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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN BERNARDINO**

11
12 ANTWANETTE KING, as an aggrieved
employee pursuant to the Private Attorneys
13 General Act ("PAGA"), on behalf of the State of
California and other non-party Aggrieved
14 Employees,

15 Plaintiff,

16 vs.

17 RADC ENTERPRISES, INC., a California
corporation; ANABI CONVENIENCE
18 CENTERS, INC., a California corporation;
ANABI OIL CORPORATION, a California
19 corporation; C.A.R. ENTERPRISES, INC., a
California corporation; EDE ENTERPRISES,
20 INC., a California corporation; HOLLINS
MANAGEMENT GROUP, INC., a California
21 corporation; JBL OIL CORPORATION, a
California corporation; JV S&T, INC., a
22 California corporation; NMSO, INC., a
California corporation; QUICKBITES, INC., a
23 California corporation; S & M OIL
CORPORATION, a California corporation;
24 TMSO, INC., a California corporation; and
DOES 1 through 10, inclusive,

25 Defendants.
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27
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Case No. CIVSB2221711

Assigned to the Hon. Joseph T. Ortiz

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

Date: July 25, 2024

Time: 1:30 p.m.

Place: Department S17

Complained Filed: September 30, 2022

Trial Date: None Set

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

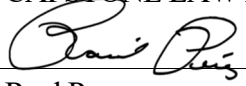
2 **PLEASE TAKE NOTICE** that on July 25, 2024 at 1:30 p.m., or as soon thereafter as counsel
3 may be heard, in Department S17 of the above-captioned court, located at 247 West Third Street, San
4 Bernardino, California 92415, the Honorable Joseph T. Ortiz presiding, Plaintiff Antwanette King will,
5 and hereby does, move this Court for entry of an order and judgment approving the Parties' PAGA
6 settlement pursuant to Labor Code section 2699(l)(2).

7 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
8 Points and Authorities in Support of Motion for Court approval of the PAGA Settlement; (3) the
9 Declaration of Raul Perez, which attaches the PAGA Settlement Agreement; (4) the Declaration of Haig
10 B. Kazandjian; (5) the Declaration of Antwanette King; (6) the Declaration of Khaled Alrifai; (7)
11 [Proposed] Order and Judgment; (8) the records, pleadings, and papers filed in this action; and (9) upon
12 such other documentary and oral evidence or argument as may be presented to the Court at or prior to the
13 hearing of this Motion.

14
15 Dated: June 28, 2024

Respectfully submitted,

CAPSTONE LAW APC

16
17 By: 

Raul Perez
Bevin Allen Pike
Daniel Jonathan
Trisha K. Monesi

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20 Attorney for Plaintiff Antwanette King
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code. §§ 2698, *et seq.*, “PAGA”), Plaintiff Antwanette King seeks Court approval of the settlement of her claim for PAGA civil penalties with Defendants RADC Enterprises, Inc., C.A.R. Enterprises, Inc., EDE Enterprises, Inc., Hollins Management Group, Inc., JBL Oil Corporation, JV S&T, Inc., NMSO, Inc., and S & M Oil Corporation (“Defendants”).

The PAGA provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). In *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the Court of Appeal explained that similar to class action settlements, the trial court should satisfy itself that the settlement is “fair, adequate, and reasonable” in view of PAGA’s “purposes and policies.” The statute does not, however, require the two-step process utilized in class actions. *See Salazar v. Sysco Central Cal.*, No. 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action settlement rules and procedures for PAGA settlement approval). Nothing in the PAGA changes the strong judicial preference in support of approving settlements.

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

- (1) A non-reversionary Gross Settlement Amount of \$1,089,350, which includes payments to the LWDA and Aggrieved Employees for their respective shares of the PAGA Penalties Fund, Plaintiffs’ attorneys’ fees and litigation costs, settlement administration costs, and Service Awards.
- (2) The creation of a PAGA Penalties Fund of approximately \$670,233, which will be paid to Aggrieved Employees and the LWDA in full satisfaction of all Settled Claims (“PAGA Penalties Fund”).
 - (a) Seventy-five percent of the PAGA Penalties Fund, or approximately \$502,674.75, will be paid to the LWDA pursuant to Labor Code section 2699(i).

¹ Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the PAGA Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Raul Perez filed in conjunction with this motion.

(b) Twenty-five percent of the PAGA Penalties Fund, or approximately \$167,558.25, will be paid to all persons who were employed by Defendants in nonexempt positions in the State of California at any time from May 12, 2021 to February 9, 2024 (“Aggrieved Employees”). There are approximately 2,450 Aggrieved Employees.

(3) Service Awards of \$10,000 to Antwanette King and Khaled Alrifai² as consideration for their service on behalf of the State of California and Aggrieved Employees, and for a general release of all claims they may have against Defendant arising out of their employment.

(4) Reasonable attorneys’ fees and costs under Labor Code section 2699(g) for Plaintiffs’ Counsel’s successful prosecution and resolution of this action. Plaintiffs request \$363,117 in attorneys’ fees and \$25,000 in costs for their counsel, Capstone Law APC and Haig B. Kazandjian Lawyers, APC (“Plaintiffs’ Counsel”).

(5) Settlement Administration Costs of approximately \$11,000 to CPT Group, Inc.

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

For these reasons, Plaintiffs respectfully request that the Court approve the Settlement and enter the proposed Order Approving the PAGA Settlement Agreement and the proposed Judgment.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation and Settlement Negotiations

Defendants employed Antwanette King as a non-exempt Assistant Manager at their convenience

² Khaled Alrifai is the named plaintiff in the related PAGA action entitled *Alrifai v. RADC Enterprises, Inc.*, No. 23PSCV00201 (Los Angeles County Superior Court). Mr. Alrifai’s PAGA claims will also be settled by the PAGA Settlement Agreement.

1 stores in California from approximately January 2022 to May 2022. (Declaration of Antwanette King
2 [“King Decl.”] ¶ 2.) Plaintiff King filed this PAGA action against Defendants on September 30, 2022.
3 (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.) Her Complaint alleges that Defendant violated
4 California Labor Code sections: (i) 510 and 1198 (unpaid overtime); (ii) 1182.12, 1194, 1197, 1197.1,
5 and 1198 (unpaid minimum wages); (iii) 226.7, 512(a), 516, and 1198 (failure to provide meal periods);
6 (iv) 226.7, 516, and 1198 (failure to authorize and permit rest periods); (v) 226(a), 1174(d), and 1198
7 (non-compliant wage statements and failure to maintain accurate payroll records); (vi) 204 (failure to
8 timely pay wages during employment); (vii) 201 and 202 (failure to timely pay final wages upon
9 termination); (viii) 551 and 552 (failure to provide one day’s rest in seven); (ix) 1198 and California
10 Code of Regulations Title 8, Section 11070 Subdivision 14 (failure to provide suitable seating); (x) 1198
11 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) (failure to provide suitable
12 resting facilities); (xi) 2802 (unreimbursed business expenses); (xii) 2810.5(a)(1)(A)-(C) (failure to
13 provide notice of material terms of employment). (*Id.*)

14 Defendants employed Khaled Alrifai as a non-exempt employee at their gas station store in
15 California from approximately September 2019 through April 2022. (Declaration of Khaled Alrifai
16 [“Alrifai Decl.”] ¶ 2.) Mr. Alrifai filed his PAGA action against Defendants in the Los Angeles County
17 Superior Court on January 24, 2023 (“Alrifai Action”). (Declaration of Haig B. Kazandjian [“Kazandjian
18 Decl.”] ¶ 5.) His Complaint alleges that Defendant violated California Labor Code sections: (i) 226.7 and
19 512(a) (failure to provide meal and rest periods); (ii) 1182.12, 1194, 1197, 1197.1 (failure to pay
20 minimum wages); (iii) 226(a), 1174(d), and 1198 (failure to keep accurate and provide itemized wage
21 statements); (iv) California Code of Regulations 11050 (5)(A) (failure to pay reporting time); (v) 1198
22 and California Code of Regulations 11050(4)(C) (failure to pay split shift premiums); (vi) 204 (failure to
23 timely pay wages during employment); (v) 201, 202, and 203 (failure to timely pay wages during
24 employment); (vi) 201, 202, and 203 (failure to timely pay wages upon termination); (vii) 2800 and 2802
25 (failure to reimburse necessary business-related expenses and costs); (viii) 246 (failure to provide notice
26 of paid sick time and accrual). (*Id.*)

27 On January 24, 2024, Antwanette King, Khaled Alrifai, and Defendants (collectively, the
28 “Parties”), through their counsel of record, participated in a global mediation with Todd Smith, Esq., an

1 experienced mediator of wage and hour actions. (Perez Decl. ¶ 4.) Mr. Smith helped to manage the
2 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*)
3 With Mr. Smith's guidance, the Parties were eventually able to negotiate a complete settlement of
4 Plaintiffs' claims and actions. (*Id.*) The terms of the settlement are now set forth in complete and final
5 form in the PAGA Settlement Agreement. (*Id.*, Ex. 1.) At all times, the Parties' negotiations were
6 adversarial and non-collusive. (*Id.*) The Settlement therefore constitutes a fair, adequate, and reasonable
7 compromise of the claims at issue. (*Id.*)

8 Upon Court approval of the Settlement, the Parties still stipulate to dismiss the Alrifai Action.

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

11 As set forth in greater detail in Plaintiffs' Counsel's declarations, based on their analysis of
12 documents and data produced by Defendants—including Defendants' labor policies and procedures
13 manuals and a sample of time and payroll records (i.e., Defendants produced time and payroll records for
14 2,438 Aggrieved Employees from May 12, 2021 through December 11, 2023)—Plaintiffs' Counsel
15 were able to realistically assess the value of Plaintiffs' claims, and intelligently engage defense counsel in
16 settlement discussions that culminated in the proposed settlement now before the Court. (Perez Decl. ¶¶
17 6-10; Kazandjian Decl. ¶ 8.)

18 By engaging in a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel
19 can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
20 Agreement, is fair, reasonable, and adequate, and is in the best interests of the LWDA and Aggrieved
21 Employees in light of all known facts and circumstances, including the risk of significant delay and
22 uncertainty associated with litigation, various defenses asserted by Defendants. (Perez Decl. ¶ 11;
23 Kazandjian Decl. ¶ 13.)

24 **C. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiffs' Claims**

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

26 The Settlement Agreement provides that Defendants will pay a total of \$1,089,350 to settle
27 Plaintiffs' PAGA claims. (Settlement Agreement ¶ 11.) From this amount, payments will be made: (a) to
28 the LWDA and Aggrieved Employees; (b) to Plaintiffs as compensation for their service on behalf of the

1 State, and for a general release of claims arising out of their employment with Defendants; (c) to
2 Plaintiffs' Counsel for their attorneys' fees and litigation costs; and (d) and to the Settlement
3 Administrator (CPT) for settlement administration costs. (*Id.* at ¶¶ 11-16.)

4 The resulting balance will be distributed to the LWDA and Aggrieved Employees: the LWDA
5 will receive approximately \$502,674.75, and Aggrieved Employees will receive approximately
6 \$167,558.25. The Aggrieved Employees encompassed by the proposed Settlement are all persons who
7 were employed by Defendants in nonexempt positions in the State of California at any time from May
8 12, 2021 to February 9, 2024. (*Id.* at ¶ 2.) There are approximately 2,450 Aggrieved Employees. (*Id.* at ¶
9 16.)

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

11 Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual
12 allocations will be calculated on a pro-rata basis using the number of pay periods worked by each
13 employee. Defendants will provide the total number of pay periods worked by each Aggrieved
14 Employee and the total number of pay periods worked by all Aggrieved Employees during the
15 Settlement Period. (Settlement Agreement ¶ 12.) The Settlement Administrator will calculate each
16 Aggrieved Employee's payment using the proportional number of pay periods during which the
17 employee worked. (*Id.*) Thus, the Settlement Administrator will perform the following calculation to
18 calculate individual payments: Settlement Payment = (25% of PAGA Penalties Fund) × (pay periods
19 worked by individual Aggrieved Employee during the Settlement Period ÷ total pay periods worked by
20 all Aggrieved Employees during the Settlement Period). (*Id.*)

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

24 **3. The Settled PAGA Claims**

25 Upon entry of the Order and Judgment, the LWDA and Plaintiffs, on behalf of themselves and
26 the Aggrieved Employees to the fullest extent allowed by law, will be deemed to have fully, finally, and
27 forever released, relinquished, and discharged Defendants from any and all claims for PAGA civil
28 penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law

1 alleged or could have been alleged to have been violated in the Actions with respect to Aggrieved
2 Employees based on the facts alleged in the Actions during the Settlement Period. (Settlement
3 Agreement ¶¶ 9, 21.)

4 Additionally, Plaintiffs have agreed to a broader general release of all claims of any kind against
5 Defendants. (*Id.* at ¶ 14.)

6 **III. ARGUMENT**

7 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and** 8 **Fulfill PAGA’s Underlying Purpose To Benefit the Public**

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

16 A superior court must review and approve any PAGA settlement. Cal. Lab. Code § 2699(l)(2).
17 The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” *Williams v.*
18 *Superior Court*, 3 Cal. 5th 531, 549 (2017). The Court’s evaluation of the settlement must “determine
19 whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
20 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz, Inc.*, 72 Cal. App.
21 5th at 77.

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

26 **B. The Settlement Is Reasonable Given the Risks of Further Litigation**

27 In assessing whether the amount of civil penalties is genuine and meaningful, the Court may
28 balance the amount in penalties against the risks of further litigation. Here, Plaintiffs obtained a

1 meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on
2 information and evidence produced by Defendants during discovery, Plaintiffs' Counsel determined that
3 approximately 2,450 Aggrieved Employees worked during a total of approximately 43,574 pay periods
4 during the PAGA statute of limitations period. (Settlement Agreement ¶¶ 12, 16.) Statutory penalties
5 would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the
6 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
8 aggrieved employee per pay period for each subsequent violation.

9 However, a number of courts have found that the "subsequent" penalty under PAGA applies
10 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.
11 *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) ("the increased \$200 civil penalty
12 for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor
13 Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *Bernstein v.*
14 *Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to "heightened civil
15 penalties" because the defendant was not given notice by the Labor Commissioner when the
16 "subsequent" violations occurred).³

17 Under this line of cases, Defendants' exposure would be estimated as follows:

18

Claim	Violation Rate	Pay Periods w/ Violations	Penalty	Total Penalties
Off-the-Clock	At least 50%	21,787	\$100	\$2,178,700.00
Meal Period	At least 50%	21,787	\$100	\$2,178,700.00
Rest Period	At least 50%	21,787	\$100	\$2,178,700.00
Wage Statements	At least 50%	21,787	\$100	\$2,178,700.00

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23 ³ See also *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSCKX, 2019 WL 2436998, at *5
24 (C.D. Cal. June 10, 2019) ("employers are not subject to heightened penalties . . . until a court or
25 commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered
26 evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA's
27 heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in
28 controversy"); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014
WL 4961182 (C.D. Cal., October 2, 2014) ("Under the Labor Code, if an employer does not have notice
that they are committing a violation, they are not subject to the heightened penalties."); *Trang v. Turbine
Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal.
Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent
violations unless and until a court or commissioner notifies the employer that it is in violation of the
Labor Code"), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

Claim	Violation Rate	Pay Periods w/ Violations	Penalty	Total Penalties
Final Pay	Equal to # of employee terminations	1,850	\$100	\$185,000.00
Day's Rest in Seven	At least 10%	4,357	\$100	\$435,700.00
Suitable Seating	At least 50%	21,787	\$100	\$2,178,700.00
Business Expenses	At least 50%	21,787	\$100	\$2,178,700.00
Labor Code § 2810.5	Equal to # of Aggrieved Employees	2,450	\$100	\$245,000.00
Total Penalties				\$13,937,900.00

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

For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or 0.21% of the calculated maximum**—and stated that this reduction was warranted because (a) the Court did not believe it was appropriate to impose multiple penalties per pay period in which a violation occurred and (b) imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517-18. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied here, Plaintiffs would have recovered only approximately \$29,269.59 (\$13,937,900 × 0.0021 reduction).

Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding

1 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
2 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
3 under specified PAGA claim where the employer produced evidence that it took its obligations
4 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
5 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
6 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*
7 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
8 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
9 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
10 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
11 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
12 other PAGA claims).

13 Considering the issues, defenses, and the risks, a \$1,089,350 settlement for a limited release of
14 PAGA penalties—no individual wage and hour claims will be extinguished by the Settlement—is a fair
15 and just result and furthers PAGA’s objectives, and is not “unjust, arbitrary, and oppressive.”

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

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

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

1 487, 501 (2012).

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

10 Those benefiting from the recovery of the fund, in this case some depositors and eventually
11 the People of the State of California, must bear their share of the cost of litigation. Fees for
12 taxpayers' attorneys will be deducted from the judgment, and each claimant's share
13 reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery
14 of attorney fees, it must be modified to confine the award of fees to the common fund
15 theory.

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

16 Likewise, through the successful efforts of Plaintiffs and their attorneys, a common fund was
17 created in the amount of \$1,089,350 for the benefit of the employees and the State of California. Thus,
18 these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the gross
19 settlement fund under the common fund theory. *Id.* Such fees are deducted as a percentage of the
20 settlement amount. *See, e.g., Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican*
21 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe*
22 *Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th
23 Cir. 2003).

24 The California Supreme Court recently upheld the use of the common fund theory of recovery
25 for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016). In *Laffitte*, the
26 settlement created a common fund of \$19 million. The Court approved the award of attorneys' fees in
27 the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the
28 common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based

1 on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the
2 best results possible. *See Laffitte*, 1 Cal. 5th at 492-494. Indeed, “the percentage method is generally
3 favored in common fund cases because it allows courts to award fees from the fund in a manner that
4 rewards counsel for success and penalizes it for failure. *Id.* at 493 (quoting *In re Rite Aid Corp. Securities*
5 *Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

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

10 Consistent with that observation, California state and federal courts routinely award attorneys’
11 fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App.
12 4th 860, 871 (2016) (“33 1/3 percent of the common fund is consistent with, and in the range of, awards
13 in other class action lawsuits”); *Chavez*, 162 Cal. App. 4th at 66 n.11 (“Empirical studies show that,
14 regardless whether the percentage method or the lodestar method is used, fee awards in class actions
15 average around one-third of the recovery.”); Eisenberg & Miller, *Attorney Fees in Class Action*
16 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35
17 (independent studies of class action litigation nationwide conclude that fees representing one-third of the
18 total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v.*
19 *Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte*, 231 Cal. App.
20 4th at 506.

21 A fee award in the amount of one-third of the common fund is also reasonable because it best
22 reflects the market rate for contingency fees. *See Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19, 47
23 (2000) (“attorneys providing the essential enforcement services must be provided incentives roughly
24 comparable to those negotiated in the private bargaining that takes place in the legal marketplace. . . .”).
25 Fees representing one-third of the recovery reflect the rate negotiated in “typical contingency fee
26 agreements [which] provide that class counsel will recover 33% if the case is resolved before trial and
27 40% if the case is tried.” *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM SHX,
28 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (citing an academic study collecting contingency

1 fee agreements and finding that a fee award constituting 34% of the fund is reasonable on that basis).
2 Because the negotiated fee structure mimics the marketplace, it is reasonable and should be approved.

3 A one-third common fund⁴ attorneys' fee award is also consistent with what courts have
4 awarded in other representative action cases. The following list shows PAGA actions where attorneys'
5 fees were awarded on a common fund basis:

- 6 • *Cruz v. Wal-Mart Associates, Inc.*, Los Angeles Superior Court, No. 18STCV03128 (May 28,
7 2021) (approving fee award from PAGA-only settlement of \$5 million against a common fund
8 of \$15 million);
- 9 • *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823 (April 20,
10 2017) (approving fee award from PAGA-only settlement of \$1.375 million against a common
11 fund of \$3.2 million (42%));
- 12 • *Garcia v. Macy's*, San Bernardino County Superior Court, Case No. CIVDS1516007 (Sept. 13,
13 2017) (33.33% fee awarded on \$12,500,000 settlement of a PAGA only case);
- 14 • *Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-CJC
(July 14, 2016) (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);
- 15 • *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-
16 OC-CXC (June 15, 2017) (33.33% fee awarded on a PAGA only case);
- 17 • *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137
18 (May 23, 2016) (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).

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

27 ⁴ Court have also approved fees in amounts greater than one-third of the common fund. *See*
28 *Charles v. JPMorgan Chase Bank*, No. CGC-14-538933 (San Francisco County Superior Court June 18,
2019) (awarding plaintiffs \$2.88 million in attorneys' fees on PAGA penalties totaling \$2.7 million);
Boseman v. VXi Global Solutions, LLC, No. BC602442 (Los Angeles County Superior Court Jan. 3,
2019) (awarding plaintiff \$750,000 in attorneys' fees and costs on general PAGA penalties totaling
\$585,000); *Salas v. Hallmark Aviation Services LP*, No. BC586585 (Los Angeles County Superior
Court February 17, 2017) (awarding plaintiff \$600,000 in attorneys' fees on PAGA penalties totaling
\$605,000); *Monroe v. Continental Design Co., Inc.*, No. RG16817667 (Alameda County Superior Court
June 21, 2017) (awarding plaintiff \$110,000 in fees on PAGA penalties totaling \$90,000); *Ramirez v.*
Benito Valley Farms, LLC, No. 16-CV-04708-LHK, 2017 WL 3670794, at *6 (N.D. Cal. Aug. 25,
2017) (awarding attorneys' fees under the lodestar method with no regard to the proportion of the fees to
civil penalties).

1 approximation of market conditions in a contingency case, and the encouragement it provides counsel to
2 seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the
3 percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

4 For all of these reasons, a common fund fee award in the amount of \$363,117 is fair and
5 reasonable.

6 **D. A Lodestar Cross-Check Confirms that the Requested Attorneys’ Fees Are Fair**
7 **and Reasonable**

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

21 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
22 multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re*
23 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested
24 rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region.
25 *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community
26 for comparable legal services even though party used in-house counsel). Here, Plaintiffs’ Counsel’s
27 hourly rates are comparable to, or less than, those charged by other representative action plaintiffs’
28 counsel and the firms defending PAGA actions, and have been approved by numerous federal and state

1 courts. (Perez Decl. ¶¶ 19-22, Ex. 2; Kazandjian Decl. ¶¶ 20-21, Ex. 1.)

2 Likewise, the total attorney hours expended on this action are reasonable and in line with
3 comparable cases. In determining the reasonableness of the hours expended, “the court should defer to
4 the winning lawyer’s professional judgment as to how much time he was required to spend on the case;
5 after all, he won, and might not have, had he been more of a slacker.” *Kerkeles v. City of San Jose*, 243
6 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.
7 2008)). Plaintiffs’ Counsel billed a combined total of 462.9 hours. (Perez Decl. ¶ 19; Kazandjian Decl. ¶
8 20.)

9 Multiplying the total hours billed by Plaintiffs’ Counsel to the litigation by their reasonable
10 hourly rates yields a combined lodestar of \$314,220. (Perez Decl. ¶ 19; Kazandjian Decl. ¶ 20.)
11 Applying a 1.15 multiplier to that lodestar yields the requested fees. A 1.15 multiplier is not
12 “extraordinarily high”—to the contrary, the normal range for a multiplier on a lodestar cross-check “can
13 range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001);
14 *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (multipliers “ranging from one
15 to four are frequently awarded ... when the lodestar method is applied”; affirming fees where the cross-
16 check multiplier is 3.65).

17 Courts routinely accept multipliers ranging from 2 to 4 on a lodestar cross-check. *See, e.g., Sutter*
18 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
19 lodestar cross-check); *Chavez.*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier in a consumer class
20 action); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22,
21 2015) (approving a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells*
22 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in
23 lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
24 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

25 Indeed, courts following *Laffitte* have reaffirmed that a multiplier between 2 and 4 to be
26 reasonable and not so “extraordinarily high” as to require greater judicial scrutiny. *See Spann v. J.C.*
27 *Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (finding that a 3.07 multiplier is
28 “well within the range for reasonable multipliers” under *Laffitte II*); *Beaver v. Tarsadia Hotels*, No. 11-

CV-01842-GPC-KSC, 2017 WL 4310707, at *13 (S.D. Cal. Sept. 28, 2017) (“The one-third fee Class Counsel seeks reflects a multiplier of 2.89 on the lodestar which is reasonable for a complex class action case.”).

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

E. The Requested Recovery In Litigation Expenses Is Reasonable

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

As itemized in Plaintiffs’ Counsel’s declarations, Plaintiffs’ Counsel advanced \$26,809.53 in out-of-pocket costs. (Perez Decl. ¶ 23; Kazandjian Decl. ¶ 22.) Because these reasonable costs were necessarily incurred during the case’s pendency, the requested costs reimbursement of \$25,000 is reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) (“[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court’s discretion.”); *Hsu v. Semiconductor Sys., Inc.*, 126 Cal. App. 4th 1330, 1341 (2005) (“[W]hile it is reasonable to interpret a general contractual cost provision by reference to an established statutory definition of costs, we do not discern any legislative intent to prevent sophisticated parties from freely choosing a broader standard authorizing recovery of reasonable litigation charges and expenses.”).

F. The Court Should Approve the Negotiated Service Awards

Paragraph 14 of the PAGA Settlement Agreement provides that Defendants will pay Plaintiffs the sum of \$10,000, each, for their service on behalf of the LWDA and Aggrieved Employees, and for a general release of all claims arising out of their employment with Defendants. These releases cover not only the settled PAGA claims, but all claims arising out of Plaintiffs’ employment.

These additional payments are justified in light of the reputational risk that Plaintiffs assumed by

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

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

17 The separate settlement payments are reasonable because Plaintiffs “remained fully involved and
18 expended considerable time and energy during the course of the litigation.” *See In re Toys ‘R’ Us-Del*
19 *FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiffs devoted their time and effort toward
20 assisting their attorneys with the prosecution of the claims, and assisted counsel with finalizing the
21 settlement.

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

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

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

18 **IV. CONCLUSION**

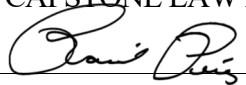
19 The Parties have negotiated a fair and reasonable settlement of Plaintiffs’ PAGA claims. Having
20 appropriately presented the materials and information necessary for approval, the Parties request that the
21 Court approve the PAGA Settlement Agreement.

22
23 Dated: June 28, 2024

Respectfully submitted,

CAPSTONE LAW APC

24
25 By: _____


Raul Perez
Bevin Allen Pike
Daniel Jonathan
Trisha K. Monesi

26
27 Attorney for Plaintiff Antwanette King
28