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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SHAWNTE JOHNSON, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

HERCULES FORWARDING, INC., a California corporation; and DOES 1 - 10, inclusive,

Defendants.

Case No. 23STCV05374

Assigned to the Hon. Lee W. Tsao

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

Date: September 8, 2025
Time: 9:30 a.m.
Dept.: Department C

Complaint Filed: March 10, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that on September 8, 2025 at 9:30 a.m., or as soon thereafter as counsel may be heard, in Department C of the above-captioned court, located at 12720 Norwalk, Los Angeles, California 90650, the Honorable Lee W. Tsao presiding, Plaintiff will, and hereby does, move this Court for entry of an order and judgment approving the Parties' PAGA settlement pursuant to Labor Code section 2699(s)(2).

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

Dated: May 15, 2025

Respectfully submitted,

By: Eric Yaeckel

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Roxanna Tabatabaeepour
Ryan Tish
Alexander Wallin
CAPSTONE LAW APC

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I. INTRODUCTION

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code. §§ 2698, *et seq.*, "PAGA"), Plaintiff Shawnte Johnson ("Plaintiff") seeks Court approval of the settlement of her claim for PAGA civil penalties with Defendant Hercules Forwarding, Inc. ("Defendant") (collectively with Plaintiff, the "Parties").

The PAGA provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Lab. Code § 2699(s)(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 Agreement[1] are as follows:

(1) A non-reversionary Gross Settlement Amount of $135,000, which includes payments to the LWDA and Aggrieved Employees for their respective shares of the PAGA Penalties Fund, Plaintiff's attorneys' fees and litigation costs, Plaintiff's Service Award, and Settlement Administration Costs.

(2) The creation of a PAGA Penalties Fund of approximately $63,547.78 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 $47,660.84 will be paid to the LWDA pursuant to Labor Code section 2699(i).[2]

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[1] Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the PAGA Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Eric K. Yaeckel ["Yaeckel Decl."] filed in conjunction with this motion.

[2] The PAGA statute was recently amended on July 1, 2024. Certain citations to the PAGA's provisions in this Motion relate to the pre-amendment version of the statute, which applies to this action

(b) Twenty-five percent of the PAGA Penalties Fund, or approximately $15,886.94, will be paid to Aggrieved Employees.

(c) Aggrieved Employees are all persons who are employed or were employed by Defendant in California as non-exempt, hourly-paid employees at any time during the Settlement Period and who have not previously signed a general release of their claims against Defendant. ("Aggrieved Employees"). There are approximately 210 Aggrieved Employees.

(3) Service Award of $10,000 to Plaintiff, as consideration for her service on behalf of the State of California and Aggrieved Employees.

(4) Reasonable attorneys' fees and costs under Labor Code section 2699(k)(1) for Plaintiff's Counsel's successful prosecution and resolution of this action. Plaintiff requests $45,000 in attorneys' fees and $12,702.22 in costs for her counsel, Sullivan & Yaeckel Law Group and Capstone Law APC ("Plaintiff's Counsel").

(5) Settlement Administration Costs of approximately $3,750 to ILYM Group, Inc. ("ILYM").

The civil penalties secured by the settlement represent a fair compromise of Plaintiff's 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" Defendant 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, Plaintiff respectfully requests 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

Defendant is a provider of freight shipping services. Defendant employed Plaintiff as a non-

based on the pre-amendment filing date of the initial complaint and related administrative exhaustion letter.

exempt, hourly-paid employee from around April 19, 2022, to around October 12, 2022. (Complaint at ¶ 7.) Plaintiff filed this PAGA action against Defendant on March 10, 2023. (Yaeckel Decl. ¶ 4.) Plaintiff's Complaint seeks PAGA civil penalties for Defendant's alleged violation of the following Labor Code sections: (a) meal and rest period violations (sections 226.7, 512); (b) minimum wage violations (section 1197); (c) overtime violations (sections 510, 1194, 1197); (d) wage statement violations (section 226); failure to reimburse (section 2802) ; and (e) failure to pay wages upon separation (sections 201-203).

Following the exchange of informal discovery, including the production of Defendants' California labor policies and procedures materials, and a sample of Aggrieved Employes' time and wage records, the Parties participated in a mediation on August 13, 2024, with Michael D. Young, Esq. (Yaeckel Decl. at ¶5.) At all times, the Parties' negotiations were adversarial and non-collusive. (*Id.*) Mr. Young helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*) With Mr. Young's guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs' claims. (*Id.*) The terms of the settlement are now set forth in complete and final form in the PAGA Settlement Agreement. (*Id.* at ¶3, Ex. 1.)

B. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiff's Claims

1. Terms of the Settlement and Distribution of PAGA Penalties

The Settlement Agreement provides that Defendant will pay a total of $135,000 to settle this Action. (Settlement Agreement ¶ 12.) From this amount, payments will be made: (a) to the LWDA and Aggrieved Employees; (b) to Plaintiff as compensation for her service on behalf of the State; (c) to Plaintiff's Counsel for their attorneys' fees and litigation costs; and (d) and to the Settlement Administrator (ILYM) for settlement administration costs. (*Id.* at ¶ ¶13-17.)

The resulting balance will be distributed to the LWDA and Aggrieved Employees: the LWDA will receive approximately $47,660.84, and Aggrieved Employees will receive approximately $15,886.94. (*Id.*) The Aggrieved Employees encompassed by the proposed Settlement are all persons who are employed or were employed by Defendant in California as non-exempt, hourly-paid employees at any time during the Settlement Period and who have not previously signed a general release of their claims against Defendant. (*Id.* at ¶ 2.) There are approximately 210 Aggrieved Employees. (*Id.* at ¶17.)

2. Allocations to the LWDA and Aggrieved Employees

Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual allocations will be calculated on a pro-rata basis using the number of pay periods worked by each employee. Defendant will provide the total number of pay periods worked by each Aggrieved Employee and the total number of pay periods worked by all Aggrieved Employees during the Settlement Period. (Settlement Agreement ¶ 13.) The Settlement Administrator will calculate each Aggrieved Employee's payment using the proportional number of pay periods during which the employee worked. (*Id.*). Thus, the Settlement Administrator will perform the following calculation to calculate individual payments: Settlement Payment = 25% of PAGA Penalties Fund × [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period ÷ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period]. (*Id.*)

A proposed notice to accompany the settlement checks is attached to the declaration of Eric K. Yaeckel as Exhibit 4.

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

3. The Settled PAGA Claims

Upon entry of the Order and Judgment, Plaintiff and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the Settlement Period:

> "Settled Claims" means the claims that Plaintiff alleged against the Released Parties, in his individual capacity and on behalf of the State of California, based on the facts stated in the operative Complaint and in Plaintiff's LWDA notice letter, including (i) all PAGA claims seeking civil penalties premised upon California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2802 et seq., the corresponding sections of the California Industrial Commission Wage Orders, and (ii) all other claims for civil penalties recoverable under the Private Attorneys General Act, California Labor Code sections 2698 et seq., based on the facts alleged in the operative Complaint and in Plaintiff's LWDA notice letter at any time during the Settlement Period. The Released Claims do not release any Aggrieved Employees' claims for wages or statutory penalties, and the Aggrieved Employees may not opt out of the Released Claims.

(Settlement Agreement ¶¶ 10, 22.)

Additionally, Plaintiff has agreed to a broader general release of all claims of any kind against Defendant. (*Id.* at ¶ 15.)

III. ARGUMENT

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

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

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

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

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

Based on their analysis of documents and employee data produced by Defendant, including Defendants' California labor policies and procedures manuals, and a sample of Aggrieved Employees' time records, Plaintiff's Counsel were able to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Yaeckel Decl.¶6)

By engaging in a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendant. (*Id.* at ¶¶7, 16, 34.)

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

Furthermore, Defendant contended that the majority of Hercules's drivers are subject to the Federal Motor Carrier Safety Act ("FMCSA") Hours of Service Rules and therefore would not be subject to California's wage and hour laws.

Finally, Defendant contended it had acted in good faith and at all relevant times had taken measures to ensure compliance with workplace policies and the Labor Code. Thus, Defendant asserted, even if Plaintiff was able to establish some violations, these would likely be technical or minor in nature, and therefore the Court would exercise its discretion to award much less than the maximum amount of potential penalties.

C. The Settlement Is Reasonable Given the Risks of Further Litigation

In assessing whether the amount of civil penalties is genuine and meaningful, the Court may balance the amount in penalties against the risks of further litigation. Here, Plaintiff obtained a meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on information and evidence produced by Defendant during discovery, Plaintiff's Counsel determined that Aggrieved Employees worked during a total of approximately 14,115 pay periods during the PAGA statute of limitations period. Statutory penalties would be calculated according to Labor Code 2699(f)(2):

If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

However, a number of courts have found that the "subsequent" penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) ("the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to "heightened civil penalties" because the defendant was not given notice by the Labor Commissioner when the "subsequent" violations occurred).[3] Under this line of cases, Defendant's exposure would be approximately $1,411,500.00 = 14,115 violative pay periods × $100.

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(e)(2). 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).

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[3] *See also Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) ("employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA's heightened penalty of $200 for subsequent violations will not be calculated to determine the amount in 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).

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—**<u>or 0.21% of the calculated maximum</u>**—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, Plaintiff would have recovered only approximately $2,964.15 ($1,411,500.00× 0.0021 reduction).

Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding $500,000 instead of maximum penalties of $2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past PAGA violations from $1.8 million to $500,000, after rejecting numerous other PAGA claims).

Considering the issues, defenses, and the risks, a $135,000 settlement for a limited release of PAGA penalties—no individual wage and hour claims will be extinguished by the Settlement—is a fair and just result and furthers PAGA's objectives, and is not "unjust, arbitrary, and oppressive."

D. The Court Should Award the Requested Attorneys' Fees in the Amount of Approximately One-Third of the Gross Settlement Fund

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

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

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

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

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

Likewise, through the successful efforts of Plaintiff and their attorneys, a common fund was created in the amount of $135,000 for the benefit of the employees and the State of California. Thus, these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the gross settlement fund under the common fund theory. *Id*. Such fees are deducted as a percentage of the settlement amount. *See, e.g.*, *Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six* (6) *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe Communications Co*., 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing Co*., 327 F.3d 938, 967 (9th Cir. 2003).

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

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

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

Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte*, 231 Cal. App. 4th at 506.

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

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

- *Cruz v. Wal-Mart Associates, Inc.*, Los Angeles Superior Court, No. 18STCV03128 (May 28, 2021) (approving fee award from PAGA-only settlement of $5 million against a common fund of $15 million);

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

- *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823 (April 20, 2017) (approving fee award from PAGA-only settlement of $1.375 million against a common fund of $3.2 million (42%));
- *Garcia v. Macy's*, San Bernardino County Superior Court, Case No. CIVDS1516007 (Sept. 13, 2017) (33.33% fee awarded on $12,500,000 settlement of a PAGA only case);
- *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);
- *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-OC-CXC (June 15, 2017) (33.33% fee awarded on a PAGA only case);
- *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137 (May 23, 2016) (33.33% fee awarded on a $650,000 settlement of a PAGA only case).

An award of fees from the gross settlement amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of plaintiff's counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal. 5th at 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts." *Id*.

For all of these reasons, a common fund fee award in the amount of $45,000 is fair and reasonable.

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

The trial court may use an abbreviated lodestar "cross-check" for common fund awards if the court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly instructed that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the fee award." *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in *Laffitte II* emphasized that only where the "multiplier calculated by means of a lodestar cross-check is

extraordinarily high or low" should the court "consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* (emphasis added). Accordingly, when the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not "required to closely scrutinize each claimed attorney-hour." *Laffitte II*, 1 Cal. 5th at 505. An evaluation may be done by reviewing "counsel declarations summarizing overall time spent." *Id*.

In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region. *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel). Here, Plaintiff's Counsel's hourly rates are comparable to, or less than, those charged by other representative action plaintiffs' counsel and the firms defending PAGA actions, and have been approved by numerous federal and state courts. (Yaeckel Decl. ¶¶22-24; Declaration of Raul Perez ¶¶ 15-17, Ex. 2.)

Likewise, the total attorney hours expended on this action are reasonable and in line with comparable cases. In determining the reasonableness of the hours expended, "the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). Plaintiff's Counsel billed a total of approximately 95.7 hours. (Yaeckel Decl. ¶17(a)-(c); Perez Decl. ¶ 14.)

Multiplying the total hours billed by Plaintiff's Counsel to the litigation by their reasonable hourly rates yields a lodestar of $61,650. (Yaeckel Decl. ¶17(a)-(c)) Here, no lodestar multiplier is necessary as counsel have billed more than is being requested in this motion. Applying a ***negative*** multiplier of 0.73 to that lodestar approximately yields the requested fees. When plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. *See*, *e.g*., *Chun-Hoon v. McKee Foods Corp*., 716 F. Supp. 2d 848, 854 (N.D.

Cal. 2010) (finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by Plaintiff's Counsel.").

Plaintiff's Counsel would otherwise be entitled to a ***positive*** multiplier based on factors most commonly cited by courts, including: (1) the results obtained; (2) the contingent nature of the fee award; and (3) the skill displayed by counsel. *See Serrano III*, 20 Cal. 3d at 49; *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 835 (2001) (recognizing "results obtained" as a factor). Additionally, under California law, a 1.5 multiplier would be awarded ***for the contingent risk factor alone***, and without the presence of other factors. *See Ctr. for Biological Diversity v. Cty. of San Bernardino*, 185 Cal. App. 4th 866, 900 (2010) (affirming a 1.5 risk multiplier in a non-complex statutory case and expressly rejecting the application of other multiplier factors). *See also Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1174 (2008) (affirming a 1.65 contingent risk multiplier in a wage and hour class action, explaining that "counsel risked never receiving any compensation *at all*" (emphasis in original)); *Pellegrino v. Robert Half Int'l*, 182 Cal. App. 4th 278, 292 (2010) (affirming a 1.75 multiplier due, in part, to "Plaintiff's Counsel not being paid for their work in the event that [defendant] prevailed on [an] affirmative defense.").

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

F. The Requested Recovery In Litigation Expenses Is Reasonable

Plaintiff's Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code § 2699(k)(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 Plaintiff's Counsel's declaration in support of the Motion, Plaintiff's Counsel advanced $12,702.22 in out-of-pocket costs to the State for, among other things, court fees, courier fees, legal research databases, consultant fees, and mediation fees. (Yaeckel Decl. ¶25.) Because these reasonable costs were necessarily incurred during the case's pendency, these costs are 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.").

G. The Court Should Approve the Negotiated Service Award Payment

Paragraph 15 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiff the sum of $10,000 for her service on behalf of the LWDA and Aggrieved Employees.

The concurrently filed declaration of Plaintiff (Mr. Johnson) details his time and efforts spent on this case.

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

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

Second, the separate settlement payment is reasonable because Plaintiff "remained fully involved and expended considerable time and energy during the course of the litigation." *See In re Toys 'R' Us-Del FACTA Litig*., 295 F.R.D. at 471 (citation omitted). Plaintiff devoted his time and effort toward assisting her attorneys with the prosecution of the claims, and assisted counsel with finalizing the settlement.

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

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

IV. CONCLUSION

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

Dated: May 15, 2025

Respectfully submitted,

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