now set forth in complete and final form in the PAGA Settlement Agreement. (*Id.*,
11 Ex. 1.) At all times, the Parties' negotiations were adversarial and non-collusive. The Settlement therefore
12 constitutes a fair, adequate, and reasonable compromise of the claims at issue. (Yaeckel Decl. ¶ 6).

13 **D. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiff's Claims**

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

15 The Settlement Agreement provides that Defendant will pay a total of \$200,000 to settle this Action.
16 (Settlement Agreement ¶ 1.10). From this amount, payments will be made to the LWDA and Aggrieved
17 Employees, to Plaintiff Pineda as compensation for her service on behalf of the State and for a general release
18 of claims arising out of her employment with Defendant, to Plaintiff's Counsel for their attorneys' fees and
19 litigation costs, and to the Settlement Administrator (ILYM Group, Inc.) for settlement administration costs.
20 (Settlement Agreement ¶ 1.15).

21 The resulting balance will be distributed to the LWDA and Aggrieved Employees. The LWDA will
22 receive approximately \$80,584.14 and the Aggrieved Employees will receive approximately \$26,861.38.³
23 (Yaeckel Decl. ¶ 9). The Aggrieved Employees encompassed by the proposed Settlement are all persons who,
24 at any time during the period from May 27, 2021 through the date of Approval of the Settlement, worked for
25 Defendant as a non-exempt, hourly employee in the State of California. (Settlement Agreement at ¶¶ 1.4 and
26

27

³These numbers differ slightly than the numbers in the proposed settlement agreement because
28 Plaintiff's Counsel is seeking slightly less costs, which means the LWDA and the Aggrieved
Employees will be entitled to slightly more compensation, as reflected here.

1 1.19). There are approximately 505 Aggrieved Employees. (*Id.* at ¶ 4.1.). If you divide the \$26,861.38 in
2 penalties between 505 employees, it results in an average payout of **\$53.19** per employee. (Yaeckel Decl. ¶ 9).
3 The actual payout per employee will vary based on the total pay periods worked by each employee during the
4 PAGA period. (*Id.*)

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

6 Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual
7 allocations will be calculated on a pro-rata basis using the number of pay periods worked by each employee.
8 Defendant will provide the total number of pay periods worked by each Aggrieved Employee and the total
9 number of pay periods worked by all Aggrieved Employees during the Settlement Period. (Settlement
10 Agreement ¶ 4.2). The Settlement Administrator will calculate each Aggrieved Employee's payment using the
11 proportional number of pay periods during which the employee worked. Thus, the Settlement Administrator
12 will perform the following calculation to calculate individual payments: Settlement Payment = (25% of PAGA
13 Penalties Fund) × (pay periods worked by individual Aggrieved Employee during the Settlement Period ÷ total
14 pay period Aggrieved Employees during the Settlement Period). (*Id.* at ¶¶ 3.2.3.1 - 3.2.3.2). This is a fair and
15 equitable means of allocating the penalties. Aggrieved Employees who worked for a longer duration during
16 the Settlement Period will receive proportionally larger payments than those employees who worked for shorter
17 durations.

18 **3. The Settled PAGA Claims**

19 Upon entry of the Order and Judgment, the LWDA and Plaintiff, on behalf of themselves and the
20 Aggrieved Employees to the fullest extent allowed by law, will be deemed to have fully, finally, and forever
21 released, relinquished, and discharged each and all of the Released Parties from any and all claims against
22 Defendant and the Released Parties for PAGA civil penalties under the California Labor Code, Wage Orders,
23 regulations, and/or other provisions of law alleged or which could have been alleged to have been violated in
24 the Action with respect to Aggrieved Employees based on the allegations pleaded in the Action during the
25 Settlement Period. The exact release is found at paragraph 5 of the Settlement Agreement.

26 Additionally, Plaintiff Elizer Pineda has agreed to a broader general release of all claims of any kind
27 against Defendant. (*Id.* at ¶ 5.1.) Mr. Pineda is not receiving any additional consideration for the settlement.
28 (Yaeckel Decl. ¶ 45).

1 **III. ARGUMENT**

2 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and**
3 **Fulfill PAGA's Underlying Purpose To Benefit the Public**

4 The California legislature enacted PAGA to “augment the limited enforcement capability of the
5 [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” *Iskanian*,
6 59 Cal. 4th at 383. This statute authorizes an employee to bring an action for “civil penalties on behalf of the
7 state against his or her employer for Labor Code violations committed against the employee and fellow
8 employees” *Id.* at 360. The goal of a PAGA enforcement action is to impose civil penalties for Labor Code
9 violations “significant enough to deter violations.” *Id.* at 379.

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

19 Moreover, the PAGA statute distinguishes and preserves the right of employees to separately (or
20 concurrently) pursue their own causes of action against their employers and to recover other available federal
21 and state remedies. Cal. Lab. Code § 2699(g)(1); *see Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123
22 (9th Cir. 2014) (explaining the differences between the finality in class action judgments and the limited res
23 judicata effect of PAGA judgments). “Unlike a class action seeking damages or injunctive relief for injured
24 employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government
25 that otherwise may not have been assessed and collected by overburdened state enforcement agencies.”
26 *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222, 1233 (C.D. Cal. 2011).

27 The Court’s evaluation of the settlement should therefore not focus on “restitution”—the average
28 recovery per aggrieved employee, as in a class action settlement, but rather take into account PAGA’s statutory

1 purpose in deterring Labor Code violations through the imposition of civil penalties, with special attention on
2 whether the relief is “genuine and meaningful.” *Salazar*, 2017 WL 1135801 at *2.

3 **B. Nature of the Alleged Violations**

4 Plaintiff alleges that Defendant failed to: (1) provide Aggrieved Employees with legally compliant meal
5 and rest periods; (2) pay Aggrieved Employees minimum wages for all time spent under its control; (3) pay
6 Aggrieved Employees overtime wages for all time spent under its control; (4) provide Aggrieved Employees
7 with accurate, itemized wage statements/maintain payroll records; (5) reimburse Aggrieved Employees for their
8 necessary business expenses; (6) pay Aggrieved Employees wages upon separation/termination; (7) provide
9 adequate seating and resting facilities; and (8) abide by Labor Code sections 221 and 450 by requiring Plaintiff
10 and other employees to purchase company products. (Yaeckel Decl. ¶12).

11 **1. Meal and Rest Period Violations**

12 Plaintiff alleges that Defendant systematically failed to provide legally compliant meal periods to non-
13 exempt employees during the Settlement Period, through understaffing, not providing proper break coverage,
14 and requiring certain employees to work through their meal periods, skip their meal periods, or cut short their
15 meal periods. Defendant allegedly knew, or should have known, that as a result of its policies, Plaintiff and
16 other Aggrieved Employees were required to perform some of their assigned duties during meal periods and
17 that Defendant did not pay meal period premium wages when meal periods were interrupted, taken late, or not
18 taken. (Yaeckel Decl. ¶13).

19 Furthermore, this alleged systematic failure extended to rest periods as well, requiring employees to
20 work during rest periods and pressuring employees to either skip, or cut short, rest periods based on work
21 volume and coverage issues. Moreover, Defendants’ policies and practices preclude a “duty free” meal and rest
22 period due to the fact that employees were required to be “on-call” and to respond to the employer immediately
23 and remain on the premises at all times during meal and rest periods. (Yaeckel Decl. ¶14).

24 **2. Minimum Wage Violations**

25 Plaintiff alleges that Defendant failed to pay minimum wages to employees for all time spent
26 under Defendant’s control. This allegation is based on the following alleged facts: Defendants’
27 policies of (1) altering (and deducting) the work-time reported by its employees prior to payment,
28 (2) failing to properly retain accurate time records, and (3) failing to provide compensation for all

1 time worked by the employees, or in control of the employer. Additionally, Defendants would often
2 require Plaintiff and other employees, to work extended hours (beyond their scheduled hour and
3 during meal periods), without compensation. (Yaeckel Decl. ¶15).

4 **3. Overtime Violations**

5 Plaintiff alleges that Defendant failed to pay Plaintiff and all other Aggrieved Employees all
6 compensation, including overtime compensation, due in violation of, among other statutes, Labor
7 Code section 510. These violations occurred due to Defendants' illegal policies, referenced above,
8 whereby employees experienced monetary under-compensation. The systematic failure to provide
9 proper overtime compensation is a violation of California law. Additionally, Defendants also failed
10 to calculate the correct regular rate of pay for purposes of paying overtime compensation, as
11 Defendants do not include the value of non-discretionary compensation and other employee benefits
12 when determining the overtime rate of pay owed to employees. (Yaeckel Decl. ¶16).

13 **4. Wage Statement Violations**

14 Plaintiff alleges that Defendants failed to provide Plaintiff and all other Aggrieved
15 Employees with accurate itemized wage statements in violation of, among other statutes, Labor Code
16 section 226. These violations include, but are not limited to, Defendants' failure to accurately identify
17 all applicable regular and overtime (including double-time) rates of pay in violation of section
18 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendants also
19 failed to accurately list "all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate," in violation of 226(a)(9). Defendants
21 also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code
22 section 226(a)(2). For example, Defendants had notice of employees working outside of their
23 scheduled and/or reported hours, as well as within Meal and Rest Periods, but did not provide
24 compensation. (Yaeckel Decl. ¶17).

25 **5. Business Expense Reimbursement Violations**

26 California Labor Code section 2802 provides that an employer must reimburse employees
27 for all necessary expenditures and losses incurred by the employee in the performance of his or her
28 job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of

1 doing business and operating expenses on to their employees. Plaintiff alleges that Defendant failed
2 to reimburse their employees for all necessary business expenditures incurred in direct consequence
3 of the discharge of their duties. These expenditures are the result of, *inter alia*, Defendants' standard
4 policies which requires its employees to incur mileage and to use their own cell phones for work-
5 related purposes, without reimbursement. (Yaeckel Decl. ¶18).

6 **6. Pay Wages Upon Separation/Termination Violations**

7 Plaintiff alleges that Defendants failed to provide Plaintiff and other Aggrieved Employees
8 with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code
9 sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants'
10 willful failure to provide accurate and complete compensation to aggrieved employees under Labor
11 Code sections 226, 7, 510, 512, 1197, and 2802, as set forth above. Additionally, Defendants failed
12 to timely pay Plaintiff, and other Aggrieved Employees, all wages actually owed at the time of
13 termination, including but not limited to, all vacation pay owed. (Yaeckel Decl. ¶19).

14 **7. Provide Adequate Seating and Resting Facilities Violations**

15 Plaintiff alleges that Defendant failed to provide suitable seats to all working employees
16 when the nature of the work reasonably permitted the use of seats, in violation of Labor Code section
17 1198 and California Code of Regulations, title 8, section 11040(14)(A). Plaintiff and other
18 nonexempt employees were required to stand throughout their work periods. Additionally, when
19 Plaintiff and other employees were not engaged in the active duties of their employment and/or the
20 nature of the work required standing, an adequate number of suitable seats were not placed in
21 reasonable proximity to the work area and/or employees were not permitted to use such seats when
22 it did not interfere with the performance of their duties, in violation of California Code of
23 Regulations, title 8, section 11040(14)(B). During rare occasions when Plaintiff was able to take a
24 rest period, Defendants did not provide an area with adequate seating, instead Plaintiff and other
25 nonexempt employees had to sit on make-shift seats erected from dirty tires in the facilities storage
26 room, in violation of California Code of Regulations, title 8, section 11040(13)(B). (Yaeckel Decl.
27 ¶20).

28 ///

1 **8. Requirement to Purchase Company Products Violations**

2 California Labor Code section 221 prohibits an “employer to collect or receive from an
3 employee any part of wages theretofore paid by said employer to said employee.” California Labor
4 Code section 450 specifically states, “No employer, or agent or officer thereof, or other person, may
5 compel or coerce any employee, or applicant for employment, to patronize his or her employer, or
6 any other person, in the purchase of any thing of value.” Plaintiff alleges that Defendant violated
7 Labor Code section 221 and 450 by requiring Plaintiff and other employees to purchase company
8 products, such as uniforms. Defendants would often take this remuneration directly from its
9 employees by and through their paychecks. (Yaeckel Decl. ¶21).

10 **C. The Number of Alleged Individual Violations, Including Both the Length of the**
11 **Relevant Employment Period and the Number of Employees Allegedly**
12 **Employed During that Period**

13 Based on information and evidence produced by Defendant during discovery and again in the verified
14 agreement, Plaintiffs estimate that the settlement covers 505 individuals and a total of approximately 10,606
15 pay periods during the Settlement Period.⁴ Plaintiffs allege that each and every pay period had at least one form
16 of Labor Code violation. This information is summarized in the table below:

17 **Principal Pay Period Data**

18 Number of Aggrieved Employees	Approximately 505
19 Number of Former Aggrieved Employees	Approximately 200
20 Length of PAGA Period	May 27, 2021 through the date of Approval of the Settlement
21 Total Number of Pay Periods At Issue	Approximately 10,606

22
23
24 ⁴ Please Note: The “Settlement Period,” also known as the “PAGA Period,” is from May 27, 2021
25 through the date of Approval of the Settlement, subject to an escalator clause. The Escalator Clause
26 stipulates: “So long as the actual pay periods at the time of court approval do not exceed 10,606 plus
27 10% (11,666), then Defendant shall not pay any further money above the Gross Settlement Amount.
28 However, if the actual pay periods at time of court approval exceed 10,606 plus 10% (11,666),
Defendant will need to decide either to pay a pro rata amount for each additional pay period in excess
of 10,606 plus 10% (11,666) or have the release period end on the date when up to the 10% is
reached (no greater than 11,666).” (See Settlement Agreement, ¶8).

1
2 **D. Total Amount of Penalties for Which Defendant Is Potentially Liable If Plaintiff's**
3 **Allegations Were All Proven As to All Alleged Labor Code Violations**

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

8 However, a growing number of courts have found that the “subsequent” penalty under PAGA applies
9 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
10 *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil
11 penalties” because the defendant was not given notice by the Labor Commissioner when the “subsequent”
12 violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSCKX, 2019 WL 2436998, at *5 (C.D.
13 Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner
14 notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the
15 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of
16 \$200 for subsequent violations will not be calculated to determine the amount in controversy”); *Chen v.*
17 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
18 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing a
19 violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine Components*
20 *Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts
21 have held that employers are not subject to heightened penalties for subsequent violations unless and until a
22 court or commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
23 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

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

28 **Meal Period and Rest Period Violations:** Plaintiff alleges that all pay periods had either meal period

1 or rest period violations. Defendant's exposure for PAGA penalties would therefore be \$1,060,600= 10,606
2 Pay Periods x \$100 penalties. (Yaeckel Decl. ¶22).

3 **Minimum Wage Violations:** Plaintiff alleges that all pay periods had minimum wage violations.
4 Defendant's exposure for PAGA penalties would therefore be \$1,060,600= 10,606 Pay Periods x \$100
5 penalties. (*Id.*).

6 **Overtime Violations:** Plaintiff alleges that all pay periods had overtime violations. Defendant's
7 exposure for PAGA penalties would therefore be \$1,060,600= 10,606 Pay Periods x \$100 penalties. (*Id.*).

8 **Wage Statement Violations:** Plaintiff alleges that Defendant issued Aggrieved Employees
9 non-compliant wage statements during every pay period. Defendant's exposure for PAGA penalties
10 would therefore be \$1,060,600= 10,606 Pay Periods x \$100 penalties. (*Id.*).

11 **Business Expense Reimbursement Violations:** Plaintiff alleged that Aggrieved Employees had
12 unreimbursed business expenses for Defendants' standard policies which required its employees to incur
13 mileage and to use their own cell phones for work-related purposes without reimbursement. Defendant's
14 exposure for PAGA penalties would therefore be \$1,060,600= 10,606 Pay Periods x \$100 penalties. (*Id.*).

15 **Pay Wages Upon Separation/Termination Violations:** Plaintiff alleges that Defendant is
16 liable for penalties in connection with its failure to pay all wages upon separation/termination.
17 Defendant's exposure for PAGA penalties would therefore be \$20,000= 200 Former Aggrieved
18 Employees x \$100 penalties. (*Id.*).

19 **Provide Adequate Seating and Resting Facilities Violations:** Plaintiff alleges that
20 Defendant is liable for penalties in connection with its failure to provide suitable seats to all working
21 employees when the nature of the work reasonably permitted the use of seats. Defendant's exposure
22 for PAGA penalties would therefore be \$1,060,600= 10,606 Pay Periods x \$100 penalties. (*Id.*).

23 **Requirement to Purchase Company Products Violations:** Plaintiff alleges that Defendant
24 is liable for penalties in connection with its requirement for employees to purchase company
25 products. Defendant's exposure for PAGA penalties would therefore be \$1,060,600= 10,606 Pay
26 Periods x \$100 penalties. (*Id.*).

27 In summary, the total amount of penalties for which Defendant is potentially liable if Plaintiff's
28 allegations were all proven at trial is approximately \$7,444,200. (*Id.*).

1 **E. The Extent To Which The Alleged Violations Would Likely Be Found To Be**
2 **True At Trial, Considering The Weight Of Evidence, The Clarity Of Applicable**
3 **Law And The Strength Of Any Factual Or Legal Defenses Likely To Be**
4 **Asserted By The Defendant**

5 Although Plaintiff maintains his strong belief in the underlying merits of his claims, Plaintiff's Counsel
6 acknowledge that wage and hour cases on behalf of low wage workers can difficult to prove at trial, and that
7 success at trial is far from certain. For settlement purposes, therefore, Plaintiff determined a more realistic range⁵
8 of recovery by discounting Defendant's maximum potential exposure by the risks and uncertainties of
9 continued litigation, and by the strengths of Defendant's many defenses to the merits of Plaintiff's claims. *See*
10 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408, 112 Cal. Rptr. 3d 324, 331
11 (2010) ("an informed evaluation cannot be made without an **understanding** of the amount that is in controversy
12 and the **realistic range** of outcomes of the litigation.") (emphasis added.)

13 **Defenses to Manageability:** Defendant would have argued that any trial of this case would not be
14 manageable because any number of mini-trials would be required to make a liability **determination** on the
15 numerous claims at issue. *See Williams v. Super. Ct.*, 3 Cal. 5th 531, 559 (2017) (discussing a PAGA
16 representative plaintiff's need to "render a trial of the action manageable"); *Amiri v. Cox Commc'ns Cal., LLC*,
17 272 F. Supp. 3d 1187, 1194 (C.D. Cal. 2017) (striking PAGA representative claims as "unmanageable"
18 because "liability determinations [as to allegedly aggrieved employees] will required **individualized** inquiries");
19

20 ⁵ Federal district courts also recognize that there is an inherent "range of reasonableness" in
21 determining whether to approve a settlement "which recognizes the uncertainties of law and fact in
22 any particular case and the concomitant risks and costs necessarily inherent in taking any litigation
23 to completion." *Id.* at 188, *quoting Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). *See In re*
24 *Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); *see also Nat'l Rural Telecomm.*
25 *Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed
26 settlement may be acceptable even though it amounts to only a fraction of the potential recovery");
27 *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) ("settlement
28 amount's ratio to the maximum potential recovery need not be the sole, or even dominant,
 consideration when assessing settlement's fairness"); *In re IKON Office Solutions, Inc. Sec. Litig.*,
 194 F.R.D. 166, 184 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively
 small percentage of the most optimistic estimate does not, in itself, weigh against the settlement;
 rather the percentage should be considered in light of strength of the claims"); *Officers for Justice*
 v. Civil Serv. Comm., 688 F. 2d 615, 628 (C.A. Cal. 1982) (it is "the complete package, taken as a
 whole rather than the individual component parts, that must be examined for overall fairness").

1 *Ortiz v. CVS Caremark Corp.*, 2014 WL 1117614, at *3-5 (N.D. Cal. Mar. 19, 2014) (striking PAGA claims
2 as unmanageable because a “multitude of individualized assessments would be necessary”).

3 **Meal and Rest Period Claim Defenses:** Defendant would have argued at trial that it has no
4 obligation to “guarantee” or “ensure” that meal periods are taken by all employees at all times. *Brinker*
5 *Restaurant Corporation v. Super. Ct.*, 53 Cal. 4th 1004, 1040 (2012) (employers are “not obligated to police
6 meal breaks and ensure no work thereafter is performed”). Rather, an employer satisfies (as Defendant would
7 argue) its obligation to provide meal periods if “it relieves its employees of all duty, relinquishes control over
8 their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does
9 not impede or discourage them from doing so.” *Id.* Defendant argued that there is no “basis in the wage order
10 or statute” for the notion “that an employer must ensure that no work is done – i.e., prohibit work” during a
11 meal period. *Id.* at 1038; *see also Murphy*, 40 Cal. 4th at 1104 (finding a violation occurs only if the employee
12 is “forced to forgo his or her meal period”).

13 Defendant would have argued at trial that “to assert a meal break claim, the employee must show that
14 he was **forced to forego** his meal breaks as opposed to merely showing that he did not take them.” *Nguyen v.*
15 *Baxter Healthcare Corp.*, No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *5 (C.D. Cal. Nov. 28, 2011)
16 (emphasis in original); *see also Brinker*, 53 Cal. 4th at 1034; *Dailey v. Sears, Roebuck & Co.*, 214 Cal. App.
17 4th 974, 1000-02 (2013); *Gonzalez v. Officemax N. Am.*, No. CV 07-04839 JVS MLGX, 2012 WL 5473764,
18 at *5 (C.D. Cal. Nov. 5, 2012). Thus, Defendant would have argued that courts reject certifying meal break
19 claims where no common policy denies breaks on a class-wide basis. *See, e.g., Purnell v. Sunrise Senior Living*
20 *Mgmt., Inc.*, No. SA CV10-00897 JAK, 2012 WL 1951487, at *8 (C.D. Cal. Feb. 27, 2012); *Washington v.*
21 *Joe’s Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (**denying** certification because “an individualized
22 inquiry will be required to determine whether any employee failed to take a meal break because he/she was too
23 busy”); *Salazar v. Avis Budget Grp., Inc.*, 251 F.R.D. 529, 533 (S.D. Cal. 2008); *Ordonez v. Radio Shack, Inc.*,
24 No. CV 10-7060-CAS JCGX, 2013 WL 210223, at *8 (C.D. Cal. Jan. 17, 2013); *Gonzalez*, 2012 WL 5473764,
25 at *5 (holding that “[why] any particular employee missed any particular break requires, ineluctably,
26 individualized fact finding”).

27 Defendant would have also argued at trial that absent a shift-by-shift, break-by-break, employee-by-
28 employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break

1 was taken; and (2) if not, why not. Defendant also would have argued that even if employees recorded every
2 rest break ever taken, their time records would still be insufficient to prove liability. For each instance where
3 an employee did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would
4 still have to determine why that particular employee had less than their full allotment of rest time. Defendant
5 accordingly would have argued that rest break claims are inherently individualized in nature because employers
6 only need to “authorize and permit” breaks; they need not ensure that rest breaks are taken. *Brinker*, 53 Cal.
7 4th at 1004. To succeed, “[a]n employee must show that the employer prevented the employee from taking
8 breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient.” *Reece v. Unitrin Auto*
9 *& Home Ins. Co.*, No. 5:11-CV-03960 EJD, 2013 WL 245452, at *5 (N.D. Cal. Jan. 22, 2013) (rejecting claim
10 that the work structure made taking rest breaks impossible, because plaintiff failed to show that the employer
11 prevented such breaks); *Drenckhahn v. Costco Wholesale Corp.*, No. 2:08-CV-01408-JHN, 2011 WL
12 3754659, at *3 (C.D. Cal. Aug. 24, 2011) (“although employers must provide employees with meal and rest
13 breaks under Cal. Lab. Code § 512(a), they need not guarantee that employees take breaks”).

14 Defendant would have also argued that *Augustus* did not specifically address the requirement that
15 employees remain at the worksite during their rest period; rather, *Augustus* addressed whether employers could
16 satisfy their obligation to relieve employees from duties and control during rest periods while still having to
17 remain on-call.

18 **Minimum Wage and Overtime Claim Defenses:** Defendant would have argued at trial that its labor
19 policies prohibit off-the-clock work, that employees were properly compensated for all time worked, and any
20 time worked off-the-clock would not be reflected in the time records, making it practically impossible to
21 determine whether any Aggrieved Employee worked off-the-clock without **engaging** in thousands of
22 individualized inquiries that would make trial on a representative basis unmanageable. *See Brinker*, 53 Cal. 4th
23 at 1051-52 (holding that in the absence of a uniform, companywide policy, proof of liability is individual);
24 *Amey v. Cinemark USA Inc.*, No. 13-CV-05669-WHO, 2015 WL 2251504, at *12 (N.D. Cal. May 13, 2015)
25 (denying certification of off-the-clock claim because plaintiffs’ work requirements depended on the manager);
26 *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D. Cal. Nov. 12, 2014)
27 (denying certification based on policy requiring employees to finish closing duties within 30 minutes, because
28 the court would still be left with numerous individual issues); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516,

1 532-33 (C.D. Cal. 2011) (denying certification of off-the-clock claim).

2 Defendant would have argued that for Plaintiff to establish that Defendant failed to pay Aggrieved
3 Employees for all hours worked, Plaintiff would have had to prove that Defendant was aware that they were
4 working hours for which they were not compensated. For example, in *Forrester v. Roth's I.G.A. Foodliner,*
5 *Inc.*, 646 F.2d 413 (9th Cir. 1981), the Ninth Circuit held that “where an employer has no knowledge that an
6 employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents
7 the employer from acquiring knowledge of the overtime work, the employer’s failure to pay for the overtime
8 hours is not a violation [of overtime requirements].” *Id.* at 414.

9 **Wage Statement Claim Defenses:** Defendant would have argued at trial that wage statement claims
10 are nothing but technical violations for which Aggrieved Employees suffer no injury. Before Section 226(e)
11 was amended, the dispositive issue was whether “suffering injury” was satisfied by the deprivation of a legal
12 right (i.e., an employer’s provision of non-compliant wage statements), or by consequential damages caused
13 by the non-compliant wage statements. Employers had frequently prevailed in arguing for the latter
14 interpretation. Even after the enactment of section 226(e), some courts have held that this amendment merely
15 clarifies existing law and have held that plaintiffs must demonstrate actual injury. *See Loud v. Eden Med. Ctr.*,
16 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage
17 statement claim because plaintiff could not show injury due to defects and that incorrect wage information is
18 not willful).

19 **Business Expense Claim Defenses:** Defendants would have argued at trial that an employer
20 owes no duty to reimburse employees for using their cell phone for work-related purposes if the
21 employer did not mandate that the employee use their personal cell phone. Defendant would claim
22 that the expenses were not “necessary” under Cal. Lab. Code § 2802. The California Supreme Court
23 emphasized that reimbursement under § 2802 applies only to expenses that are “necessary” to
24 perform job duties. *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)(“In
25 calculating the reimbursement amount due under section 2802, the employer may consider not only
26 actual expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’
27 which in turn depends on the reasonableness of the employee’s choices.”).

28 **Pay Wages Upon Separation/Termination Claim Defenses:** Defendant would have argued

1 at trial that no waiting-time penalties can be awarded unless the failure to pay wages is “willful,” an
2 element that Plaintiff acknowledges would have been difficult to prove. *See* Cal. Code Regs. tit. 8,
3 § 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs
4 when an employer intentionally fails to pay wages to an employee when those wages were due.”).
5 The California Supreme Court ruled that employers are shielded from penalties when they
6 “reasonably and in good faith” believe that they complied with wage laws. *Naranjo v. Spectrum*
7 *Security Services, Inc.*, 15 Cal. 5th 1056, 1065 (2024).

8 **Provide Adequate Seating and Resting Facilities Defenses:** Defendant would have argued
9 at trial that the nature of the work and totality of the requirements does not entitle the employees to
10 a seat. *Kilby v. CVS Pharmacy, Inc.*, 63 Cal. 4th 1, 18 (2016) (“When evaluating whether the ‘nature
11 of the work reasonably permits the use of seats,’ courts must examine subsets of an employee’s total
12 tasks and duties by location ... and consider whether it is feasible for an employee to perform each
13 set of location-specific tasks while seated.”). Defendant would argue that a seat would interfere with
14 the duties and therefore, is not feasible. Furthermore, Defendant would argue “Section 14(B) does
15 not require seats to be provided if doing so would interfere with employees’ performance of their
16 duties. (See Cal. Code Regs., tit. 8, § 11070, subd. 14(B).)” *Laface v. Ralphs Grocery Co.*, 75
17 Cal.App.5th 388, 405 (2022).

18 **Requirement to Purchase Company Products Defenses:** Defendant would have argued
19 at trial that they did not mandate the purchase of a uniform as a job condition. *Cf. Harris v. Vector*
20 *Marketing Corp.*, 2011 U.S. Dist. LEXIS 48878, *16 (case where plaintiff alleged she was forced
21 to buy a knife set to sell products, raising a Cal. Lab. Code section 450 claim). Defendant would
22 argue that Plaintiff has the burden to prove that Defendant forced employees to purchase their
23 uniforms. *Arias v. Superior Court*, 46 Cal. 4th 969, 987 (2009) (“Recovery of civil penalties under
24 the act requires proof of a Labor Code violation (Lab. Code, § 2699, subds. (a), (f)), and for some
25 Labor Code violations there are remedies in addition to civil penalties (see, e.g., Lab. Code, §§ 98.6
26 [lost wages and work benefits], 226.7 [one additional hour of pay]; *Murphy v. Kenneth Cole*
27 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [56 Cal.Rptr.3d 880, 155 P.3d 284]).”).

28 ///

1 **F. The Total Amount of Penalties for Which The Defendant Would Likely Be**
2 **Found Liable At Trial**

3 The PAGA gives the Court wide latitude to reduce the amount of civil penalties “based on the facts
4 and circumstances of a particular case” when “to do otherwise would result in an award that is unjust, arbitrary
5 and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA penalties, courts have
6 considered issues including whether the employees suffered actual injury from the violations, whether the
7 defendant was aware of the violations, and the employer’s willingness to fix the violation. *Carrington v.*
8 *Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.21% of the
9 maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien*
10 *Inc.*, No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

11 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties
12 in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—or 0.21% of the
13 maximum—and stated that this reduction was warranted because imposing the maximum penalty would be
14 “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with meal period
15 obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517. The
16 Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529.

17 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
18 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Aguirre v. Genesis*
19 *Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035, at *3 (C.D. Cal. Dec. 30, 2013) (reducing the
20 original penalty of \$1.8 million by 72% to \$500,000 noting among other reasons that the maximum penalty
21 would be punitive without evidence that the employer intentionally violated the wage order); *see also, e.g.,*
22 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
23 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v.*
24 *Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial
25 court decision denying any civil penalties where violations had been proven, remanding for the trial court to
26 exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No.
27 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for
28 violation of California Labor Code § 226 as redundant with recovery on a class basis pursuant to California

1 Labor Code § 226, directly); *Fleming v. Covidien Inc.*, No. EDCV 10-01487 RGK (OPx), 2011 WL 7563047,
2 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000.00); *Aguirre v.*
3 *Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
4 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000.00, after rejecting numerous other
5 PAGA claims).

6 As discussed above, Plaintiffs estimated Defendant's *potential* exposure for PAGA civil penalties at
7 approximately \$7,444,200. (Yaeckel Decl. ¶22). However, Plaintiffs estimated that their odds of prevailing
8 at trial on all of the alleged Labor Code violations at 15%. Discounting by the risks of continued litigation,
9 therefore, Plaintiffs would have recovered only approximately \$1,116,630 in penalties. (*Id.* at ¶23).

10 And even if Plaintiff had recovered maximum PAGA penalties at trial, the Court could have exercised
11 its discretion to reduce the penalties because Defendant's policies facially comply with the Labor Code. If the
12 Court had reduced the maximum penalties by the same percentage affirmed in *Carrington*, Plaintiffs would
13 have recovered only approximately \$15,632.82 in PAGA penalties (i.e., $0.21\% \times \$7,444,200 = \$15,632.82$).
14 Accordingly, considering the issues, defenses, and the risk, a \$200,000 settlement for a limited release of
15 PAGA penalties is a fair and just result and furthers PAGA's objectives. Courts throughout the county routinely
16 approve settlements that provide a similar discounted range of the maximum potential recovery. *See, e.g., In*
17 *re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable
18 settlement amount can be 1.6% to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472
19 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages
20 were approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla. 1972) (approving 8% of
21 damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014)
22 (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial
23 approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re*
24 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008).

25 **G. The Court Should Award the Requested Attorneys' Fees in the Amount of One-**
26 **Third of the Gross Settlement Fund**

27 For the reasons discussed in detail below, an award of attorneys' fees in the amount of one-third of the
28 gross settlement fund is fair and reasonable, and in line with what other California courts, both state and federal,

1 have awarded in settlements of similar litigation.

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

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

18 Those benefiting from the recovery of the fund, in this case some depositors and eventually the
19 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
proportionately. To the extent the judgment relies upon section 1021.5 for recovery of attorney
fees, it must be modified to confine the award of fees to the common fund theory.

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

23 Likewise, through the successful efforts of Plaintiff and his attorneys, a common fund was created in
24 the amount of \$200,000 for the benefit of the employees and the State of California. Thus, these beneficiaries
25 must bear their share of the costs and attorneys' fees, to be deducted from the gross settlement fund under the
26 common fund theory. *Id.* Such fees are deducted as a percentage of the settlement amount. See, e.g., *Boeing*
27 *Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904
28 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.

1 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

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

12 As a California appellate court very recently confirmed, "fee awards in class actions average around
13 one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro*
14 *v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal.
15 App. 4th 43, 66, fn. 11 (2008)). Consistent with that observation, California state and federal courts routinely
16 award attorneys' fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*,
17 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range
18 of, awards in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that,
19 regardless whether the percentage method or the lodestar method is used, fee awards in class actions average
20 around one-third of the recovery."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An*
21 *Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies
22 of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent
23 with market rates). Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a
24 fee award representing one-third of the fund. *Laffitte*, 231 Cal. App. 4th at 506.

25 A fee award in the amount of one-third of the common fund is also reasonable because it best reflects
26 the market rate for contingency fees. *See Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19, 47 (2000)
27 ("attorneys providing the essential enforcement services must be provided incentives roughly comparable to
28 those negotiated in the private bargaining that takes place in the legal marketplace. . . ."). Fees representing one-

1 third of the recovery reflect the rate negotiated in “typical contingency fee agreements [which] provide that class
2 counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria*
3 *Secret Stores, LLC*, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008)
4 (citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34%
5 of the fund is reasonable on that basis). Because the negotiated fee structure mimics the marketplace, it is
6 reasonable and should be approved.

7 A one-third common fund⁶ attorneys’ fee award is also consistent with what courts have awarded in
8 other representative action cases. The following list shows PAGA actions where attorneys’ fees were awarded
9 on a common fund basis:

- 10 ● *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court. Case No. BC451823
11 (approving fee award from PAGA-only settlement of \$1.375M against a common fund of
12 \$3.2M (42%));
- 13 ● *Garcia v. Macv’s*. San Bernardino County Superior Court, Case No. CIVDS1516007 (33.33% fee
14 awarded on \$12,500,000 settlement if a PAGA only case);
- 15 ● *Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-CJC
16 (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);
- 17 ● *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-OC-
18 CXC (33.33% fee awarded on a PAGA only case);
- 19 ● *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137
20 (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).

21
22 ⁶ Court have also approved fees in amounts greater than one-third of the common fund. *See Charles*
23 *v. JPMorgan Chase Bank*, No. CGC-14-538933 (San Francisco County Superior Court June 18,
24 2019) (awarding plaintiffs \$2.88 million in attorneys’ fees on PAGA penalties totaling \$2.7 million);
25 *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los Angeles County Superior Court Jan.
26 3, 2019) (awarding plaintiff \$750,000 in attorneys’ fees and costs on general PAGA penalties
27 totaling \$585,000); *Salas v. Hallmark Aviation Services LP*, No. BC586585 (Los Angeles County
28 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 An award of fees from the gross settlement amount under the common fund doctrine prevents unjust
2 enrichment of those who benefit from the common fund created through the successful efforts of plaintiff's
3 counsel and furthers the important goal of attracting competent counsel to handle representative actions
4 enforcing minimum labor standards. *Laffitte*, 1 Cal. 5th at 503. In affirming the use of the common fund
5 doctrine in California, the California Supreme Court summarized the benefits of the percentage method of
6 recovery stating: "The recognized advantages of the percentage method—including relative ease of calculation,
7 alignment of incentives between counsel and the class, a better approximation of market conditions in a
8 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
9 unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that
10 should not be denied our trial courts." *Id.*

11 For all of these reasons, a common fund fee award in the amount of \$66,666.67 is fair and reasonable.

12 **H. A Lodestar Cross-Check Confirms that the Requested Attorneys' Fees Are Fair and**
13 **Reasonable**

14 The trial court may use an abbreviated lodestar "cross-check" for common fund awards if the court
15 considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to displace the
16 percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly instructed that "the
17 lodestar calculation, when used in this manner, does not override the trial court's primary determination of the
18 fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the
19 fee award." *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in *Laffitte II* emphasized that only where the
20 "multiplier calculated by means of a lodestar cross-check is **extraordinarily high or low**" should the court
21 "consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable
22 range." *Id.* (emphasis added). Accordingly, when the cross-check multiplier is within a normal range, the
23 lodestar-cross check does not provide a basis for a court to reduce the fee award. Furthermore, in conducting
24 a lodestar cross-check, the court is not "required to closely scrutinize each claimed attorney-hour." *Laffitte II*,
25 1 Cal. 5th at 505. An evaluation may be done by reviewing "counsel declarations summarizing overall time
26 spent." *Id.*

27 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
28 multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable hourly rate. *In re*

1 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested rate is
2 reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region. *PLCM Group*
3 *v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal
4 services even though party used in-house counsel). Here, Plaintiffs' Counsel's hourly rates are comparable to,
5 or less than, those charged by other class action plaintiffs' counsel and the firms defending class actions, and
6 have been approved by numerous federal and state courts. (Yaeckel Decl. ¶¶ 35-40; Perez Decl. ¶¶ 12-14).

7 Likewise, the total attorney hours expended on this action are reasonable and in line with comparable
8 cases. In determining the reasonableness of the hours expended, "the court should defer to the winning lawyer's
9 professional judgment as to how much time he was required to spend on the case; after all, he won, and might
10 not have, had he been more of a slacker." *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 104 (2015)
11 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). Plaintiff's Counsel billed a total
12 of approximately 184.9 hours to date. (Yaeckel Decl. ¶ 34(a)-(d); Perez Decl. ¶ 11).

13 Multiplying the total hours billed by Plaintiffs' Counsel to the litigation by their reasonable hourly rates
14 yields a lodestar of \$113,972.50. ((Yaeckel Decl. ¶ 34(a)-(d)). Here, no lodestar multiplier is necessary as
15 counsel have billed more than is being requested in this motion. (*Id.*). Applying a **negative** multiplier of 0.58
16 to that lodestar approximately yields the requested fees. When plaintiffs seek an amount in fees that is less than
17 what they actually billed, the requested fee amount is **generally** considered reasonable. *See, e.g., Chun-Hoon*
18 *v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (finding that, if the court is asked to apply
19 a negative multiplier, it "suggests the negotiated fee award is a reasonable and fair valuation of the services
20 rendered to the class by Plaintiff's Counsel.").

21 Plaintiff's Counsel would otherwise be entitled to a **positive** multiplier based on factors most
22 commonly cited by courts, including: (1) the results obtained; (2) the contingent nature of the fee award; and
23 (3) the skill displayed by counsel. *See Serrano III*, 20 Cal. 3d at 49; *Thayer v. Wells Fargo Bank*, 92 Cal. App.
24 4th 819, 835 (2001) (recognizing "results obtained" as a factor). Additionally, under California law, a 1.5
25 multiplier would be awarded **for the contingent risk factor alone**, and without the presence of other
26 factors. *See Ctr. for Biological Diversity v. Cty. of San Bernardino*, 185 Cal. App. 4th 866, 900
27 (2010) (affirming a 1.5 risk multiplier in a non-complex statutory case and expressly rejecting the application
28 of other multiplier factors). *See also Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1174

1 (2008) (affirming a 1.65 contingent risk multiplier in a wage and hour class action, explaining that “counsel
2 risked never receiving any compensation *at all*” (emphasis in original)); *Pellegrino v. Robert Half Int’l*, 182
3 Cal. App. 4th 278, 292 (2010) (affirming a 1.75 multiplier due, in part, to “Plaintiff’s Counsel not being paid
4 for their work in the event that [defendant] prevailed on [an] affirmative defense.”).

5 The lodestar cross-check thus confirms that Plaintiff’s fee request is fair and reasonable and should
6 be approved.

7 **I. The Requested Recovery In Litigation Expenses Is Reasonable**

8 Plaintiffs’ Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code
9 § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-
10 paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on*
11 *other grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary
12 costs may be claimed as part of an attorneys’ fees motion when seeking statutory fees under the Labor Code.
13 *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are
14 necessarily incurred).

15 As detailed in the declaration (Yaeckel Decl. ¶41; Ex. 3), Plaintiff’s Counsel advanced \$10,887.81 in
16 out-of-pocket costs to the State for, among other things, filing fees, courier fees, mediation fees. Because these
17 reasonable costs were necessarily incurred during the case’s pendency, these costs are reasonable and should
18 be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) (“[i]tems not mentioned in this section and items
19 assessed upon application may be allowed or denied in the court’s discretion.”); *Hsu v. Semiconductor Sys.,*
20 *Inc.*, 126 Cal. App. 4th 1330, 1341 (2005) (“[W]hile it is reasonable to interpret a general contractual cost
21 provision by reference to an established statutory definition of costs, we do not discern any legislative intent
22 to prevent sophisticated parties from freely choosing a broader standard authorizing recovery of reasonable
23 litigation charges and expenses.”).

24 **J. The Court Should Approve the Negotiated Service Award**

25 Paragraph 3.2.4 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiff the
26 sum of \$10,000 for their service on behalf of the LWDA and Aggrieved Employees, and for a general release
27 of all claims arising out of their employment. This release covers not only the settled PAGA claims but any and
28 all claims arising out of Plaintiff’s employment.

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

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

17 Second, the separate settlement payment is reasonable because Plaintiff “remained fully involved and
18 expended considerable time and energy during the course of the litigation.” *See In re Toys ‘R’ Us-Del FACTA*
19 *Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted his time and effort toward assisting his attorneys
20 with the prosecution of the claims, and assisted counsel with finalizing the settlement. (Pineda Decl. ¶¶4-6).

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

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

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

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

16 **K. The Settlement Will Be Administered By The Third Party Administrator**
17 **ILYM Group, Inc.**

18 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff’s Counsel, and the
19 LWDA, but also to approximately 505 current and former non-exempt employees in proportion to the number
20 of pay periods each Aggrieved Employee worked during the Settlement Period, considerable time and effort
21 will be required to administer the settlement if it is approved by this Court. Among other things, each
22 Aggrieved Employee’s share of the PAGA Fund must be calculated; appropriate tax forms must be issued to
23 all parties who receive payments under the Settlement Agreement; payments must be transmitted to Plaintiff,
24 Plaintiff’s Counsel, the LWDA, and each Aggrieved Employee; and any checks not cashed by Aggrieved
25 Employees shall be transmitted to the California Controller’s Unclaimed Property Fund in the name of the
26 Aggrieved Employee.

27 In contemplation of these expenses, the parties have engaged ILYM to act as a third-party settlement
28 administrator. (Yaeckel Decl. ¶¶48-49). ILYM has extensive experience administering PAGA and class

1 settlements. (Mullins Decl. ¶2). Counsel for both Parties have used ILYM in connection with previous PAGA
2 and class action settlements, and have found ILYM to be a competent settlement administrator. Based on their
3 experience with prior settlement agreements, the parties' counsel believe that the allocation of approximately
4 \$5,000 is competitive rate that reasonably approximates the work required to administer the settlement.
5 (Yaeckel Decl. ¶11).

6 **L. Uncashed Checks Will Be Distributed To The California Controller's**
7 **Unclaimed Property Fund**

8 Aggrieved Employees shall have one-hundred eighty (180) days from the date of issuance of the check
9 to negotiate the check. (Settlement Agreement ¶ 4.4.3). The uncashed funds shall be redistributed to
10 Aggrieved Employees who did deposit their checks on a pro-rata basis. Those Aggrieved Employees will then
11 have 90 days to deposit their checks. After the expiration of the 90-day period, any remaining unclaimed funds
12 will be tendered to the Children's Law Center of California as cy pres. (*Id.*).

13 **M. The LWDA Was Provided Notice Of This Settlement**

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15 On May 28, 2025, notice of this settlement and motion hearing were provided to the LWDA. Please
16 see the concurrently filed proof of service on the LWDA.

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IV. CONCLUSION

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

Dated: May 28, 2025

Respectfully submitted,

SULLIVAN & YAECKEL LAW GROUP, APC

By: *Eric Yaeckel*

Eric K. Yaeckel

Ryan T. Kuhn