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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF ORANGE**  
12

13 JEFFREY YOUNG, individually, and on behalf  
of all aggrieved employees pursuant to the Private  
14 Attorneys General Act (“PAGA”),

15 Plaintiff,

16 vs.

17 REFINED TECHNOLOGIES, INC., and DOES 1  
through 100, inclusive,

18 Defendants.  
19

Case No. 30-2022-01279468-CU-OE-CXC

Assigned for all purposes to:  
Hon. William Claster  
Dept. CX-101

**PLAINTIFF’S SUPPLEMENTAL BRIEF IN  
SUPPORT OF MOTION TO APPROVE  
PAGA SETTLEMENT**

*[Filed Concurrently with Declaration of Chris C.  
Scheithauer and Declaration of Lauren Noyes]*

**RESERVATION NO. 74511970**

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1     **I.     INTRODUCTION**

2             Plaintiff Jeffrey Young on behalf of all aggrieved employees (“Plaintiff” or “Young”) reached  
3     a settlement of the instant case for civil penalties under the Private Attorneys General Act (“PAGA”),  
4     Cal. Lab. Code §§ 2698, et seq., against Defendant Refined Technology, Inc. (“Defendant” or “RTI”).  
5     The parties filed the instant Motion to Approve the PAGA Settlement (“Motion”) which was originally  
6     set for hearing on April 18, 2025. The Court continued the hearing to June 13, 2025 and issued its  
7     Minute Order, dated April 22, 2025 asking the parties to provide supplemental briefing addressing  
8     certain items and questions identified in that Minute Order. *See* Minute Order, dated 4/22/25 (“Minute  
9     Order”). This Supplemental Brief addresses below each of the items raised by the Court.

10    **II.    RESPONSE TO THE ITEMS RAISED BY THE COURT**

11           **A.     The Pay Periods Are Set And The Escalator Clause Is Not Triggered**

12           The Court’s first question in its Minute Order was about the pay periods and whether the  
13    escalator provision in paragraph 8 of the Settlement Agreement is triggered. *See* Minute Order, p. 1.  
14    According to RTI, there are 2,199 pay periods actually at issue and which will be used for purposes of  
15    the PAGA penalties. The escalator provision in paragraph 8 is not triggered. *See* Declaration of Chris  
16    C. Scheithauer (“Scheithauer Decl.”), ¶ 3; *see also* Declaration of Lauren Noyes in Support of PAGA  
17    Settlement Agreement (“Noyes Decl.”), ¶ 2.

18           **B.     There Are 115 Aggrieved Employees**

19           The Court asked in its Minute Order if the number of Aggrieved Employees, as defined by the  
20    Settlement Agreement, is 115 or some other number. *See* Minute Order, p. 1. The Parties hereby  
21    confirm the list of 115 persons, identified by name in Exhibit A to the Settlement Agreement, includes  
22    all the names of the Aggrieved Employees covered by the Settlement Agreement. *See* Scheithauer  
23    Decl., ¶ 3; *see also* Noyes Decl., ¶ 3; *see also* Settlement Agreement, Exh. A (list of Aggrieved  
24    Employees), attached as Exhibit A to Beck Decl.

25           **C.     The Settlement Is Based On Sufficient Investigation And Discovery**

26           The Court asked in its Minute Order what discovery was conducted and what documents were  
27    turned over. *See* Minute Order, p. 1. The Declaration of Travis Beck provided an initial overview of  
28    the discovery process. *See, e.g.*, Beck Decl., ¶¶ 22-24. Plaintiff provides additional information below

1 and as further demonstrated in the Declaration of Chris C. Scheithauer provided with this  
2 supplemental brief.

3 During the course of the PAGA Case, the Parties exchanged a large number of documents in  
4 discovery. RTI took the position that virtually every document it produced in the individual  
5 Arbitration had to be returned and not utilized at all in the PAGA Case. That forced Young to  
6 essentially start over conducting discovery – sending out new document requests, engaging in the meet  
7 and confer process about documents that RTI declined to reproduce – but which Young’s counsel  
8 already knew existed and were relevant. As this Court is aware, the Parties held multiple informal  
9 discovery conferences with the Court about various discovery disputes in this PAGA Case. *See*  
10 Scheithauer Decl., ¶ 17.

11 Ultimately, in the PAGA Case, RTI produced over **26,447 pages**, including, without limitation,  
12 the following categories: (a) identities and contact information of RTI employees that performed work  
13 in California during the relevant PAGA period; (b) Non-Solicitation Agreements (NSA) signed by the  
14 relevant employees, including multiple versions such as “revisions” made in response to this litigation,  
15 (c) various personnel file documents for each of RTI employees who performed work in California  
16 (such as handbook acknowledgements, arbitration agreements, various restrictive covenant  
17 agreements); (d) emails to various RTI employees in California regarding the policies at issue in this  
18 litigation; (e) corporate policies applicable to employees working in California, such as handbooks,  
19 travel and expense reimbursement policies, employment/contractor agreements; (f) job descriptions for  
20 all RTI employees who performed work in California; (g) paystubs and timesheets for Young for the  
21 PAGA period; (h) paystubs and timesheets for all employees that worked in California for the PAGA  
22 period (not just a sampling); (i) Fatigue Management data for the employees that performed work in  
23 California (j) arbitration agreements signed by all California based employees (K); documents  
24 detailing the locations where RTI employees worked in California; (l) expense reports submitted by  
25 California employees; and (m) various other documents. *See* Scheithauer Decl., ¶ 18.

26 Additionally, the Parties engaged in multiple rounds of written discovery, involving Requests  
27 for Admission, Form Interrogatories, Requests for Production (Four Sets), Special Interrogatories  
28 (Four Sets), and supplemental discovery requests. Almost all written discovery requests required

lengthy meet and confer exchanges (letters, emails telephonic conferences) and many required informal discovery conferences to resolve a multitude of outstanding disputes. Ultimately, Plaintiff's counsel is satisfied that we obtained sufficient discovery to evaluate the case and, if necessary, be prepared for trial. *See* Scheithauer Decl., ¶ 19.

The Parties participated in eleven (11) extensive depositions of key witnesses including but not limited to, Plaintiff Young, various Aggrieved Employees, and various senior level executives for Defendant RTI. The depositions allowed Plaintiff's counsel to obtain a reasonable sampling of testimony for various job titles, positions, time periods, and perspectives to demonstrate violations for each position of Aggrieved Employee for trial. Had the matter not resolved, the Parties anticipated a continued need for at least ten (10) more depositions – involving additional Aggrieved Employees, additional RTI's corporate persons, and the Parties' expert witnesses. *See* Scheithauer Decl., ¶ 20.

In addition to formal discovery, Plaintiff Young's counsel used the class list of Aggrieved Employees to reach out to most of the persons on the list, both in writing or by other means. That outreach resulted in specific individuals being interviewed and providing informal testimony to counsel. Some of them agreed to testify at trial against RTI and they provided additional documentation that RTI had not already provided. *See* Scheithauer Decl., ¶ 21.

**D. Plaintiff Young's Attorneys Retained A Damages Expert To Help Construct Liability Exposure Models**

The Court notes in its Minute Order that Plaintiff's Motion and Declaration of Travis Beck refers to the expert witness that Plaintiff's counsel retained in this case. The Court has asked for additional information as to what expert was retained, what services were provided, and asked for a copy of the expert's CV. *See* Minute Order, p. 1.

In preparation for the mediation that ultimately resolved this case, and to potentially testify at trial, counsel for Plaintiff Young retained the consulting services and expert witness services of Deepak Goel, founder and Managing Partner at dlse Consulting LLC. Mr. Goel and his firm, dlse Consulting LLC, is a well-known expert witness in wage and hour class action and PAGA employment claims. Per the Court's request, Mr. Goel's CV is attached as Exhibit A to the Declaration of Chris C. Scheithauer. *See* Scheithauer Decl., ¶ 22 and Exhibit A.

1 In connection with his retention in this case, Mr. Goel analyzed a significant number of the  
2 records produced by RTI, including, without limitation, the payroll and timekeeping data of the  
3 Aggrieved Employees in order to assist with damages models that were utilized at mediation, as well  
4 as in anticipation of trial. Mr. Goel's expert services included detailed analysis the following:

5 a. Providing input and analysis on how to value and determine the number of  
6 instances of violations through RTI's use of the NSA with California employees. The analysis was  
7 utilized to determine the PAGA penalty exposure on the allegations relating to the Labor Code §  
8 925(a) violations. *See Scheithauer Decl.*, ¶ 24.

9 b. Reviewing and analyzing the Fatigue Time utilized by each relevant employee  
10 during the time period at issue. This analysis summarized, for each employee and by year, the fatigue  
11 hours earned, fatigue hours utilized, and the fatigue hours forfeited. Based on this information, an  
12 anticipated PAGA penalty exposure model was built relating to the allegations that RTI violated Labor  
13 Code § 227.3 (forfeiture of vacation). *Id.*

14 c. Reviewing and analyzing the alleged misclassifications of various employees  
15 (both as independent contractors and as exempt versus non-exempt) to build a PAGA penalty exposure  
16 model related to the allegations that RTI misclassified employees and in turn violated Labor Code §§  
17 2275 and 226.8. *Id.*

18 d. Reviewing and analyzing the time records and paystubs, including any meal  
19 periods recorded by employees and policies related thereto, to develop a PAGA penalty exposure  
20 model relating to the allegations that employees did not get proper meal periods and/or were not  
21 provided with meal premium pay in violation of Labor Code §§ 226.7 and 512. *Id.*

22 e. Reviewing and analyzing the time records and paystubs, and rest break policies,  
23 to develop a PAGA penalty exposure model relating to the allegations that employees did not get  
24 proper rest breaks and/or were not provided with rest break premium pay in violation of Labor Code  
25 § 226.7. *Id.*

26 f. Reviewing and analyzing time records, paystubs, deposition testimony and other  
27 evidence to develop a PAGA penalty exposure model relating to the allegations that employees were  
28 not paid minimum wage for all hours worked (such as alleged off-the-clock work, etc.) in violation of

Labor Code §§ 1194, 1197, and 223. *Id.*

g. Reviewing and analyzing time records, paystubs, deposition testimony and other evidence to develop a PAGA penalty exposure model relating to the allegations that employees were not paid all overtime wages earned (including, for example, misclassified employees who were not paid overtime wages even though their timesheets showed overtime worked) wage for all hours worked (such as alleged off-the-clock work, etc.) in violation of Labor Code §§ 510, 1197, and 223. *Id.*

h. Reviewing and analyzing time records and other evidence to develop a PAGA penalty exposure model relating to the allegations that employees worked more than six days in a row without a day of rest in violation of Labor Code § 551 and 552. *Id.*

i. Developing a PAGA penalty exposure model relating to the allegation that RTI violated Labor Code § 1174, 1174.5 and 1198 regarding recordkeeping. *Id.*

j. Developing a PAGA penalty exposure model relating to the allegation that RTI violated Labor Code § 226 in failing to provide accurate itemized paystubs. For example, the expert utilized the number of paystubs at issue for employees that primarily lived and worked in California (as opposed to those merely performed some work in California) to provide a basis for recovering a penalty for inaccurate paystubs. *Id.*

k. Developing a PAGA penalty exposure model for the allegations that RTI failed to timely pay wages to employees during employment and also failed to properly pay terminated employees waiting time pay earned at the termination of employment, in violation of Labor Code §§ 201-203, 204, 216, and 223. *Id.*

Parts of Mr. Goel's expert analysis, including various spreadsheet data, was shared with the mediator and was very helpful at the mediation to reach the result that was obtained. *See* Scheithauer Decl., ¶ 25. Mr. Goel and his firm, dlse Consulting LLC, charged Call & Jensen \$25,638.72 for the services provided in this case. A copy of the invoice for such services from dlse Consulting LLC is attached as Exhibit B to the Declaration of Chris C. Scheithauer. *See* Scheithauer Decl., ¶ 26 and Exhibit B thereto.

1           **E.       Assessing The Amount In Controversy And The Risks Of Trial**

2           In its Minute Order, the Court requested “further information about the strengths and  
3 weaknesses of Plaintiffs’ claims and Defendant’s expected defenses.” *See* Minute Order, p. 2.

4           To evaluate a settlement, the trial court must receive “basic information about the nature and  
5 magnitude of the claims in question and the basis for concluding that the consideration being paid for  
6 the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*  
7 (2008) 168 Cal.App.4th 116, 133. However, the record need not contain an explicit statement of the  
8 maximum theoretical recovery:

9           “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all  
10 cases to contain evidence in the form of an explicit statement of the maximum amount  
11 the plaintiff class could recover if it prevailed on all its claims—a number which appears  
12 nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any  
13 such explicit statement of value; it requires a record which allows “an understanding of  
14 the amount that is in controversy and the realistic ranges of outcomes of the litigation.”

15 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.

16           Plaintiff and his counsel remain confident of the merits of Plaintiff’s claims. However, Plaintiff  
17 does acknowledge that his position includes risk and uncertainty, as described in more detail below.

18           **Claim 1: Improper Venue/Choice of Law In Violation of Labor Code § 925**

19           This claim revolves around RTI forcing employees to sign both the Non-Solicitation  
20 Agreements and Arbitration Agreement that allegedly contained unlawful clauses in violation of Labor  
21 Code § 925. Young contends that in addition to containing an unlawful non-compete, the NSA  
22 included an illegal venue and choice of law provisions. *See* Scheithauer Decl., ¶ 27. For example, the  
23 NSA required:

24           “all questions relating to its validity, interpretation, performance, and inducement [are]  
25 to be governed by, construed, interpreted, and enforced in accordance with the  
26 **substantive laws of the State of Texas**, excluding Texas choice-of-law principles.”

27           NSA § 12.2 (emphasis added). Section 12.2 of the NSA further incorporated by reference the “Dispute  
28 Resolution & Arbitration Agreement contained in the RTI Artisan Handbook,” which requires all RTI  
employees to submit any disputes to arbitration in Texas, governed by Texas law. *See* Scheithauer  
Decl., ¶ 27.

          Young alleged that (1) Section 12.2 of the NSA, and (2) the Dispute Resolution and Arbitration  
Agreement, both illegally required California employees to adjudicate outside of California claims

arising in California, and also deprives California employees of the protections of California Business & Professions Code § 16600—which broadly prohibits non-competes of the type set forth in the NSA. *Id.*

Plaintiff Young contended that RTI was prohibited by **Labor Code § 925(a)** from requiring California employees to accept the terms of the NSA and Arbitration Agreement. Labor Code § 925(a) states in pertinent part:

(a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:

(1) Require the employee to adjudicate outside of California a claim arising in California.

(2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

Cal. Labor Code § 925(a). Both the NSA and the Arbitration Agreement violated both subsection (a)(1) and subsection (a)(2). This constituted multiple PAGA violations in multiple agreements. *See Scheithauer Decl.*, ¶ 27.

RTI attempted to contravene Labor Code § 925 by inserting in the NSA a “representation and warranty” regarding use of counsel. RTI’s attempt to get around Section 925 was expressly rejected by the federal court in the First Lawsuit:

Finally, [RTI] argues that by signing the NSA, [Young] acknowledged the language therein that states “Employee represents and warrants that Employee was individually represented by independent legal counsel in negotiating the terms of this agreement,” which if true in actuality, would trigger the exemption in California Labor Code section 925(e). However, [Young] declares that he was not really represented by counsel, and he argues that [RTI] should know that, because they never had to interface with an attorney in relation to [Young] signing of the NSA. Section 925(e) is clear that the strictures of section 925 shall not apply when an employee is “*in fact* individual represented by legal counsel[.]” Cal. Lab. Code § 925(e) (emphasis added). [Young] insists that he was not represented “in fact,” and [RTI] has presented no evidence to the contrary.

[RTI] simply seeks to hold [Young] to the language of the NSA. But the Court already found that the NSA was a condition of [Young’s] employment. When provisions affirming independent representations are inserted into employment contracts that are conditions of one’s employment, it forces the employee to (1) refuse to make a false representation, thereby jeopardizing his employment, (2) pay an attorney, which many employees do not have the money to do, or (3) sign the agreement and affirm the false statement. **This is simply gamesmanship [by RTI] to create an appearance of consistency with the law that the Court will not countenance.**

See Order in *Young v. RTI*, Case No. SACV 22-01032-CJC(JDEx) (C.D. Cal. June 17, 2022), p. 12 (bold emphasis added).

RTI argued that it “fixed” the problem by rolling out California compliant agreements after the litigation commenced by requiring employees to actually retain individual counsel to fit into Section 925’s exception. Thus, RTI disputes the number of violations, even while it clings to the same argument previously rejected by the district court. Additionally, interviews of witnesses dispute the efficacy of this argument. RTI has also argued that even accounting for a problem, it would not apply to all employees because some of the Aggrieved Employees did not reside in California for the entire PAGA period and thus the number pay periods at issue on this claim would be reduced even further. *See Scheithauer Decl.*, ¶ 27.

In sum, Plaintiff Young’s counsel remains very confident on prevailing on this claim – the only question is the amount of penalties the Court would decide to award. Plaintiff contends that RTI is liable for the default civil penalty set forth in Labor Code § 2699(f) – namely, \$100 per aggrieved employee per pay period for each violation. Considering that the problem occurred in multiple different agreements per person (NSA, Arbitration Agreement, etc.), there could be multiple penalties per person stacked. Based on the 2199 pay periods (which may be stacked per violating document) there could be as many as 4,398 pay periods at issue, or more. At the \$100 rate per pay period, that alone could constitute PAGA penalties of \$439,800. *See Scheithauer Decl.*, ¶ 29.

**Claim 2: Maintaining an Unlawful Policy Forfeiting Vested Vacation Pay in Violation of Labor Code § 227.3**

California Labor Code § 227.3 prohibits the forfeiture of accrued but unused vacation pay and specifically states that it is unlawful to even have such a policy: “... **an employment contract or employment policy shall not provide for forfeiture of vested vacation time...**”. *See* Labor Code § 227.3 (emphasis added). In California, this is known as the prohibition on “use it or lose it” policies. Plaintiff alleged that RTI had an “employment **policy**” providing for “forfeiture” of accrued leave provided to employees.

Plaintiff alleged that RTI maintains a “Fatigue Management Allowance Policy.” Pursuant to the policy, employees who are required to work on weekends receive a “fatigue management allowance” benefit, which allows them to take *paid time off as extra compensation for weekend work*. *See Scheithauer Decl.*, ¶ 30.

1 Plaintiff further alleged that for purposes of California law, “fatigue management allowances,”  
2 such as the one implemented by RTI, are equivalent to paid vacation. RTI’s policy requires employees  
3 to forfeit unused fatigue management allowances at the end of each calendar year, and RTI does not  
4 pay out vested benefits upon termination, as required by Labor Code section 227.3. That policy is  
5 exactly the type of “use it or lose it” vacation policy expressly prohibited under California law. It is  
6 undisputed that the policy required forfeiture of unused time, that California employees did, in fact,  
7 have such accrued fatigue time “forfeited” and that their balances were “zeroed out” each January 1<sup>st</sup>.  
8 Based on the default civil penalty in Labor Code § 2699(f) of \$100 per aggrieved employee per pay  
9 period, the 2,199 pay periods could constitute PAGA penalties of \$219,900. *See Scheithauer Decl.*, 30.

10 RTI disputes that its fatigue allowance policy is equivalent to a use it or lose it vacation policy.  
11 RTI further argues that this problem, if at all, only applies to a few employees (around 5) that actually  
12 terminated employment and that current employees have no claim. However, Plaintiff contends that  
13 California Court of Appeal cases have interpreted *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th  
14 1004 as holding that an employer’s liability flows simply from having a facially defective policy.  
15 *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (“the employer’s  
16 liability arises by adopting a uniform policy that violates” the law). Thus, under Plaintiff’s view, it is  
17 irrelevant if employees terminated or simply lost the extra time during continued employment.  
18 Plaintiff believes the Aggrieved Employees have the better argument. *See Scheithauer Decl.*, ¶ 31.

19 **Claim 3: Misclassification of Employees As Exempt or As Independent Contractors**  
20 **(Labor Code §§ 2775, 226.8)**

21 Plaintiff alleged that RTI engaged individuals in California to work on projects, and willfully  
22 misclassified them as **independent contractors** or as **exempt** when they should have been classified  
23 as non-exempt employees. In particular, workers classified as independent contractors who worked on  
24 RTI’s cleaning projects/executions were not in fact free from RTI’s control, or hired to perform work  
25 outside RTI’s usual course of business. As set forth in California Labor Code § 2775 and in *Dynamex*  
26 *Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018), workers are *presumed* to be employees, and  
27 the burden is on the hiring entity to prove the classification. *See Scheithauer Decl.*, ¶ 32.

28 Plaintiff alleged that virtually all employees working for RTI in California were treated as  
either an “independent contractor” or as “exempt” regardless of what they did or whether they fit any

1 exempt classification. For example, employees given the title of “Operations Manager” were classified  
2 as exempt, but employees with that title did not spend the majority of their time on exempt  
3 management tasks and did not fit any exemption. *See* Scheithauer Decl., ¶ 32.

4 RTI contended that it properly classified the workers – particularly those classified as exempt.  
5 RTI presented evidence that some of the workers (particularly those in higher levels) spent significant  
6 time “planning” jobs as opposed to “executing” jobs and the emphasis in “planning” bumped those  
7 employees to exempt status. Many depositions focused on this issue. Based on the default civil penalty  
8 in Labor Code § 2699(f) of \$100 per aggrieved employee per pay period, the 2,199 pay periods could  
9 constitute PAGA penalties of \$219,900. *See* Scheithauer Decl., ¶ 33.

10 **Claim 4: Failure to Provide Legally Complaint Meal Period/Premium Pay for**  
11 **Missed/Late/Short Meal Periods (§§ 512 and 226.7)**

12 Plaintiff alleged that Aggrieved Employees working in California (including those who were  
13 misclassified as exempt as well as those classified as non-exempt) worked shifts during which they  
14 were entitled to one or more uninterrupted thirty minute meal periods as required by Labor Code  
15 Sections 226.7, 512 and applicable IWC Wage Orders, which RTI failed to provide. *See* Scheithauer  
16 Decl., ¶ 34.

17 Here, Plaintiff alleged that RTI employees working in California regularly worked long  
18 shifts—often twelve to sixteen hours or more in a day (and often for weeks at length without any day  
19 off). While Employees were permitted to eat food during the workday, they were not given  
20 **uninterrupted** off duty meal periods as required by law or timely meal periods per law. *Id.*

21 Deposition testimony from various employees demonstrated the following key points:

- 22 • Employees were not trained on California meal period requirements;
- 23 • Employees were never told what their meal period parameters were (i.e., never told  
24 they were entitled 30 minutes for a first meal period and 30 minutes additional if they  
25 worked more than 10 hours, etc.);
- 26 • Employees almost never took at least a 30 minute meal period;
- 27 • Employees never took a second meal period (even though they regularly worked more  
28 than 10 hours);
- Employees never were fully relieved of duties when on site at a refinery doing an  
execution phase because they were required by policy to always be on-call:
  - They were required to continuously watch valves, pressures, cleaning status,  
etc.;

- They were required to carry a walkie-talkie and answer any issues that would come up;
- They were not permitted to leave the facility while an execution was in progress in case an issue came up; and
- No records were kept of any meal periods (no clock out/clock in)

*See Scheithauer Decl.*, ¶ 35.

Plaintiff alleged that Employees never received proper meal periods for the reasons stated above and for the obvious fact that RTI did not even think they were entitled to meal periods under California law (they were misclassified as exempt). But if RTI is right that employees were not misclassified, then there would be no violations because the claim does not apply to properly exempt employees. Based on the default civil penalty in Labor Code § 2699(f) of \$100 per aggrieved employee per pay period, the 2,199 pay periods could constitute PAGA penalties of \$219,900. *See Scheithauer Decl.*, ¶ 36.

**Claim 5: Failure to Provide Compliant Rest Breaks/Premium Pay for Missed/Late/Short Breaks (§§ 512 and 226.7)**

The claim relating to failure to provide proper rest breaks is based on similar facts to the meal period claim. Simply put, there was no policy, no training, no tracking, and no communication at all regarding rest breaks. Plaintiff alleged non-exempt employees never received proper rest breaks because they were never provided an uninterrupted rest break for each four hour period of work, or major fraction thereof. Employees had to be on-call and carry a walkie talkie during an entire shift on a refinery, which, by definition, means that no rest breaks were provided. Like the meal period claim, this really comes down to whether employees were misclassified. If so, then every pay period had a violation. But if RTI is right that employees were not misclassified, then there would be no violations because the claim does not apply to properly exempt employees. Based on the default civil penalty in Labor Code § 2699(f) of \$100 per aggrieved employee per pay period, the 2,199 pay periods could constitute PAGA penalties of \$219,900. *See Scheithauer Decl.*, ¶ 37.

**Claim 6: Failure to Pay Minimum Wages and Overtime/Failure to Compensate for all Hours Worked in Violation of Labor Code §§ 510, 223, 1194, 1197, and 1199**

RTI's failure to properly classify refinery workers as nonexempt employees also leads to penalties associated with those employees not being paid properly. Just paying nonexempt employees

1 a straight salary (regardless of amount) is not proper. Instead, those workers are entitled to be paid for  
2 all time worked, including all overtime. Unquestionably, these workers had an immense number of  
3 unpaid hours including overtime hours – virtually some overtime every pay period. Based on the  
4 default civil penalty in Labor Code § 2699(f) of \$100 per aggrieved employee per pay period, the  
5 2,199 pay periods could constitute PAGA penalties of \$219,900. *See* Scheithauer Decl., ¶ 38.

6 **Claim 7: Failure to Provide a Day of Rest After Seven Consecutive Days of Work in**  
7 **Violation of Labor Code §§ 551, 552**

8 Labor Code section 551 provides that “[e]very person employed in any occupation of labor is  
9 entitled to one day’s rest therefrom in seven,” and section 552 states that “No employer of labor shall  
10 cause his employees to work more than six days in seven.” RTI regularly required Young and the  
11 other Aggrieved Employees to work more than six days in seven, in violation of Labor Code §§ 551  
12 and 552. RTI set schedules and/or encouraged employees to work more than six days in seven and was  
13 not neutral in its encouragement to do so and did not notify employees of their rights under these  
14 Labor Code sections. Indeed, often workers would work weeks on end with no days off. *See*  
15 Scheithauer Decl., ¶ 39.

16 For example, Young’s timesheets for weeks starting February 13, 2022 and February 20, 2022,  
17 showing that he worked 11 days straight without a break. Young’s timesheets for weeks starting  
18 March 6, 2022, March 13, 2022 and March 20, 2022 showing Young worked **18 days straight**  
19 without a break. Many of those days were 13 hours or longer (Wed, March 23 shows 16 hours). *See*  
20 Scheithauer Decl., ¶ 40.

21 Other employees showed similar daunting schedules. Timesheets from James Beard for weeks  
22 starting February 13, 2022 and February 20, 2022 show he was forced to work **13 days straight**  
23 without a rest day and worked **121 hours for that two week period**. *See* Scheithauer Decl., ¶ 41.

24 RTI’s own management witnesses (such as Trey Schuenemann) testified in deposition that  
25 when RTI was working at a refinery doing the cleaning, the employees “often” worked more than six  
26 days without rest. Those same witnesses confirmed that RTI “took no steps to ensure employees  
27 received a rest day after” six consecutive days of work. Multiple Aggrieved Employees confirmed that  
28 even on days that they were otherwise were “off”, they were expected to work from home catching up

1 on paperwork *and still bill the client* for it. *See* Scheithauer Decl., ¶ 42.

2 Per Labor Code 558, there is \$50 penalty for each initial violation and \$100 penalty for each  
3 subsequent violation. Plaintiff's expert calculated the expected liability on this claim at about \$15,000.  
4 *See* Scheithauer Decl., ¶ 43.

5 **Claim 8: Improper record keeping location in violation of (Labor Code §§ 1174, 1198)**

6 California Labor Code § 1174 provides, *inter alia*, that a person employing labor in the State  
7 of California must keep at a central location in California payroll records showing “the hours worked  
8 daily by and the wages paid to,” such employees. Section 1174 further provides that the “records shall  
9 be kept in accordance with the rules established for this purpose by the commission” and “shall be  
10 kept for not less than three years.” The California Division of Labor Standards Enforcement issued an  
11 Opinion Letter interpreting Section 1174 and advising that electronic time record data may be  
12 maintained outside of California “**as long as a hard copy of the records was maintained at a**  
13 **central location within California.**” *See* DLSE Opinion Letter 11.10.1998. The IWC Wage Orders  
14 contain a similar rule stating that “All required records shall be in the English language and in ink or  
15 other indelible form, properly dated, showing month, day and year, and shall be kept on file by the  
16 employer for at least three years at the place of employment or at a central location within the State of  
17 California.” *See* Scheithauer Decl., ¶ 44.

18 RTI did not maintain any records in California for its California employees. RTI argues that  
19 because employees could access records (time records, paystubs, personnel records, etc.) via a  
20 computer in California that RTI was in compliance. The parties dispute whether that is sufficient. *See*  
21 Scheithauer Decl., ¶ 45.

22 Based on the default civil penalty in Labor Code § 2699(f) of \$100 per aggrieved employee per  
23 pay period, the 2,199 pay periods could constitute PAGA penalties of \$219,900. *See* Scheithauer  
24 Decl., ¶ 46.

25 **Claim 9: Failure to provide accurate itemized wage statements (Labor Code § 226)**

26 Labor Code § 226(a) requires that employers provide employees with “an accurate itemized  
27 statement in writing showing” various items. This is a derivative claim based on the other violations  
28 (failure to provide meal/rest periods, etc.). For the misclassified workers, RTI clearly did not comply

1 with this provision (RTI claims they did not have to based on RTI's contention that all workers were  
2 exempt). The penalty is \$250 per employee per pay period. *See* Labor Code § 226.3. Based on the  
3 2,199 pay periods, the PAGA penalties could be \$549,750. *See* Scheithauer Decl., ¶ 47.

4 **Claim 10: Failure to pay timely wages during employment in violation of (Labor**  
5 **Code §§ 204, 216, 223)**

6 Here, for all the misclassified workers, RTI failed to timely pay employees all their owed  
7 wages (such as overtime, meal/rest break premiums, etc.). At \$100 per violation for the 2,199 pay  
8 periods, the PAGA penalties could be \$219,900. *See* Scheithauer Decl., ¶ 48.

9 **Claim 11: Failure to pay all wages owed upon separation from employment in**  
10 **violation of Labor Code §§ 201-203;**

11 California law requires an employer to pay all unpaid wages timely after an employee's  
12 employment ends. Those wages are due immediately upon termination (Labor Code § 201) or within  
13 seventy-two (72) hours of resignation (Labor Code § 202). The claim for waiting time penalties is  
14 based on two alternative claims: (1) First, when employees resigned or were terminated, they were not  
15 provided their final paycheck within the same day/72 hours required by California law; (2) Second, it  
16 doesn't even matter that RTI did not provide the final paycheck pursuant to Labor Code 201 or 202 as  
17 a practice. This is because by definition, whenever they paid the final pay to the terminated employee,  
18 it did not include all the owed pay for misclassified workers in California who were still owed  
19 overtime, meal/rest break premiums, etc. Thus, violations occurred for those employees regardless of  
20 whether the check was provided in 24 hours or 72 hours because the check was wrong. *See*  
21 Scheithauer Decl., ¶ 49.

22 RTI argues that these specific laws only apply to terminated persons during the PAGA Period  
23 who (a) primarily resided; and (b) primarily worked in California. Records reflect that this applies to  
24 only 5 persons. Based on the default civil penalty in Labor Code § 2699(f) of \$100 per each of the five  
25 pay periods at issue (1 for each of the terminated employees), the PAGA Penalty would be \$500. *See*  
26 Scheithauer Decl., ¶ 50

27 Based on all the above a reasonable estimate of the potential liability exposure is  
28 approximately \$2,544,350.00, not counting attorneys' fees, interest, and other sums that could be  
recoverable at trial. *See* Scheithauer Decl., ¶ 51.

**F. Billing Entries Showing Attorney Work And Time Incurred On Behalf Of The Aggrieved Employees**

In its Minute Order the Court requested attorney billing records showing the work done by Plaintiff Young's attorneys "for lodestar cross-check purposes." *See* Minute Order, p. 2.

Pursuant to the Court's request, attached as Exhibit C to the Declaration of Chris C. Scheithauer are the contemporaneously kept billing entries for attorneys' fees. Those records demonstrate that the lodestar rate requested by this motion is less than reasonable attorneys' fees actually expended. *See* Scheithauer Decl., ¶ 55 and Exh. C.

A prevailing party in a PAGA action is entitled to recover his attorneys' fees and costs for his claims. Cal. Lab. Code § 2699(g) ["Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."].) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.)

The California Supreme Court held that "[a] PAGA representative action is ... a type of qui tam action." *Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 382; *Turrieta v. Lyft, Inc.* (2024) S271721, 2024 Cal. LEXIS 4156, at \*11. Where a common fund is created in resolving a qui tam action, the successful plaintiff's attorneys are entitled to recover fees from the common fund, rather than on fees based on hours worked. *Laffitte v. Robert Half Int'l. Inc.* (2016) 1 Cal.5th 480, 506 (Cal. 2016). Indeed, the "percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Id.* at 493 (quoting *In re Rite Aid Corp. Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 300).

California state and federal courts routinely award attorneys' fees in the range of 35% of the common fund. *See, e.g., Roos v. Honeywell Int'l, Inc.*, 241 Cal. App. 4th 1472, 1489 (2015) (affirming award of 37.5% of the common fund), disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 287 (2018); *Martin v. Ameripride Servs., Inc.* (S.D. Cal. June 9, 2011) No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at \*23 ("[C]ourts may award attorneys'

1 fees in the 30–40% range in wage and hour ... actions that result in recovery of a common fund under  
2 \$10 million.”); *Gomez v. H & R Gunlund Ranches*, No. CV F 10-1163 LJO MJS, 2011 U.S. Dist.  
3 LEXIS 135424, at \*6, 14–16 (E.D. Cal. Nov. 22, 2011) (awarding 45% of the common fund); *Van*  
4 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 297–98 (N.D. Cal. 1995) (“Class Counsel have  
5 also cited 73 district court opinions in which fees in the range of 30–50 percent of the common fund  
6 were awarded.”); *Pena v. Taylor Farms Pac., Inc.*, No. 2:13-cv-01282-KJM-AC, 2021 U.S. Dist.  
7 LEXIS 45326, at \*13 (E.D. Cal. Mar. 10, 2021) (awarding fees equaling 35% of the common fund).

8 Per the terms of the Settlement Agreement, Plaintiff’s counsel seeks fees not to exceed  
9 \$313,250.00 (35% of the Settlement Payment). See Settlement ¶3.2.2. As noted above, that is  
10 consistent with awards in common fund cases. That is also less than what a reasonable lodestar  
11 calculation would generate. See Scheithauer Decl., ¶55.

12 **G. Billing Entries Showings Costs and Expenses Incurred On Behalf Of The**  
13 **Aggrieved Employees**

14 In its Minute Order the Court requested billing records showing the litigation costs. See Minute  
15 Order, p. 2. Attached as Exhibit D to the Declaration of Chris C. Scheithauer is the billing records for  
16 the litigation costs. See Scheithauer Decl., ¶ 56 and Exhibit D. Note that the amount requested to be  
17 awarded to Plaintiff’s counsel in the Settlement Agreement and in the Motion (\$69,069.88) failed to  
18 fully account for certain invoices that were received after the Settlement Agreement was reached.  
19 Those additional costs include such things as the \$25,638.72 invoice from Mr. Goel for his expert  
20 services which helped lead to the settlement. Thus, the costs sought from the common fund  
21 significantly understate the actual costs incurred by Plaintiff’s counsel pursuing this case. See  
22 Scheithauer Decl., ¶ 56.

23 **H. Plaintiff Young’s Individual Settlement Agreement Resolving The First Case And**  
24 **Arbitration But Carving Out The PAGA Case**

25 In its Minute Order the Court requested a copy of the settlement agreement “for Plaintiff’s  
26 See Minute Order, p. 2. We assume the Court is referring to the 2023 settlement of the Arbitration  
27 Case. We point out for the Court that the Arbitration Case was a much different case than this PAGA  
28 case and involved different claims, including counterclaims by RTI against Young. See Scheithauer

Decl., ¶¶ 4-16. The only individual settlement agreement is from the Arbitration settlement and RTI wishes to keep the details private. Accordingly, to accommodate the Court's desire to review it, RTI has agreed to **lodge** the individual settlement agreement with the Court (but not publicly file it). *Id.*, ¶ 16; *see also* Noyes Decl., ¶ 5.

**I. Revisions To the Notice To Aggrieved Employees**

In its Minute Order, the Court identified modifications to the language in the Notice to the Aggrieved Employees of the PAGA Settlement, including to confirm the definition of Aggrieved Employees with the definition in the Settlement Agreement and the conform the release language as well. *See* Minute Order, p. 1. Attached as Exhibits E and F is a clean and redline Notice, respectively, with the changes requested.

Additionally, RTI has confirmed that there is no need to provide the Notice in any language other than English because all the Aggrieved Employees speak and read fluently in English. *See* Noyes Decl., § 4.

**III. CONCLUSION**

For the reasons set forth above, Plaintiff requests that the Court grant this motion, approve the Parties' PAGA Settlement, and enter an order consistent with the proposed order submitted herewith.

Dated: May 29, 2025

CALL & JENSEN  
A Professional Corporation  
John T. Egley  
Chris C. Scheithauer  
Travis A. Beck

By: 

Chris C. Scheithauer

Attorneys for Plaintiff Jeffrey Young on behalf of the  
State of California and Aggrieved Employees

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On May 29, 2025, I served the foregoing document described as **PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT** on the following person(s) in the manner indicated:

**SEE ATTACHED SERVICE LIST**

☒ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☐ (BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call & Jensen, Newport Beach, California, following ordinary business practices.

☐ (BY FEDEX) I am familiar with the practice of Call & Jensen for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Call & Jensen, Newport Beach, California, following ordinary business practices.

☐ (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification address of jsandoval@calljensen.com the document described above and a copy of this declaration to the person and at the electronic notification address set forth herein. The electronic transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 29, 2025.

  
Julie Sandoval

**SERVICE LIST**

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