KINGSLEY SZAMET
EMPLOYMENT LAWYERS
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
JESSICA BULAON, Esq., (SBN 340749)
jessi@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Edgar Aguilasocho, Esq. (SBN 285567)
Mario Martinez, Esq. (SBN 200721)
MARTINEZ AGUILASOCHO LAW, INC.
P.O. Box 1998
Bakersfield, California 93303
Telephone: (661) 859-1 174
Facsimile: (661) 840-6154

Attorneys for Plaintiffs and the aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

LUIS LOPEZ SANTOS; MAURILIO SANTIAGO GARCIA; ESTELA PONCE PEREZ; CARMEN LOPEZ SANTIAGO; CRISTINA LOPEZ SOLANO; ARTURO LOPEZ SOLANO; MARGARITO MARCELINO HERNANDEZ; an individual, on behalf of the State of California, as a private attorney general,

PLAINTIFFS,

v.

WEST COAST BERRY FARMS, LLC; and DOES 1 thru 50, inclusive,

DEFENDANTS.

Lead Case No. 23CV01149
(Case No. 23CV00578)

[Case Assigned for All Purposes to Hon. Jed Beebe in Dept. SM 4]

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

[Filed concurrently with Declarations of Kelsey M. Szamet; *Jodey Lawrence of Phoenix Class Action Settlement Administration, and Plaintiff Luis Lopez Santos; Maurilio Santiago Garcia in Support of Plaintiff's Motion for Approval of Representative Action Settlement; [Proposed] Order, and Judgment]*

Date: February 4, 2027
Time: 8:30 AM
Dept.: SM 4

Complaint Filed:	December 5, 2022
FAC Filed:	March 22, 2023
SAC Filed:	August 12, 2026
Trial Date:	None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 4, 2027 at 8:30 AM in Department SM 4 of the above-entitled court, Plaintiffs LUIS LOPEZ SANTOS and MAURILIO SANTIAGO GARCIA will move the Court for an Order Granting Approval of Representative Action Settlement.

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

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

DATED: October 26, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: _____

Kelsey M. Szamet
Attorneys for Plaintiffs and all aggrieved employees

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY 1

A. Litigation Overview and Procedural History 1

B. The Discovery Process and Mediation 3

III. PAGA ACTIONS AND THE REQUIREMENTS 4

A. The PAGA Statutory Scheme 4

B. The Court Has Discretion When Awarding the Amount of Penalties 5

C. Standards for Settlement Approval 6

IV. THE SETTLEMENT 6

V. ARGUMENT 7

A. The Court Should Approve the Settlement Agreement 7

B. The Risks of Moving Forward with Plaintiff's PAGA Claim 7

D. A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty Awarded for Technical Violations of the Labor Code 17

C. Based on the Risks Above and the Analysis of the Maximum Penalties Available, Plaintiffs Believes this Settlement is Fair and Reasonable 19

VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS 19

A. Plaintiffs' Counsel are Entitled to a Fee from the Common Fund 19

B. The Attorneys' Fees Request Are Well Within the Range of Fees in Comparable Cases 21

C. PAGA Counsel's Fee Request is Reasonable Under a Lodestar Crosscheck 21

i. Requested Multiplier 21

D. The Hourly Rates Requested are Reasonable 23

E. The Fees Requested are Reasonable 24

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS 24

VIII. ENHANCEMENT TO PLAINTIFF 25

IX. CONCLUSION 26

TABLE OF AUTHORITIES

FEDERAL CASES

Fleming v. Covidien Inc.,
(C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047 18

Gibbs v. TWC Administration, LLC,
(S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768 9

McKenzie v. Federal Exp. Corp.,
(C.D. Cal. 2011) 765 F.Supp.2d 1222 5

Medina v. Vander Poel,
(E.D. Cal. 2015) 523 B.R. 820 4

Missouri v. Jenkins by Agyei,
(1989) 491 U.S. 274 23

Moreno v. Autozone, Inc.,
(N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942 ..... 5, 17

O'Connor v. Uber Techs., Inc.,
(N.D. Cal. 2016) 201 F. Supp. 3d 1110 6

Rodriguez v. West Publishing Corp.,
(9th Cir. 2009) 563 F.3d 948 25

Staton v. Boeing Co.,
(9th Cir.2003) 327 F.3d 938 25

Van Vraken v. Atlantic Richfield Co.,
(N.D.Cal.1995) 901 F.Supp. 294 24

Willner v. Manpower, Inc.,
(N.D. Cal. 2014) 35 F.Supp.3d 1116 5

State Cases

Amaral v. Cintas Corp. No. 2,
163 Cal. App. 4th 1157 (2008) 5, 16, 17

Arias v. Superior Court,
(2009) 46 Cal.4th 969 ..... 4, 6, 7

Barnhill v. Robert Saunders & Co.,
(1981) 125 Cal.App.3d 1 16

Beasley v. Wells Fargo Bank,
(1991) 235 Cal.App.3d 1407 22

Bihun v. AT&T Info. Sys., Inc.,
(1993) 13 Cal.App.4th 976 24

Brinker Restaurant Corp. v. Superior Court,
(2012) 53 Cal.4th 1004 ..... 11, 12, 13, 14

Brown v. Ralphs Grocery Co.,
(2011) 197 Cal.App.4th 489 4

Carrington v. Starbucks Corp.,
(2018) 30 Cal. App. 5th 504 18

Chavez v. Netflix, Inc.,
(2008) 162 Cal.App.4th 43, fn 11 21

Ciani v. San Diego Trust & Sav. Bank,
(1994) 25 Cal.App.4th 563 20

Clark v. American Residential Services LLC,
(2009) 175 Cal.App.4th 785 25

Coal. for L.A. County Planning v. Bd. of Supervisors,
(1977) 76 Cal.App.3d 241 22

Consumer Privacy Cases,
(2009) 175 Cal.App.4th 545 21

Diaz v. Grill Concepts Services, Inc.,
(2018) 23 Cal.App.5th 859 16

Dunk v. Ford Motor Co.,
(1996) 48 Cal.App.4th 1794 20

Estrada v. Royalty Carpet Mills, Inc.,
(2024) 15 Cal.5th 582 ..... 12, 14

Frlekin v. Apple Inc.,
(2020) 8 Cal.5th 1038 8

Gattuso v. Harte-Hanks Shoppers, Inc.,
(2007) 42 Cal.4th 554 14

Hernandez v. Pacific Bell Telephone Co.,
(2018) 29 Cal.App.5th 131 11

Iskanian v. CLS Transp. Los Angeles, LLC,
(2014) 59 Cal.4th 348 4

Jong v. Kaiser Foundation Health Plan, Inc.,
(2014) 226 Cal.App.4th 391 11

Ketchum v. Moses,
(2001) 24 Cal.4th 1122 ..... 21, 24

Laffitte v. Robert Half Intern. Inc.,
(2016) 1 Cal.5th 480 ..... 19, 20

Lealao v. Beneficial Calif., Inc.,
(2000) 82 Cal.App.4th 19 ..... 20, 24

Maldonado v. Epsilon Plastics, Inc.,
(2018) 22 Cal.App.5th 1308 16

Mamika v. Barca,
(1998) 68 Cal.App.4th 487 16

Montano v. The Wet Seal Retail, Inc.,
232 Cal.App.4th 1214 (2015) 4

Morillion v. Royal Packing Co.,
(2000) 22 Cal.4th 575 11

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,
(2010) 186 Cal.App.4th 399 25

Murphy v. Kenneth Cole Productions, Inc.,
(2007) 40 Cal.4th 1094 12

Naranjo v. Spectrum Security Services, Inc.,
(2024) 15 Cal.5th 1056 ..... 16, 17

PLCM Group, Inc. v. Drexler,
(2000) 22 Cal.4th 1084 23

Rader v. Thrasher,
(1962) 57 Cal.2d 244 22

Rebney v. Wells Fargo Bank,
(1991) 232 Cal.App.3d 1344 22

Reyes v. Macy's, Inc.,
(2011) 202 Cal.App.4th 1119 4

San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino,
(1984) 155 Cal.App.3d 738 ..... 21, 23

Save El Toro Ass'n v. Days,
(1979) 98 Cal.App.3d 544 20

Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.,
234 Cal.App.4th 1109 (2015) 4

Serrano v. Priest III,
(1977), 20 Cal.3d 20, 21

Serrano v. Priest IV ,
(1982) "Unruh", supra, 32 Cal.3d 23

Troester v. Starbucks Corp.,
(2018) 5 Cal.5th 829 ..... 8, 9, 11

Wershba v. Apple Computer, Inc.,
(2001) 91 Cal.App.4th 224 ..... 20, 21, 22, 24

Woodland Hills Residents Assn., Inc. v. City Council,
(1979) 23 Cal.3d 917 20

State Statutes

Business & Professions Code section 17200 ..... 2, 3

CCP 1013(a)(3) 1

Labor Code § 203 ..... 2, 16

Labor Code § 226(a) 2, 15, 18

Labor Code § 226.3 7

Labor Code § 226.7 ..... 2, 13

Labor Code § 510, 511, 1194, and 1199 ..... 2, 9, 10

Labor Code § 1174, subdivision (d) 17

Labor Code § 2699 ..... passim

Labor Code § 2699.3 (a)(1) 5

Labor Code § 2802 ..... 2, 14

STATE REGULATIONS

Cal. Code Regs., tit. 8, § 11140, subd. 12(A) 12, 13

Cal. Code Regs., tit. 8, § 13520 16

Title 8 Cal. Code of Regs., § 11080(2)(G) 8

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Luis Lopez Santos and Maurilio Santiago Garcia ("Plaintiffs") submit this Memorandum of Points and Authorities in support of Motion for Approval of Representative Action Settlement. Plaintiffs and Defendant WEST COAST BERRY FARMS, LLC ("Defendant") (collectively, the "Parties") have reached a proposed settlement documented in the Representative Action Settlement Agreement ("Settlement" or "Agreement"), attached to the concurrently-filed declaration of Kelsey M. Szamet.[1]

This is a Settlement under the Private Attorneys General Act of 2004, Labor Code §2699, et seq. ("PAGA"). The Gross Settlement Amount is $400,000.00. After deduction of attorney's fees and litigation expenses, litigation enhancement to Plaintiffs, and settlement administration costs as discussed in the Agreement, the remaining amount to be divided between the Labor and Workforce Development Agency ("LWDA") and the aggrieved employees as required by Labor Code section 2699(i) is $175,490.85, with $131,618.14 (or 75%) going to the LWDA and $43,872.71 (or 25%) distributed to the aggrieved employees.[2]

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

II. BACKGROUND OF THE CASE AND RELEVANT PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On December 5, 2022, Plaintiffs LUIS LOPEZ SANTOS and MAURILIO SANTIAGO

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[1] The Parties also entered into a separate confidential settlement for Plaintiffs' individual claims. Plaintiff brought additional claims for wage and hour violations and an alleged wrongful termination claim as part of the Complaint in this Action.

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

[3] Plaintiffs' Motion for Approval of Representative Action Settlement will be concurrently uploaded to the LWDA's website on the date this Motion is filed. Proof of submission of Plaintiff's Motion for Approval of Representative Action Settlement, all related documents, and copy of the email from the LWDA confirming receipt can be provided to the Court upon request. (Szamet Decl. ¶125.)

GARCIA filed this wage and hour class action lawsuit, alleging six causes of action, including: (1) failure to pay wages and/or overtime under Labor Code sections 510, 511, 1194, and 1199; (2) failure to provide rest breaks pursuant to Labor Code section 226.7; (3) failure to reimburse expenses pursuant to Labor Code section 2802; (4) failure to issue accurate itemized wage statements pursuant to Labor Code section 226(a); (5) penalties under Labor Code section 203; and (6) violation of Business & Professions Code section 17200. (Szamet Decl. ¶5.).

Also on December 5, 2022, Plaintiffs sent a notice letter, pursuant to Labor Code section 2699 ("PAGA"), to the Labor Workforce Development Agency ("LWDA") regarding their intent to seek civil penalties for the same Labor Code violations above, under Labor Code section 2699, et seq. (Szamet Decl. ¶6.).

On February 10, 2023, Plaintiffs transferred the Action from Kern County Superior Court to Santa Barbara Superior Court. (Szamet Decl. ¶7.).

On March 22, 2023, Plaintiffs filed a First Amended Class and Representative Action Complaint adding an additional cause of action for penalties pursuant to Labor Code § 2699, et seq., the Private Attorneys General Act ("PAGA") based on the underlying Labor Code violations already pled, as well as a record keeping violation under IWC Wage Order 14, paragraph 7(A). (Szamet Decl. ¶8.).

On November 8, 2024, the Parties filed a Stipulation to Submit Individual Claims to Binding Arbitration, Dismiss Class Claims, and Stay the Representative PAGA Action. (Szamet Decl. ¶9.).

On November 13, 2024, this Court granted the parties stipulation to dismiss the putative class claims, pursuant to the parties' arbitration agreements, leaving only the Plaintiffs' individual claims and the PAGA claim. (Szamet Decl. ¶10.).

On July 18, 2025, Plaintiff Estela Ponce Perez, represented by PAGA Counsel, commenced a separate class action by filing a class action complaint alleging causes of action against WCBF for (1) failure to pay wages and/or overtime; (2) failure to provide rest breaks; (3) failure to reimburse expenses; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due upon separation of employment; and (6) violation of Business and Professions Code §§

17200, et seq. (Szamet Decl. ¶11.).

On August 12, 2025, Plaintiffs sent an amended notice letter, pursuant to Labor Code section 2699 ("PAGA"), to the Labor Workforce Development Agency ("LWDA") adding Carmen Lopez Santiago; Cristina Lopez Solano; Arturo Lopez Solano; and Margarito Marcelino Hernandez as Plaintiffs. (Szamet Decl. ¶12.).

On August 18, 2025, Plaintiffs Estela Ponce Perez, Carmen Lopez Santiago, Cristina Lopez Solano, Arturo Lopez Solano, and Margarito Marcelino Hernandez, all represented by PAGA Counsel, filed a First Amended Complaint alleging the same six causes of action against WCBF, (the "Perez Action"). (Szamet Decl. ¶13.).

In November 2025, the 121 employees represented by PAGA Counsel each filed arbitrations, pursuant to their individual arbitration agreements signed with WCBF, all alleging causes of action against WCBF for (1) failure to pay wages and/or overtime; (2) failure to provide rest breaks; (3) failure to reimburse expenses; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due upon separation of employment; and (6) violation of Business and Professions Code §§ 17200, et seq. All arbitration complaints are considered to be operative complaints in the Arbitrations ("Arbitration Complaints"). (Szamet Decl. ¶14.).

On July 15, 2026, the Court granted the Parties' Joint Stipulation to Consolidate Cases, in which the Court consolidated both this action and the Perez Action for all purposes, designating the Santos Action as the lead case. (Szamet Decl. ¶15.).

On August 12, 2026, Plaintiffs filed their Second Amended Consolidated Representative Action Complaint. ("Operative Complaint"). (Szamet Decl. ¶16.).

B. The Discovery Process and Mediation

The Parties have not engaged in extensive formal discovery instead focusing their efforts on resolving this case through early mediation. (Szamet Decl. ¶17) Defendant produced relevant data such as workweek data for the aggrieved employees, for mediation purposes only. (Id.)

On August 19, 2024, the Parties attended private mediation with Steven J. Rottman. The Parties did not reach a settlement on that day. (Szamet Decl. ¶18.).

On September 25, 2025, the Parties participated in a second, all-day mediation presided

over by mediator Henry J. Bongiovi, which led to the present Agreement to settle the Action. (Szamet Decl. ¶19.).

The Parties engaged in good faith, arms-length negotiations with Defendant concerning possible resolution of the claims asserted in the Litigation. (Szamet Decl. ¶20) Although Defendant denies that it violated any pertinent law, it recognized the risks and attendant costs of litigation, and the Parties were able to reach a tentative settlement subject to finalization of a formal Representative Action Settlement Agreement and the approval of the Court. (Szamet Decl. ¶21.) The Parties negotiated the terms and conditions of the Agreement and now present the agreed-upon Settlement to the Court for Approval. (*Id*.)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of "deputizing" citizens as private attorney generals to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501, review den. (Oct. 19, 2011, No. S195850), *cert. denied* (Apr. 16, 2012) 132 S.Ct. 1910. A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *see also Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles*, LLC (2014) 59 Cal.4th 348, 380.)

When an aggrieved employee brings a PAGA claim, "the government is always the real party in interest." *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal.App.4th 1109, 1119 (2015); *Montano v. The Wet Seal Retail, Inc.* 232 Cal.App.4th 1214, 1222 (2015) ("[A] PAGA action is a dispute between an employer and the State agency."). Accordingly, a plaintiff that brings a PAGA claim represents "the same legal right and interest as state labor law enforcement agencies," in that the plaintiff is seeking to recover those civil penalties that otherwise would have been assessed and collected by the LWDA. *Arias*, *supra*, 46 Cal.4th at 986; Lab. Code § 2699 (a) & (f); *Securitas*, *supra*, 234 Cal.App.4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding "PAGA plaintiffs do not have property rights in their

cases."). This is borne out by the fact that the LWDA receives 75 percent of any civil penalties recovered; thus, recoveries are principally for the state and only secondarily for aggrieved employees. Lab. Code § 2699 (i). Therefore, when a plaintiff brings a PAGA claim, he or she is properly conceived of as a private attorney general prosecuting violations of California's labor laws on behalf of the state.

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

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

Lab. Code § 2699.3 (a)(1)

As explained above, Plaintiffs have complied with the notice requirements and have properly pled a PAGA cause of action.

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

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

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

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code §2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Here, Defendant denies that it violated any law or that it engaged in any knowing or intentional conduct giving rise to liability and expressly deny that any employees suffered harm.

[4] *See also Willner v. Manpower, Inc.* (N.D. Cal. 2014) 35 F.Supp.3d 1116, 1136; *McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F.Supp.2d 1222, 1232.

C. Standards for Settlement Approval

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

IV. THE SETTLEMENT

Defendant will pay the total sum of $400,000.00 in full and final settlement of the PAGA claims alleged. (Szamet Decl. ¶22., Exhibit 1, ¶3.1.) Per the Agreement, the amount is allocated as follows:

Gross Settlement Amount:	$400,000.00
PAGA Counsel Fees Payment:	$133,333.33
PAGA Counsel Litigation Expenses Payment:	$58,675.82[5]
Administrator Expenses Payment:	$22,500.00
Named Plaintiffs Enhancement:	$10,000.00
PAGA Penalties:	$175,490.85 *($131,618.14 to the LWDA; $43,872.71 to remain in the Net PAGA Settlement Amount)*

(Szamet Decl. ¶23., Exhibit 1, ¶3.)

Each aggrieved employee shall receive a pro-rata portion of the remaining amount in PAGA penalties based by dividing the amount of the aggrieved employees' 25% share of PAGA Penalties

[5] The Agreement provided for counsel to receive cost reimbursement up to $65,000.00. However, counsel's final costs come to $58,675.82. (Szamet, Ex. 1) The extra $6,324.18 will remain in the net settlement fund, causing the net amount for distribution to the LWDA and Aggrieved Employees to be slightly higher than the $169,166.67 contemplated in the settlement agreement. (Szamet, Ex. 1, ¶24)

by the total number of PAGA Pay Periods worked by all aggrieved employees during the PAGA Period[6], and then multiplying the result by each aggrieved employee's PAGA Pay Periods. (Szamet Decl. ¶25., Exhibit 1, ¶3.2.4.2.)

For settlement purposes, the Aggrieved Employees are defined as: "all persons who currently or formerly work for West Coast Berry Farms, LLC as a non-exempt, hourly paid employee in the State of California from December 5, 2021, through September 29, 2025" ("aggrieved employees"). (Szamet Decl. ¶27., Exhibit 1, ¶1.4.)

V. ARGUMENT

A. The Court Should Approve the Settlement Agreement

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

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

To help the Court evaluate the fairness of the Settlement, a discussion of the risk evaluation and discount taken follows. (Szamet Decl. ¶28.) Plaintiffs believed that Defendant may persuasively argue that the Court should exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. (Szamet Decl. ¶29.) Pursuant to Labor Code §226.3, the Labor Commissioner has the discretion to "decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake." (Szamet Decl. ¶30.) And in accordance with PAGA, the court in a PAGA action has the same discretion "to assess a civil penalty" that the Labor Commissioner would have, as well as complete discretion to "award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is

[6] The PAGA Period means the period from December 5, 2021, to September 29, 2025. (Szamet Decl. ¶26, Exhibit 1, ¶1.20)

unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(1) and (e)(2)). (Szamet Decl. ¶31.)

PAGA Counsel anticipated that, at trial, Counsel for Defendant could make a potentially persuasive argument that: (1) the aggrieved employees were properly paid and/or reimbursed in accordance with Defendant's lawful policies and practices, and that any alleged failure to compensate the aggrieved employees was the result of inadvertence and clerical error; (2) the aggrieved employees were provided with the opportunity to take rest breaks in compliance with California law; (3) until this action was filed, no employees had complained about any alleged failure to pay wages, provide rest breaks, reimburse expenses, issue accurate itemized wage statements; (4) none of Defendant's employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiffs' allegations. (Szamet Decl. ¶32.) All of which Counsel for Defendant would argue, should mitigate in favor of significantly reducing or waiving any PAGA penalties. (*Id.*) While Plaintiffs disagree that this analysis is legally correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded to aggrieved employees if the Court were persuaded by them. (Szamet Decl. ¶33.)

1. The Risks Associated with the Wages/Overtime Claim

"California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845. Time is compensable if an employee is "*subject to the control* of an employer" even if not working, or if an employee "is *suffered or permitted to work*" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046 (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (*Id.* at p. 1056; *Cf.*

Gibbs v. TWC Administration, LLC (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant's motion for summary judgment when plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

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

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

(*Id.* at p. 847.)

Under California law, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek…shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).) Furthermore, "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." (Lab. Code, § 510, subd. (a).) Labor Code §§ 510, 511, 1194 and 1199 require employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.

Plaintiffs alleged that they and the Aggrieved Employees were not properly compensated for all hours worked because Defendant failed to pay Plaintiffs and the Aggrieved Employees for each and every hour worked. (Szamet Decl. ¶34.) Specifically as to pre-shift work, Plaintiffs alleged that they and the Aggrieved Employees routinely worked "off the clock" and performed compensable activities before working each shift for which no pay was provided. (*Id*.) Plaintiffs

alleged that they and the Aggrieved Employees were not paid any wages for these pre-shift activities. Plaintiffs and the Aggrieved Employees contend that Defendant required Plaintiffs and the Aggrieved Employees to report to the job site at least 5-10 minutes before the start of each scheduled shift. (Szamet Decl. ¶35.) They further alleged that they generally spent this time preparing for their scheduled shifts by washing buckets and adjusting their personal vehicles to carry products for work purposes. (Szamet Decl. ¶36.) Plaintiffs contend that this time spent was "clocked out" and as such, Plaintiffs and the Aggrieved Employees are not compensated for this time worked even though this time is compensable. (Szamet Decl. ¶37.)

Plaintiffs also alleged that whenever the conditions of Defendant's job sites were too wet, despite Defendant having required Plaintiffs and the Aggrieved Employees to "sign in" to work, Plaintiffs and the Aggrieved Employees are required to wait to perform their job duties until it is dry enough but were not paid despite being on the clock. (Szamet Decl. ¶38.)

Plaintiffs alleged that Defendant also had a consistent policy of failing to compensate Plaintiffs and the Aggrieved Employees for their time spent traveling from field to field despite performing compensable activities during this travel time. (*Id*.)

Plaintiffs contend that by their policy of requiring Plaintiffs and the Aggrieved Employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one- half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199, as well as its own written policies. (Szamet Decl. ¶39.) Plaintiffs allege that Defendant therefore owes penalties under PAGA. Defendant disputes this off the clock time and argues that all employees were paid for all hours worked. (*Id*.)

Despite the strength of these allegations, Plaintiffs recognized substantial risks in establishing liability at trial. Because the pre-shift time at issue was, by definition, unrecorded, Plaintiffs would bear the burden of proving both that the work occurred and that Defendant knew or should have known of it. (Szamet Decl. ¶40.) The California Supreme Court has held that off-the-clock "liability is contingent on proof [the employer] knew or should have known off-the-clock work was occurring," and that absent evidence of a systematic company policy to pressure

or require off-the-clock work, "proof of off-the-clock liability would have had to continue in an employee-by-employee fashion, demonstrating who worked off the clock, how long they worked, and whether [the employer] knew or should have known of their work." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1051-1052.) Defendant disputes that any off-the-clock work occurred and maintains that all employees were paid for all hours worked (Szamet Decl. ¶41), and courts have entered judgment for employers on precisely this basis where the employee could not establish actual or constructive knowledge of unreported time. (See *Jong v. Kaiser Foundation Health Plan, Inc.* (2014) 226 Cal.App.4th 391, 398-399 [summary judgment affirmed where employee's evidence was insufficient to show employer awareness of unreported hours].) Moreover, while *Troester* forecloses a de minimis defense to work performed "on a regular basis or as a regular feature of the job," it expressly left open whether activities "so irregular or brief in duration" might not reasonably be captured, and Plaintiffs anticipated that Defendant would argue the 5-10 minute pre-shift activities alleged here—washing buckets and loading personal vehicles—were irregular, varied by employee and by day, and did not occur in every pay period. (*Troester*, *supra*, 5 Cal.5th at pp. 847-848; Szamet Decl. ¶42.)

The travel-time and waiting-time theories carried their own distinct risks under the control test. Compulsory travel time is compensable precisely because the employer "determin[es] when, where, and how" employees travel, but the Supreme Court has emphasized that "employers do not risk paying employees for their travel time merely by providing them transportation," and travel an employee is not required to undertake in a prescribed manner "may not be compensable as 'hours worked.'" (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 587-588.) Because the aggrieved employees traveled between fields in their own personal vehicles, Plaintiffs anticipated that Defendant would argue the requisite control was absent and that merely transporting work products in a personal vehicle does not satisfy the "suffered or permitted to work" prong. (See *Hernandez v. Pacific Bell Telephone Co.* (2018) 29 Cal.App.5th 131, 137-143 [travel in vehicle carrying employer's equipment and tools not compensable where the arrangement was not compulsory, and mere transportation of tools does not itself constitute work]); (Szamet Decl. ¶43.) Similarly, the wet-conditions waiting-time claim would turn on intensely factual questions of

whether employees remained subject to Defendant's control during weather delays or were instead free to leave and use the time for their own purposes—questions likely to vary by crew, field, foreman, and day. (Szamet Decl. ¶44.)

Finally, even if Plaintiffs prevailed on liability, the trial itself presented risk. Although a PAGA claim may not be stricken as unmanageable, trial courts retain authority to limit the evidence presented in order to keep a PAGA trial workable, and the individualized nature of the pre-shift, waiting-time, and travel-time inquiries here created a genuine risk that Plaintiffs would be constrained in proving violations across the full group of aggrieved employees—and, as discussed below, that any penalties ultimately awarded would be substantially reduced in the Court's discretion. (*Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582; Szamet Decl. ¶45.)

2. The Risks Associated with the Rest Period Claim

Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11140, subd. 12(A).)

Plaintiffs and the aggrieved employees' rest period claims arise from an alleged common course of conduct wherein Defendant did not provide employees with the opportunity to take first, second, and/or third 10-minute rest breaks in compliance with California law. The California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours and so on." (*Brinker Rest. Corp. v. Superior Court*, supra, 53 Cal.4th at 1029.) In an eight-hour workday, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc*. (2007) 40 Cal.4th 1094, 1104).

The Court has also clarified what steps an employer must take to make rest breaks available to its employees:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest

> break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.

(*Brinker Rest. Corp. v. Superior Court*, supra, 53 Cal.4th at 1033 (emphasis added.).)

Employers must authorize and permit a net ten-minute paid rest period for every four hours, or major fraction thereof, of work for its employees. If an employer does not, then the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11140, subd. 12(B).)

Plaintiffs alleged that Defendant violated Labor Code § 226.7 and IWC Wage Order 14, which require an employer to provide rest periods or to pay an additional one (1) hour of wages for each rest period the employer fails to provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or major fraction thereof. (Szamet Decl. ¶46.) Plaintiffs also alleged that Defendant failed to maintain a policy informing Plaintiffs and the Aggrieved Employees of this right. (Szamet Decl. ¶47.)

Plaintiffs and the Aggrieved Employees consistently worked shifts over three and one-half hours. (Szamet Decl. ¶48.) On a regular and consistent basis, Plaintiffs alleged that Defendant failed to provide all Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work period or major fraction thereof during the relevant time period. (Szamet Decl. ¶49.) Instead, they alleged that Defendant required Plaintiffs and the Aggrieved Employees to forgo at least one of their rest breaks on a regular and consistent basis during the relevant time period. (*Id*.) Specifically, Plaintiffs alleged that they and the Aggrieved Employees have been required to work four-hour increments (or major fractions thereof) without being provided with compliant second ten (10) minute rest periods. (*Id*.) Plaintiffs further alleged that all Aggrieved Employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period as described above and as required by Labor Code § 226.7. (Szamet Decl. ¶50.)

During the mediation process, Defendant raised the defense that employees received all required rest breaks. (Szamet Decl. ¶51.) Given that the written rest period policy was accurate, Plaintiff considered this a viable risk and the defense carried real force. (Szamet Decl. ¶52.) Under

Brinker, an employer satisfies its rest period obligation by authorizing and permitting the required breaks. Thus Plaintiffs would be required to prove, without documentary records since rest periods are paid and typically unrecorded, which employees were denied which breaks on which days. (See *Brinker*, *supra*, 53 Cal.4th at p. 1033.) That proof would proceed employee-by-employee and day-by-day, and, as discussed above, the Court could limit the volume of testimony presented at a PAGA trial to keep the trial manageable. (*Estrada v. Royalty Carpet Mills, Inc.*, *supra*, 15 Cal.5th 582; Szamet Decl. ¶53.)

3. The Risks Associated with the Reimbursement Claim

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

Plaintiffs alleged that Defendant failed to reimburse Plaintiffs and the aggrieved employees the cost of using their personal vehicles and tools/equipment for business related purposes but were necessary for the performance of Plaintiffs and the aggrieved employees' job duties. (Szamet Decl. ¶54.) First, Plaintiffs alleged that Defendant required that Plaintiffs and the aggrieved employees use their own vehicles to for work-related purposes. (Szamet Decl. ¶55.) Second, Plaintiffs alleged that Defendant required Plaintiffs and the aggrieved employees to purchase their own tools and/or equipment such as knee protectors, scissors for weeding, gloves, and jar rings, and this was necessary to perform their job duties. (Szamet Decl. ¶56.) Plaintiffs acknowledged that Defendant occasionally provided gloves to its employees, but other necessary tools were not provided. (*Id*.)

Plaintiffs acknowledged that there is a significant risk to this claim as the actual violation rate may be very low due to each aggrieved employee's own preference as to whether each of these tools was needed. (Id.) This meant that the damages were relatively small. (Szamet Decl. ¶57.) Beyond the potentially low violation rate, the reimbursement claim faced structural proof problems. (Szamet Decl. ¶58.) Section 2802 requires reimbursement only of expenditures that were both actually incurred and "necessary," and the Supreme Court has explained that necessity in turn "depends on the reasonableness of the employee's choices." (*Gattuso v. Harte-Hanks*

Shoppers, Inc. (2007) 42 Cal.4th 554, 568.) To the extent aggrieved employees did not retain receipts or mileage records for the vehicle use and hand tools at issue, establishing what each employee actually spent—and whether each purchase was necessary rather than a matter of personal preference—would require individualized, employee-by-employee evidence, and Defendant would contend that any amounts owed were modest. (Szamet Decl. ¶59.)

4. The Risks Associated with the Wage Statement Claims

California Labor Code §226(a) requires Defendant to provide its employees with an accurate, itemized written wage statement that shows, in relevant part, total hours worked by the employee, their name and address of the legal entity that is the employer, and all applicable hourly rates and the corresponding number of hours worked. Specifically, Labor Code §226(a) requires employers to furnish accurate itemized wage statements in writing that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. (Labor Code §§ 226(a)(2) and (9) respectively.)

Here, Plaintiffs alleged that Defendant furnishes Plaintiffs and all Aggrieved Employees with itemized wage statements that do not accurately show total hours worked or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate because Plaintiffs and the aggrieved employees performed work while off the clock. (Szamet Decl. ¶60.) Further, they alleged that Aggrieved Employees are issued wage statements that do not include accurate meal and rest premiums as a result of the claims alleged above nor accurately reflect payment for piece rate rest periods. (Szamet Decl. ¶61.) Defendant's alleged failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis. Thus, Plaintiffs alleged that Defendant owes the Aggrieved Employees penalties under PAGA for failing to provide accurate and itemized wage statements. (Szamet Decl. ¶62.) As this is a derivative claim, the same risks present for the above claims were present for this claim. (Szamet Decl. ¶63.)

In addition to those derivative risks, Defendant had two substantial defenses specific to this claim. (Szamet Decl. ¶64.) First, because the wage statements accurately reflected the hours

Defendant actually recorded and the wages it actually paid, Defendant would argue that statements which correctly document the pay an employee actually received are not rendered inaccurate by an underlying failure to pay for unrecorded time as the remedy lies in the wage claim itself. (See *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-1337.) Second, the Supreme Court recently confirmed that an employer's objectively reasonable, good faith belief that its wage statements complied with the law precludes statutory penalties under section 226, subdivision (e). (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.) While Plaintiffs would respond that PAGA civil penalties are not subject to section 226(e)'s injury and intent requirements, Defendant would press the same good faith arguments in urging the Court to reduce any PAGA penalty under section 2699(e)(2). (Szamet Decl. ¶65.)

5. The Risks Associated with the Waiting Time Penalties Claim

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

Here, Plaintiffs and numerous aggrieved employees are no longer employed by Defendant. Plaintiffs alleged that Defendant failed to pay all wages owed and due upon their termination and/or resignation and Defendant's actions were willful, as they have intentionally failed or refused to perform an act which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) "The failure to pay is willful if the employer 'knows what [it] is doing [and] intends to do what [it] is doing', and does not also require proof that the employer acted with "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (*Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

Plaintiffs factored in the risk of establishing that any violation was "willful" and the fact that this claim is derivative. (Szamet Decl. ¶66.) That risk was substantial. A "good faith dispute that any wages are due" precludes imposition of waiting time penalties (Cal. Code Regs., tit. 8, §

13520), and the Supreme Court recently reaffirmed that, under long-established law, an employer cannot incur penalties for the willful nonpayment of wages where it reasonably and in good faith disputes that the wages are owed. (*Naranjo v. Spectrum Security Services, Inc.*, *supra*, 15 Cal.5th 1056.) Because Defendant disputes the underlying off-the-clock, rest period, and reimbursement claims on grounds that are at least colorable, there was a genuine risk the trier of fact would find no willful violation at all—eliminating this claim entirely as to the aggrieved employees whose employment ended during the PAGA Period. (Szamet Decl. ¶67.)

6. The Risks Associated with the Recordkeeping Claim

Plaintiffs also sought penalties premised on Defendant's alleged failure to keep accurate records of hours worked as required by IWC Wage Order 14, paragraph 7, and Labor Code section 1174, subdivision (d). This claim is wholly derivative of the off-the-clock allegations: Defendant's time records are inaccurate only if, and to the extent that, unrecorded pre-shift, waiting, and travel time was in fact worked. If the trier of fact credited Defendant's position that all time worked was recorded and paid, the recordkeeping claim would fail with the wage claim, and the same employee-by-employee proof problems and employer-knowledge requirements discussed above apply to it with equal force. (Szamet Decl. ¶68.)

In light of all these significant risks and given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Gross Settlement Amount of $400,000.00 was fair and reasonable. (Szamet Decl. ¶69.)

D. A Court May Exercise its Discretion to Reduce the Maximum Civil Penalty Awarded for Technical Violations of the Labor Code

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

However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code section 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular

case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

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

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

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

Here, as explained above, Plaintiffs' counsel anticipated that, at trial, Counsel for Defendant would argue that: (1) the aggrieved employees were properly paid and/or reimbursed in accordance with Defendant's lawful policies and practices, and that any alleged failure to compensate the aggrieved employees was the result of inadvertence and clerical error; (2) the aggrieved employees were provided with the opportunity to take rest breaks in compliance with California law; (3) until this Action was filed, no employees had complained about any alleged

failure to pay wages, provide rest breaks, reimburse expenses, issue accurate itemized wage statements; (4) none of Defendant's employees suffered any harm from or actual damage as a result of the conduct that forms the basis for Plaintiffs' allegations. All of which, Counsel for Defendant would argue, should mitigate in favor of significantly reducing the civil penalty.

After engaging in pertinent informal discovery in this Action, Plaintiff's counsel determined that a settlement of $400,000.00 is reasonable given the above risks.

C. Based on the Risks Above and the Analysis of the Maximum Penalties Available, Plaintiffs Believes this Settlement is Fair and Reasonable

Based on these figures, the maximum potential exposure for the PAGA claims for the aggrieved employees is $10,915,900 (109,159 pay periods at issue multiplied by $100 a pay period). If the Court stacks pay periods, the full value could balloon to much more, but in light of the immense discretion available, Plaintiffs believes the Settlement is reasonable. Given the detailed risks set forth above, Plaintiffs believe this Settlement for $400,000.00 is fair and reasonable.

VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS

As detailed fully in the Settlement, the settlement provides for Defendant to create a Gross Settlement Amount of $400,000.00. (Szamet Decl. ¶74; Ex. 1 at ¶¶3.1.) From that fund, Plaintiff requests an award of attorneys' fees for PAGA Counsel in the amount of $133,333.33, or 33.33% of the Gross Settlement Amount, and $58,675.82 in reimbursement for litigation costs. (*Id*; Ex. 1 at ¶3.)

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

On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half International,* which addressed the correct methodology for awarding fees in a class action settlement. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503.) The *Laffitte* Court approved awarding fees as a percentage of the settlement fund in cases like the present one, where a settlement results in the creation of a common fund on behalf of a class:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Class Counsel a fee out of that fund, the

> court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

(*Id.* at p. 503.) The Court then set out several reasons why the percentage-of-the-fund method is preferred over the alternative lodestar-multiplier approach in California courts:

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

(*Id.* at pp. 503-504.)

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

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

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

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

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

(Newberg on Class Actions, 3rd Ed., 1992, § 14.03; *and see Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66, fn 11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Thus, PAGA Counsel's requested fee of 33.33% is not only well within the range of reasonableness, but lower than the average fee award of 35% and is fair compensation for undertaking this complex, risky, expensive, and time-consuming litigation on a contingent basis.

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

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

i. Requested Multiplier

The purpose of using the lodestar/multiplier method is to mirror the legal marketplace. Counsel will not handle cases for straight hourly fees payable only if they win; therefore, an enhancement is often awarded so that the fee received is commensurate with what attorneys could expect to be compensated for services in similar circumstances. (*See San Bernardino Valley*

Audubon Soc., Inc. v. County of San Bernardino (1984) 155 Cal.App.3d 738, 755 [an award must be large enough "to entice competent counsel to undertake difficult public interest cases"].) No specific findings reflecting the court's calculations are required. (*Wershba*, *supra*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank* (1991) 232 Cal.App.3d 1344, 1349.) "The record need only show that the attorney fees were awarded according to the 'lodestar' or 'touchstone' approach." (*Ibid.*)

Here, a lodestar cross-check confirms that the percentage requested is reasonable. (Szamet Decl. ¶83.) PAGA Counsel have an aggregate lodestar in the amount of $126,450.00 which represents 125.6 hours of attorney work on this litigation from its inception through the date of this filing of Plaintiffs' instant Motion. (*Id*.) As such, PAGA Counsel is asking for a lodestar multiplier of 1.05. (Szamet Decl. ¶84.) Typically, the lodestar is merely the starting point of the calculation of a reasonable fee, and courts often multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work, and the novelty and difficulty of the issues involved. (*See Rader v. Thrasher,*(1962) 57 Cal.2d 244, 253; *Beasley v. Wells Fargo Bank,* (1991) 235 Cal.App.3d 1407, 1419; *Coal. for L.A. County Planning v. Bd. of Supervisors,* (1977) 76 Cal.App.3d 241, 251.)

This case dealt with difficult legal and factual questions. (Szamet Decl. ¶85.) Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses as discussed in detail above. *(Ibid.)* Were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. *(Ibid.)* There are genuine issues in dispute. *(Ibid.)* Furthermore, PAGA Counsel was able to obtain close to the full value for this case. (Szamet Decl. ¶86.)

As discussed above, PAGA Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter. (Szamet Decl. ¶87.) To achieve the ultimate result in this case, my firm had to incur substantial risk and expense, and were precluded from taking other fee generating employment for 125.6 hours of attorney time. (Szamet Decl. ¶88.) This matter had been handled purely on a contingency fee basis and my firm has advanced many thousands of dollars in costs while deferring all payment of fees, with no guarantee

that any of the fees incurred or costs advanced would ever be recovered, and diverting significant firm resources to prosecution of this matter. (Szamet Decl. ¶89.) PAGA Counsel believe this is an exceptional result that has been well received by the aggrieved employees. (Szamet Decl. ¶90.)

D. The Hourly Rates Requested are Reasonable

PAGA Counsel is entitled to be compensated at hourly rates that reflect the reasonable market value of their legal services, based on their experience and expertise. (*See Serrano IV, supra*, 32 Cal.3d at pp. 640-43, n.31.) "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) Payment at full market rates is essential to entice well-qualified counsel to undertake difficult cases, such as this one. (*San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984) 155 Cal. App. 3d 738, 755.) Additionally, calculation of a lodestar based on current hourly rates is appropriate as a means of compensating for delay in payment. (*Missouri v. Jenkins by Agyei* (1989) 491 U.S. 274, 283-84.)

The requested hourly rates in this case range from $570.00 per hour to $1,250.00. (Szamet Decl. ¶92.) PAGA Counsel's hourly rates are fully supported by their experience and reputation in handling complex employment litigation, including wage and hour class actions. (Szamet Decl. ¶93; ¶¶98- 102.)

Mr. Kingsley is a 30-year attorney with expertise in wage and hour class action lawsuits. (Szamet Decl. ¶94.) He has litigated several hundred such cases, including at the appellate level at the U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of Appeal. (Szamet Decl. ¶95.) He is also a prolific speaker at various seminars on employment law and has contributed to legal publications on employment topics. (Szamet Decl. ¶96.)

Biographical information for the other handling attorneys is included in the concurrently filed Declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶97-102.)

PAGA Counsel's charged rates are commensurate with the prevailing market rates in Santa Barbara County for attorneys of comparable experience and skill handling complex litigation. (Szamet Decl. ¶104.) Furthermore, PAGA Counsel's rates in calculating the lodestar are the same rates charged to non-contingent hourly clients and thus necessarily reflect the

current market value of counsel's legal services.[7] (Szamet Decl. ¶105.) PAGA Counsel has made all reasonable attempts to avoid duplication of assignments and to assign tasks to timekeepers at the appropriate billing rates. (Szamet Decl. ¶106.)

Finally, PAGA Counsel's rates are in line with the 2025-2026 Laffey Matrix, which is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such as Mr. Kingsley, is $1,227, a reasonable rate for an attorney with 16 years of experience, such as Ms. Szamet and Ms. Ly, is $1,019, and a reasonable rate for an attorney with 4-7 years of experience, such as Ms. Bulaon is $625. (Szamet Decl. ¶107; Ex. 4 [2025-2026 Adjusted Laffey Matrix].)

E. The Fees Requested are Reasonable

The trial court has substantial discretion in adjusting the lodestar to account for various factors inadequately reflected therein. (*See Lealao*, supra, 82 Cal.App.4th at pp. 40-45.) A lodestar multiplier is recognized as earned compensation: "The adjustment to the lodestar, e.g., to provide a fee enhancement reflecting the risk the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous." (*Ketchum*, supra, 24 Cal.4th at p. 1138.)

In California, courts regularly use a multiplier of 2.0 or greater in statutory fee cases to approximate market fees. In fact, "[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation." (*Van Vraken v. Atlantic Richfield Co*. (N.D.Cal.1995) 901 F.Supp. 294, 298; *see also, Wershba, supra*, 91 Cal.App.4th at p. 255 ["Multipliers can range from 2 to 4 or even higher."].)

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

In addition to their request for fees, PAGA Counsel further request reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred by them in connection with this

[7] The Court should also note that other California courts approved many of these same rates over 15 years ago. (See, e.g., *Bihun v. AT&T Info. Sys., Inc*. (1993) 13 Cal.App.4th 976, 997, disapproved on other grounds, 6 Cal.4th 644, 664 [$450 hourly rate was a reasonable fee based on counsel's knowledge, skill, experience and reputation].)

litigation, in the amount of $58,675.82. (Szamet Decl. ¶114.) To date, PAGA Counsel has incurred $58,375.82 in costs. (Szamet Decl. ¶115.) PAGA Counsel anticipates incurring an additional $300.00 in costs to file and serve this motion, but the Settlement provides for a reimbursement of litigation costs of up to $65,000.00. (Szamet Decl. ¶116.) As such, counsel is requesting a cost reimbursement of $58,675.82. (Szamet Decl. ¶117.)

All of the requested costs are reasonable in amount and were necessarily incurred by PAGA Counsel in prosecuting this litigation. (Szamet Decl. ¶118.); Exhibit 5 [Cost Report].) Expenses in this matter to date include costs for filing fees, research, mediation, and additional costs for the prosecution of this case evidenced in the costs spreadsheet attached to the Declaration of Kelsey M. Szamet. All of these costs have been incurred in the course of this litigation, and all costs advanced have already been paid by PAGA Counsel, with the exception of the anticipated cost of filing the present motion. (Szamet Decl. ¶119.)

Accordingly, the requested reimbursement of the reasonable out-of-pocket expenses advanced and/or incurred is appropriate and justified as part of the overall settlement and the Court should approve the request for reimbursement in the amount of $58,675.82. (Szamet Decl. ¶120.)

VIII. ENHANCEMENT TO PLAINTIFF

The Settlement calls for an enhancement payment of $5,000.00 to each of the Plaintiffs, to be paid from the Gross Settlement Amount. (Szamet Decl. ¶121; Ex. 1 at ¶3.2.2.) Incentive awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. "[I]t is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (citing *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805-806; *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938, 977)).

Here, the enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of the aggrieved employees. The time

spent by Luis Lopez Santos and Maurilio Santiago Garcia includes identifying competent counsel, providing information to PAGA Counsel regarding Plaintiffs' relevant employment experiences, compiling documents, meeting with PAGA Counsel frequently to discuss the status of the case and the theories of liability, reviewing settlement documents, and making themselves available for two full days of mediation. (Szamet Decl. ¶122.)

PAGA Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶123.) The enhancement takes into consideration the time, effort, risks, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of the aggrieved employees. (Szamet Decl. ¶124.) Accordingly, Plaintiffs should be awarded the agreed-upon enhancement of $5,000.00 each, for a total of $10,000.00.

IX. CONCLUSION

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

DATED: October 26, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: _____

Kelsey M. Szamet
Attorneys for Plaintiffs and all aggrieved employees

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On October 26, 2026, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

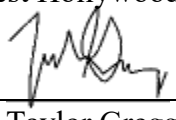
VENTURA COUNTY ASSOCIATION **Robert P. Roy** **Rob-vcaa@pacbell.net** **Michael P. Roy** **Mike-vcaa@pacbell.net** **916 W. Ventura Blvd.** **Camarillo, California 93010** **LIGHTGABLER LLP** **Michael H. Brody** **mbrody@lightgablerlaw.com** **Kathleen M. Fellows** **kfellows@lightgablerlaw.com** **Jason Edlinger** **jedlinger@lightgablerlaw.com** **760 Paseo Camarillo, Suite 300** **Camarillo, CA 93010**	**MARTINEZ AGUILASOCHO LAW, INC.** **Edgar Aguilasocho** **Mario Martinez** **eaguilasocho@farmworkerlaw.com** **mmartinez@farmworkerlaw.com** **info@farmworkerlaw.com** **P.O. Box 1998** **Bakersfield, CA 93303**

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

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

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

Executed on October 26, 2026, at West Hollywood, California.



Taylor Gregg