

1 Taras Kick (SBN 143379)
2 Taras@kicklawfirm.com
3 Tyler J. Dosaj (SBN 306938)
4 Tyler@kicklawfirm.com
5 **THE KICK LAW FIRM, APC**
6 815 Moraga Drive
7 Los Angeles, California 90049
8 Telephone: (310) 395-2988
9 Facsimile: (310) 395-2088

7 Larry W. Lee (State Bar No. 228175)
8 Kristen M. Agnew (State Bar No. 247656)
9 DIVERSITY LAW GROUP, P.C.
10 515 S. Figueroa Street, Suite 1250
11 Los Angeles, CA 90071
12 (213) 488-6555
13 (213) 488-6554 facsimile

11 Attorneys for Intervenor COREY J. DEVINE,
12 and JERMAINE WILLIS, individually, and on
13 behalf of all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF TUOLUMNE**

15 ANDREA OTANEZ VERDUGO, individually, and
16 on behalf of others similarly situated

17 Plaintiff,

18 v.

19 CAPSTONE LOGISTICS, LLC, a Delaware
20 Limited Liability Company with its principal place
21 of business in Georgia; and DOES 1 through 100,
22 inclusive,
23 Defendants.

CASE NO.: CV66120

[Assigned for all purposes to Dept. 5]

UNLIMITED CIVIL

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND APPROVAL OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Date: November 12, 2025

Time: 8:30 a.m.

Dep: 5

Action Filed: April 22, 2024

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 12, 2025 at 8:30 a.m. Pacific Time, in Department
3 5 of Superior Court of California, County of Tuolumne, Courtroom LJ, 12855 Justice Center Dr., Sonora,
4 CA, proposed class representatives Corey J. Devine (“Devine”), Jermaine Willis (“Willis”), Ivan Escobar
5 (“Escobar”), Sheri King (“King”), and Andrea Otanez Verdugo (“Verdugo”) (collectively “Plaintiffs”)
6 will and hereby do move the Court for an order:

7 1. Conditionally certifying the Class for purposes of settlement;
8 2. Preliminarily approving the proposed class action settlement between Plaintiffs and
9 Defendant Capstone Logistics, LLC as fair, adequate, and reasonable, based upon the terms set forth in
10 the Parties’ Class Action and PAGA Settlement Agreement (“Settlement Agreement” or “Agreement”),
11 including payment by Defendant of the non-reversionary Gross Settlement Amount (“GSA”) of
12 \$5,950,000 and the following estimated allocations therefrom:

- 13 a. Attorneys’ Fees (1/3 of the GSA) (maximum) (\$1,983,333.33)
14 b. Reasonable Litigation Costs To Be Determined (maximum \$100,000.00)
15 c. Settlement Administration Costs (maximum) (\$65,950.00)
16 d. Service Payments to Class Representatives (\$65,000)
17 e. PAGA Payment (\$250,000.00)

18 3. Preliminarily appointing Plaintiffs as the Class Representatives and Taras Kick and Tyler
19 Dosaj of The Kick Law Firm, APC, and Larry Lee and Kristen Agnew of Diversity Law Group as Class
20 Counsel for purposes of settlement;

21 4. Appointing the third-party Settlement Administrator for distributing notices and for
22 settlement administration;

23 5. Approving the proposed Class Notice and ordering it to be disseminated to the Class as
24 provided in the Settlement Agreement; and,

25 6. Approving the proposed settlement of PAGA claims under California Labor Code §
26 2699(1)(2).

27 The motion is based on this Notice, the attached memorandum of points and authorities; the
28 declarations of Plaintiffs’ counsel Taras Kick, Larry Lee, Kristen Agnew, and, James Treglio; the

1 declarations of the Named Plaintiffs Jermaine Willis, Corey Devine, Ivan Escobar, and Sheri King; all
2 matters of which this Court may take judicial notice, all pleadings in this matter, and such evidence and
3 argument as may be presented at the hearing or the Court may allow.

4 Dated: October 31, 2025

THE KICK LAW FIRM, APC

5 /s/ Taras Kick

Taras Kick

6 Tyler Dosaj

7 Attorneys for Corey Devine and Jermaine Willis,
individually, and on behalf of all others similarly
8 situated

DIVERSITY LAW GROUP, P.C.

10 /s/ Larry W. Lee

Larry W. Lee (State Bar No. 228175)

11 Kristen M. Agnew (State Bar No. 247656)

DIVERSITY LAW GROUP, P.C.

12 515 S. Figueroa Street, Suite 1250

Los Angeles, CA 90071

13 (213) 488-6555

14 (213) 488-6554 facsimile

15 Attorneys for Ivan Escobar and Sheri King,
16 individually, and on behalf of all others similarly
17 situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is an Unopposed Motion for Preliminary Approval of a Proposed Class Action Settlement and
4 Approval of PAGA Settlement (“Motion”). The Plaintiffs in three related cases have reached a proposed
5 class-wide and PAGA settlement with Defendant Capstone Logistics, LLC (“Capstone” or “Defendant”),
6 subject to this Court’s approval: *Devine v. Capstone Logistics, LLC*, No. 20STCV39030, Los Angeles
7 Superior Court (the “*Devine*” case), which was filed on October 9, 2020; *Escobar v. Capstone Logistics,*
8 *LLC*, No. STK-CV-UOE-2020-0009429, San Joaquin Superior Court, which was filed on November 9,
9 2020; and, *Verdugo v. Capstone Logistics, LLC*, No. CV66120, Tuolumne County Superior Court, which
10 was initially filed in Los Angeles Superior Court on March 15, 2022. Plaintiffs Corey Devine, Sherri King,
11 and Jermaine Willis have also filed a Complaint In Intervention in the instant case (the “Actions”).

12 The underlying putative class and PAGA actions are wage-and-hour lawsuits. Plaintiffs Corey
13 Devine, Jermaine Willis, Sheri King, Ivan Escobar, and Andrea Otanez Verdugo (collectively, “Plaintiffs”)
14 bring the Actions on behalf of themselves and approximately 17,344 similarly situated current and former
15 non-exempt employees of Capstone in California. Plaintiffs allege that they and their fellow Class members
16 and aggrieved employees were deprived of certain rights afforded to them by the Labor Code during their
17 employment with Capstone.

18 This Court previously on July 19, 2024, preliminarily approved a proposed settlement of the wage
19 and hour class and PAGA issues in this case for \$1,400,000, which had been brought to this Court for
20 approval by the *Verdugo* plaintiff only. After learning of this, proposed class representatives Jermaine
21 Willis, Corey Devine, and Sheri King filed a Motion to Vacate and Intervene on January 10, 2025, pointing
22 out what they believed to be issues with that attempted settlement. As a result, Defendant agreed to attend
23 a new mediation with these newly added class representatives before the Honorable Amy D. Hogue (Ret.)
24 of Signature Resolution. Declaration of Taras Kick (“Kick Decl.”) ¶ 5.

25 The new proposed Settlement is for \$5,950,000, more than four times the prior amount previously
26 approved by this Court. It is the result of an accepted mediator’s proposal by Judge Hogue.¹ A true and
27 correct copy of the fully executed Class Action and PAGA Settlement Agreement (“Settlement,” or “SA”)
28

29 ¹ Before her retirement, Judge Hogue served a Los Angeles County Superior Court judge for approximately
30 twenty years, including seven years as a judge of the Complex Litigation Division of the Los Angeles
Superior Court, where she presided over the approval of countless wage and hour class actions and
representative PAGA matters, and she was also the primary author of the Model Wage and Hour Class
Action and PAGA Settlement Agreement used in many complex courts across the State of California.

1 is attached as **Exhibit 1** to the concurrently filed Declaration of Taras Kick.

2 As shown below, all of the criteria for preliminary approval are met here. Accordingly, Plaintiffs
3 respectfully request that the Court preliminarily approve the Settlement of the Class Claims so that notice
4 of a final approval hearing may be disseminated. Further, Plaintiffs respectfully request that the Court
5 approve the proposed settlement as to the PAGA claims.

6 **II. GENERAL SUMMARY OF THE LITIGATION**

7 **A. The Devine Action**

8 On October 9, 2020, Corey Devine filed his complaint against Defendant in the Superior Court for
9 the County of Los Angeles, bringing claims based on Defendant's failure to provide required meal periods,
10 failure to provide required rest periods, failure to pay overtime wages, failure to pay minimum wages,
11 failure to timely pay wages during employment, failure to pay all wages due to discharged or quitting
12 employees, failure to provide itemized wage statements, failure to indemnify for necessary business
13 expenditures, and unlawful wage deductions. Mr. Devine filed a First Amended Complaint on January 12,
14 2021. Kick Decl. ¶ 6. In response to the FAC, Defendant filed a demurrer and motion to strike on or about
15 February 17, 2021, which was fully briefed and argued on June 23, 2021. *Id.* Mr. Devine filed a Second
16 Amended Complaint ("SAC") on July 13, 2021. (Ex. 2) Defendant filed an Answer to the SAC on August
17 23, 2021. On October 1, 2021, Defendant served discovery on Mr. Devine, *to wit*, 40 requests for
18 production and a notice for Mr. Devine's deposition. Mr. Devine served written responses to the requests
19 for production and produced 167 pages of documents on November 29, 2021. Mr. Devine served 31 special
20 interrogatories and 49 requests for production on Defendant. Kick Decl. ¶ 6.

21 On April 8, 2022, Defendant filed a Motion to Compel Arbitration, seeking to require Mr. Devine
22 to arbitrate his claims against Defendant. On May 25, 2022, the parties attended a mediation before
23 Anthony F. Pantoni, Esq. of Signature Resolution, which was unsuccessful. On August 23, 2022, Defendant
24 filed an Amended Motion to Compel Arbitration, arguing that Mr. Devine was required to arbitrate his
25 claims under *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022). The motion was fully briefed
26 and heard on January 19, 2023, and the court ordered Mr. Devine to arbitrate his individual claims against
27 Defendant while staying the representative PAGA claims. Kick Decl. ¶ 6.

28 Mr. Devine filed a demand for arbitration with the American Arbitration Association on February
29 8, 2023. Following depositions and written discovery, the arbitration hearing was held on April 9 and 10,
30 2024. Mr. Devine submitted a post-hearing brief on May 24, 2024; Defendant filed a response on June 21,

2024; Mr. Devine filed a reply on June 21, 2024; and Mr. Devine filed a supplemental brief on July 30, 2024. On January 3, 2025, the arbitrator issued a final award in favor of Mr. Devine, stating as follows: “Claimant Corey Devine is the prevailing party on his one cause of action under the Private Attorneys General Act for purposes of Code of Civil Procedure § 1032(a), and Claimant is awarded \$3,500.00 in penalties . . . Claimant is awarded \$130,795.32 in attorneys’ fees and \$8,871.09 in costs.” Final Award of Arbitrator at 9 (Ex. 4); Kick Decl. ¶ 6.

B. The *Verdugo* Action

On March 15, 2022, Plaintiff Verdugo filed her complaint in the Superior Court for the County of Los Angeles, bringing PAGA and class claims against Defendant that substantially overlapped with those brought by Mr. Devine. *Verdugo* Complaint (Ex. 16). On May 9, 2022, Defendant removed the *Verdugo* action to the U.S. District Court for the Central District of California. Kick Decl. ¶ 7.

On October 19, 2022, Defendant filed a Motion to Compel Arbitration, seeking to require Ms. Verdugo to arbitrate her claims against Defendant. On October 20, 2022, the *Verdugo* parties filed a joint stipulation to continue the Motion to Compel Arbitration hearing, informing the court that the parties had settled the matter. On November 23, 2022, Plaintiff Verdugo filed a Motion for Preliminary Approval of a class and PAGA settlement between the parties. The court denied the motion, and the motion was re-filed on three subsequent occasions. The district court denied the motion a fourth time on July 13, 2023, and stated that although it would allow an additional Motion For Preliminary Approval to be filed, it would need to be with an entirely new law firm representing the proposed class. Kick Decl. ¶ 4. There is extensive briefing before this Court in Tuolumne County as a part of Plaintiffs Corey Devine’s and Jermaine Willis’s and Sheri King’s Motion to Vacate and Intervene recounting the details of the denials by the district court. Kick Decl. ¶ 4. On August 11, 2023, Defendant filed a Motion to Compel Arbitration and Dismiss the Complaint in *Verdugo*. On August 18, 2023, Plaintiff Verdugo filed a Notice of Non-Opposition to this motion. On August 22, 2023, the district court entered an order dismissing Plaintiff Verdugo’s Complaint without prejudice. Kick Decl. ¶ 7.

On or about September 26, 2023, Plaintiff Verdugo served Defendant with a Demand for Arbitration. On or about January 30, 2024, the *Verdugo* parties entered into a Stipulated Settlement Agreement and Release of Claims, and Plaintiff Verdugo submitted a Motion for Approval of Class Action and PAGA Settlement to the parties’ selected arbitrator. On April 8, 2024, the arbitrator entered an award purporting to grant preliminary approval of the class action and PAGA settlement of \$1.4 million. Kick

Decl. ¶ 7. On April 22, 2024, the *Verdugo* parties filed a Joint Motion to Confirm Arbitration Award in Tuolumne County Superior Court, seeking approval of the \$1.4 million “award”. This Court entered an order confirming the arbitrator’s award on July 19, 2024. Kick Decl. ¶ 7.

On October 10, 2024, the *Verdugo* parties filed a Notice of Related Cases in the *Devine* action. On January 10, 2025, Mr. Devine filed a Motion to Vacate the court’s July 19, 2024 Confirmation Order and requested leave to intervene in the Tuolumne action. Defendant and Plaintiff Verdugo filed oppositions to the Motion to Vacate on January 31, 2025; Mr. Devine filed a reply on February 6, 2025; and on February 13, 2025, this Court issued a tentative ruling vacating the July 19, 2024 Confirmation Order. At the February 14, 2025, hearing on Mr. Devine’s Motion to Vacate, the Court permitted supplemental briefing and granted leave to file a Complaint In Intervention. Mr. Devine and Mr. Jermaine Willis filed their Complaint In Intervention on February 21, 2025, bringing class action and PAGA claims for violation of the California Labor Code, and Ms. King filed her Complaint in Intervention on June 2, 2025, also for class claims and PAGA violations. (Ex. 5.) On March 14, 2025, Defendant and Plaintiff Verdugo filed supplemental briefs in opposition to the Motion to Vacate, and on April 18, 2025, Mr. Devine filed a supplemental brief. A hearing on the Motion to Vacate was scheduled to take place on May 2, 2025, but was continued on two occasions to permit the parties to participate in mediation. Kick Decl. ¶ 7.

On July 14, 2025, the parties to the Actions, as well as counsel for plaintiffs in a later-filed related case, *Saige et al v. Capstone Logistics, LLC*, No. 5:24CV00195 (C.D. Cal.), participated in a mediation before Judge Amy D. Hogue (Ret.). Declaration of Larry Lee (“Lee Decl.”) ¶10; Kick Decl. ¶ 8. Specifically, on the plaintiffs’ side, attorneys Taras Kick, Tyler Dosaj, and Nick Rosenthal appeared on behalf of the putative class members and Aggrieved employees through representatives Jermaine Willis and Corey Devine; attorneys Larry Lee and Kristen Agnew appeared through Mr. Escobar and Ms. King; and attorney James Treglio appeared on behalf of Plaintiff Verdugo. Attorneys Gerald Maatman, Jr., Jennifer Riley, and James Brown appeared on behalf of Defendant. The matter did not settle on the day of the mediation, but Judge Hogue subsequently submitted a mediator’s proposal to the parties, which they accepted. *Id.* The Settlement Agreement for which the parties seek preliminary approval reflects the terms of that mediator’s proposal by Judge Hogue. *Id.*

C. The Escobar Action

Plaintiff Ivan Escobar filed the initial complaint in the *Escobar* action on November 9, 2020, bringing claims under PAGA for Capstone’s failure to provide accurate itemized wage statements, in San

Joaquin County Superior Court. Lee Decl. ¶ 4. Capstone filed a notice of removal, which Mr. Escobar opposed, and the case returned to San Joaquin County Superior Court. Mr. Escobar then filed a First Amended Complaint. Capstone demurred to the First Amended Complaint on the grounds that the *Escobar* action should be stayed under the doctrine of exclusive concurrent jurisdiction in light of the earlier filed *Devine* action. Following briefing on the demurrer, Mr. Escobar and Capstone stipulated to the filing of a Second Amended Complaint. Mr. Escobar filed the Second Amended Complaint on March 30, 2022. *Escobar* Second Amended Complaint (Ex. 7.) On May 2, 2022, the court sustained Capstone’s demurrer in part, staying the *Escobar* action. Lee Decl. ¶ 7. Kick Decl. ¶ 9.

III. TERMS OF THE SETTLEMENT

A. The Settlement Amount

The Gross Settlement Amount (“GSA”) is \$5,950,000. SA ¶ I.T (Ex. 1). The GSA will be distributed without a claims process, and no portion of the amount will revert to Capstone. SA ¶ IV.A.

B. Key Financial Terms of the Settlement

Subject to this Court’s approval, the Settlement Administrator will make the following payments from the GSA to arrive at the Net Settlement Fund: Service Awards in the amount of \$25,000 to Mr. Devine (who was deposed and went through an actual binding arbitration); \$10,000 to Mr. Willis; \$10,000 to Ms. King; \$10,000, to Mr. Escobar; and, \$10,000 to Ms. Verdugo, for a total of \$65,000 in Service Awards; a PAGA Settlement Payment of \$250,000, of which \$187,500 shall be paid to the LWDA and \$62,500 shall be allocated to the PAGA Representative Group; attorneys’ fees of one-third of the GSA, \$1,983,333.33; litigation costs not to exceed \$100,000; and, administration costs not to exceed \$65,950. SA ¶ IV.B.

Assuming that these deductions from the GSA are approved, the Net Settlement Fund will amount to \$3,485,716.67. The Net Settlement Fund will be allocated among Participating Class Members by (a) dividing the Net Settlement Fund by the total number of Workweeks worked by Participating Class Members during the Class Period; and (b) multiplying the result by the number of Workweeks worked by each Participating Class Member during the Class Period. SA ¶ IV.5. For tax purposes, a Participating Class Member Payment issued from the Net Settlement Fund shall be treated as follows: (1) 20% shall be treated as wages, subject to applicable withholdings, for which an IRS Form W-2 will be issued; and (2) 80% will be treated as non-wages, including penalties and interest, for which the Settlement Administrator

will issue an IRS Form 1099. *Id.* Capstone will separately pay the amounts owed for the employer-side payroll taxes associated with Participating Class Member Payments classified as wages. SA ¶ V.C.

Further, the PAGA Representative Group will receive \$62,500, which is twenty-five (25%) of the PAGA Settlement Payment. The Administrator will calculate each Individual PAGA Payment by: (a) dividing the amount of the PAGA Representative Group's 25% share of PAGA Settlement Payment by the total number of PAGA Period Pay Periods worked by the PAGA Representative Group during the Class Period; and (b) multiplying the result by each PAGA Representative Group member's respective PAGA Period Pay Periods. PAGA Representative Group members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. The Administrator will report the Individual PAGA Payments on IRS Form 1099.

IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED

The Settlement Class is defined as "all current or former employees who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, through and including July 25, 2025." SA ¶ I.QQ. The Class Period is August 1, 2019, through and including July 25, 2025. SA ¶ I.I. The Class consists of 17,344 Capstone employees. SA ¶ V.A; Kick Decl. ¶ 10. The class members are currently estimated to have worked 542,000 workweeks during the Class Period. SA ¶ V.A.

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. Although Plaintiffs believe this case can be certified even under a contested motion for class certification, it is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1807 n.19; *see Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ."). As discussed below, for the purposes of this settlement only, the parties ask this Court to provisionally certify the Class, as defined above, under Cal. Civ. Proc. Code § 382.

A. Numerosity

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. Code Civ. Proc. § 382. Numerosity is readily satisfied here as the Class consists of 17,344 Capstone employees. Kick Decl. ¶ 9; *Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); *Newberg on Class Actions*, § 3.5 (4th Ed. 2004) (40 class members is sufficient to satisfy numerosity).

1 **B. Ascertainability**

2 A test for ascertainability is whether the class definition “identifies a group of unnamed plaintiffs
3 by describing a set of common characteristics sufficient to allow a member of that group to identify himself
4 or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000)
5 81 Cal.App.4th 816, 828; *Block v. Major League Baseball* (1998) 65 Cal.App.4th 538, 541-42. The class
6 definition, “all current or former employees who worked for Capstone within the State of California in a
7 non-exempt position at any time from August 1, 2019, through and including July 25, 2025,” satisfies this
8 requirement. SA ¶ I.QQ. In addition, the class members will be identified using Capstone’s data. SA ¶ V.B.

9 **C. Community of Interest**

10 The community of interest requirement has three essential elements: “(1) predominant questions of
11 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
12 representatives who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435
13 (2000). As shown below, these elements are met.

14 a. Commonality

15 To justify certification, the class proponent must show that questions of law or fact common to the
16 class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*
17 (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal. 4th 906,
18 913). Here, Plaintiffs contend that not only do there exist common questions of law or fact, but also the
19 common questions predominate over any individual ones. Defendants’ own records showed that all Class
20 members were subject to common policies and practices and paid according to uniform formulae. Kick
21 Decl. ¶ 19. Commonality and predominance are therefore satisfied.

22 b. Plaintiffs’ Claims Are Typical of the Class

23 Typicality does not require that a class representative have suffered injuries identical to those of
24 other class members. *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375. Typicality
25 “focuses on whether there exists a relationship between the plaintiff’s claims and the claims alleged on
26 behalf of the class.” *Newberg*, § 3:13. Here, it is Plaintiffs’ position that their claims are not just typical of
27 those of the other putative class members, they are essentially identical, as they were subject to the same
28 employment policies and practices as all other Class members. Kick Decl. ¶ 19. Typicality is satisfied.

29 c. Adequacy

30 Class representatives must establish that they will adequately represent the proposed class. *See*

1 *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal. App. 4th 540, 546. This adequacy analysis
2 focuses on any conflicts that would appear between the named Plaintiffs and putative class members.
3 *Richmond v. Dart Industries* (1981) 29 Cal.App.3d 462, 470. The Court must also consider the competency
4 of Plaintiffs' counsel in determining whether to certify a class. *Cal. Pak Delivery v. United Parcel Service*
5 (1997) Inc. 52 Cal.App.4th 1, 12; *General Tel. Co. v. Falcon* (1982) 457 U.S. 147, 157-8, n. 13. Class
6 Counsel and the Class Representatives meet the adequacy requirement.

7 The Kick Law Firm, APC has significant class action litigation experience, including in wage and
8 hour class and PAGA actions, and is more than competent. Kick Decl. ¶¶ 2–4. Diversity Law Group also
9 has significant class action experience in wage and hour matters. Lee Decl. ¶¶ 14–16; Agnew Decl. ¶¶ 4–
10 8. The interests of the Plaintiffs are not antagonistic to those of the other class members; in fact, their
11 interests are wholly aligned because they were subject to the same employment policies and practices as
12 all other Class members. Kick Decl. ¶ 12. Moreover, Plaintiffs have actively participated in the Actions
13 and understand their responsibility to assist Class Counsel in prosecuting the Actions on behalf of the Class.
14 See Declaration of Corey Devine; Declaration of Jermaine Willis; Declaration of Sherri King; Declaration
15 of Ivan Escobar. Adequacy is satisfied. Kick Decl. ¶ 12.

16 **D. Superiority**

17 Certification of the Class for settlement purposes is superior here because there will be a global
18 resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior
19 to litigation of numerous individual claims because most of the claims are too small to litigate outside of
20 the class context. Kick Decl. ¶ 13; *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 469. A class action
21 is thus the superior method for adjudicating this controversy.

22 **V. DUNK/KULLAR ANALYSIS**

23 In evaluating the reasonableness of a settlement, a trial court should consider relevant factors, which
24 may include the strength of a plaintiff's case, the risk, expense, complexity and likely duration of further
25 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
26 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
27 presence of a governmental participant, and the reaction of the class members to the proposed settlement.
28 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The court must satisfy itself that the
29 settlement is within the "ballpark" of reasonableness. *Id.* at 133.

30 **A. Summary of the Claims Being Settled and the Legal and Factual Basis For the Claims**

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Plaintiffs allege that Capstone failed to provide rest periods to class members, and failed to pay the required premiums for missed or interrupted rest periods as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 12. Complaint In Intervention ¶¶ 71–72 (Ex. 5).

Plaintiffs allege that Capstone failed to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, § 3 by, *inter alia*, requiring, permitting or suffering the class members to work off the clock. Complaint In Intervention ¶¶ 76 (Ex. 5).

Plaintiffs allege that Capstone failed to pay the class members minimum wages for all hours worked by, *inter alia*, requiring, permitting or suffering the class members to work off the clock in violation of California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-2001, § 4. Complaint In Intervention ¶¶ 82–83 (Ex. 5).

5. Failure to Timely Pay Wages During Employment

Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, employers are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. For work performed between the 16th and 26th days of any calendar month, employers must pay such employees between the 1st and 10th day of the following calendar month. Plaintiffs allege that Capstone violated Labor Code § 204 by knowingly and willfully failing to timely pay class members in accordance with this provision. Complaint In Intervention ¶¶ 85–86 (Ex. 5).

Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, employers are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. For work performed between the 16th and 26th days of any calendar month, employers must pay such employees between the 1st and 10th day of the following calendar month. Plaintiffs allege that Capstone violated Labor Code § 204 by knowingly and willfully failing to timely pay class members in accordance with this provision. Complaint In Intervention ¶¶ 85–86 (Ex. 5).

- 9 -

MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE SETTLEMENT

1 Plaintiffs allege that Capstone willfully failed to pay accrued wages and other compensation to the
2 class members in accordance with California Labor Code §§ 201 and 202 by failing to pay all earned and
3 unpaid wages to discharged and quitting employees in accordance with the timeframes established by these
4 provisions. Complaint In Intervention ¶¶ 88–91 (Ex. 5).

5 7. Failure to Provide Accurate Itemized Wage Statements

6 Labor Code § 226 mandates that employers “must provide accurate itemized statements of wages
7 to their employees.” *Morgan v. United Retail Inc.*, 186 Cal.App.4th 1136, 1143 (2010). Labor Code §
8 226(a) sets forth nine categories of information that must appear on the face of the wage statement,
9 including “all applicable hourly rates in effect during the pay period and the corresponding number of hours
10 worked at each hourly rate by the employee.” Plaintiffs allege that Capstone failed to include all of the
11 required information on class members’ wage statements during the Class Period. Complaint In
12 Intervention ¶¶ 95–97 (Ex. 5).

13 8. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge
14 of Duties

15 Plaintiffs allege that Capstone knowingly and willfully failed to indemnify the class members for
16 all business expenses and/or losses incurred in direct consequence of the discharge of their duties while
17 working under the direction of Capstone, including but not limited to expenses for uniforms, cell phone
18 usage, and other employment-related expenses, in violation of California Labor Code § 2802. Complaint
19 In Intervention ¶ 101(Ex. 5).

20 9. PAGA Penalties

21 The Private Attorneys General Act (PAGA) permits aggrieved employees to recover civil penalties
22 specified by the Labor Code that previously only the Labor Commissioner could recover. Labor Code §
23 2699(e)(1). Labor Code § 558 provides: “(a) Any employer or other person acting on behalf of an employer
24 who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days
25 of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty ...” Here, if
26 proven, Defendant’s repeated practice of Labor Code and Wage Order violations, including meal and rest
27 break violations, would give rise to potential PAGA penalties.

28 **B. Investigation and Discovery**

29 The investigation and discovery conducted in this matter have been adequate to give the Plaintiffs
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1 and Class Counsel a sound understanding of the merits of their position, Capstone’s defenses, and to
2 evaluate the reasonable value range of the claims of the Class. Kick Decl. ¶ 14. Both before and after
3 initiating the Actions on behalf of the putative class, Class Counsel diligently investigated the claims
4 alleged and conducted legal research regarding Defendant’s potential liability and defenses. *Id.* In the
5 *Devine* arbitration, the parties exchanged written discovery, and Capstone produced over 1,700 pages of
6 documents relevant to Mr. Devine’s claims, including contracts and policy documents. *Id.* For mediation
7 purposes, Capstone produced a random sample of time and pay records showing payment of wages,
8 overtime, meal and rest break premiums, and business expenses, which amounted to 144,155 rows of data.
9 *Id.* Capstone also provided information regarding the number of non-exempt workers, number of
10 workweeks, and average rates of pay for relevant periods. *Id.* Class Counsel analyzed this data with expert
11 assistance to evaluate the potential damages and penalties at issue in the Actions. *Id.* The July 14, 2025,
12 mediation before Judge Hogue proceeded against the backdrop of this data and damages analysis, which
13 permitted the parties to negotiate with an objective view of Capstone’s potential liability exposure. *Id.*

14 **C. Settlement Negotiations**

15 Settlement negotiations at all times were at arm’s length, adversarial, and devoid of any collusion.
16 Lee Decl. ¶ 10; Kick Decl. ¶ 15. As discussed above, the Settlement was reached following two separate
17 mediation sessions and was the result of a mediator’s proposal by Judge Hogue. *Id.* The fact that “[a]
18 respected and dedicated judicial officer presided over the lengthy discussions from which this settlement
19 emerged” belies any suggestion of collusion in the negotiating process. *In re WorldCom, Inc. ERISA Litig.*
20 (S.D.N.Y. 2004) 2004 WL 2338151, at *6. Class Counsel have extensive experience litigating wage and
21 hour class and PAGA actions, and they support this settlement. Lee Decl. ¶ 9, 15-16; Kick Decl. ¶ 2-4, 15.

22 **D. Scope of the Release**

23 The Settlement releases class and PAGA claims that were asserted, or could have been asserted
24 based on the facts alleged, in the Actions during the Class Period, and is set forth at SA ¶¶ I.JJ, KK. For
25 the named Plaintiffs only, and not the absent class members, the release further includes a waiver of rights
26 under Civil Code Section 1542. SA ¶ VI.A. The Effective Date of the Settlement is defined as “the later
27 of 30 days after: (1) the Court’s final approval of the Settlement Agreement, if no objections have been
28 lodged; (2) if an objection has been lodged, the time for an appeal has expired without the filing of any
29 appeal; or (3) the final resolution of any appeal, writ, or challenge to the Settlement that has been lodged
30 upholding the Settlement.” SA ¶ I.P.

E. Reasonableness of the Settlement

2. Capstone's Potential Exposure and Discounts

Based on Class Counsel's analysis of the sample data provided by Capstone and legal analysis of the strength of the claims, Capstone's potential exposure in the Actions is as follows:

Claim	Maximum Exposure	Discounted Exposure
Failure to Provide Required Meal Periods	\$13,545,071.26	\$1,354,507.13
Failure to Provide Required Rest Periods	\$14,356,245	\$717,812.25
Failure to Pay Overtime and Minimum Wages	\$2,334,071.95	\$2,100,664.75
Failure to Pay All Wages Due to Discharged or Quitting Employees	\$57,946,591.66	\$5,794,659.17
Failure to Provide Accurate Itemized Wage Statements	\$10,875,957.07	\$2,175,191.41
Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties		\$867,200
PAGA Penalties	\$48,324,716.10	\$2,416,235.80
TOTAL	\$147,382,653.04	\$15,426,270.51

These calculations were based on a class member count of 17,344, with 541,929 workweeks, and an average hourly rate of pay of \$19.58. Kick Decl. ¶ 16. Further, the assumed violation rate for the meal period claim was 31.2%; the assumed amount of business expenses for reimbursement per pay period was denied by Defendant but estimated at \$50 per class member; and, 12,331 former employees were estimated to be eligible for waiting time penalties. *Id.* The rationale for the discounts applied is as follows:

Meal and Rest Break Claims. It is reasonable to reduce Capstone's potential exposure due to the meal break claims by 90% and the rest break claims by 95%. Courts have denied class certification of meal and rest break claims, particularly where the defendant did not maintain a uniform policy of denying such breaks. *See, e.g., Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 1000; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1052 (2012) (no common proof of employer's knowledge of off-the-clock work existed "in the absence of evidence of a uniform policy or practice). Without a uniform policy, a court may be persuaded by evidence of employee-specific reasons for facially noncompliant breaks, such as that employees voluntarily chose to delay their breaks based on personal preferences. These idiosyncratic, employee-specific justifications can also be argued to defeat commonality as they involve individualized defenses that arguably apply differently to class members rather than uniformly across the

1 proposed class. This possibility represents additional grounds for a discount. Additionally, with regard to
2 the rest breaks, Capstone did not require recording the start and finish times of the rest breaks, and as such
3 would make the certification of that issue even more challenging. Kick Decl. ¶ 17.

4 **Overtime and Minimum Wages.** Here, damages were reduced modestly, by 10%, to account for
5 the possibility that certification of this issue would be denied.

6 **Failure to Pay All Wages Due to Discharged or Quitting Employees.** It is reasonable to apply a
7 90% discount to the total potential penalties under Labor Code § 203 to account for the likelihood that
8 Capstone would prevail on a good faith defense. Penalties under Labor Code § 203 require a finding of
9 willfulness, and Capstone might successfully argue that it attempted in good faith to comply with the Labor
10 Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1203–1204 (“So long as no other
11 evidence suggests the employer acted in bad faith, presentation of a good faith defense, based in law or
12 fact, will negate a finding of willfulness.”). A court might decline to award the Labor Code § 203 penalties
13 for various reasons, including that Capstone’s overtime and minimum wage violations were unintentional.

14 **Wage Statement Violations.** Here, an 80% discount was applied to account for the possibility that
15 Capstone would prevail on a good faith defense, or that the court would otherwise exercise its discretion
16 to reduce the penalties. *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065 (“[I]f an
17 employer reasonably and in good faith believed it was providing a complete and accurate wage statement
18 in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to
19 comply with the wage statement law.”).

20 **Expense Reimbursement Claims.** Capstone denies any requirement for use by its employees of
21 cell phones or any other equipment not belonging to Capstone, and investigation in this area did not develop
22 affirmative evidence of expense reimbursement violations. Kick Decl. ¶ 17. Capstone testified in this matter
23 that non-exempt employees were not required to use cell phones for work. Peot Dep. at 148:9–149:15 (Ex.
24 8). Plaintiffs allocate \$50 per class member for unreimbursed expenses to arrive at the \$867,200 figure.

25 **PAGA Penalties.** Capstone’s Maximum Exposure was calculated under the assumption that
26 Plaintiffs would prevail on all of their claims. As discussed *supra*, however, there is a likelihood Plaintiffs
27 would not prevail on certain claims, and it is reasonable to discount the potential PAGA penalties to account
28 for this. Even if Plaintiffs did prevail on the claims a court can exercise its discretion under § 2699(e)(2) to
29 reduce PAGA penalties, including to \$0. See *Lockhart v. Columbia Sportswear*, No. RICJCCP4930, 2025
30 Cal. Super. LEXIS 27984, *30 (Cal. Sup. Ct. Riverside Cnty., June 18, 2025) (finding PAGA penalties

“duplicative” of statutory penalties and exercising discretion to reduce “PAGA penalties to \$0.”). A court also might find the PAGA penalties duplicative of restitution or statutory penalties, or find that PAGA penalties should be reduced if Capstone believed in good faith that it complied with the Labor Code.

3. The Settlement Is Fair and Reasonable to Class Members

The GSA of \$5,950,000 represents a recovery of 38.6% of the amount that Class Counsel believe class members could most realistically have recovered at trial, which is fair and reasonable in light of the risks inherent in continuing with litigation. Even the Discounted Exposure amount of \$15,426,270.51 is far from a certain recovery in this case. For example, Mr. Devine prevailed on only a single claim in his arbitration, namely the wage statement violation claim. Interim Award of Arbitrator at 19 (Ex. 3).

The Settlement also is reasonable when compared to similar class and PAGA settlements. As discussed *supra*. at page 1, as well as in Mr. Devine’s Motion to Vacate filed on January 10, 2025, the Gross Settlement Fund in the prior settlement between Ms. Verdugo and Capstone in this very case was \$1,400,000. Ex. 9, ¶ 10. This Court preliminarily approved that settlement in its July 19, 2024, Confirmation Order. The Settlement now being submitted for approval is for more than 4 times that.

For further example involving this same Defendant, in another case against Capstone, on August 5, 2020, the Hon. John M. Pacheco of the Superior Court of California, County of San Bernardino granted final approval of a class and PAGA settlement with a Gross Settlement Fund of \$2,275,000, with a minimum payment to the approximately 11,320 class members of \$1,592,500. *Gomez* Final Approval Order (Ex. 11); Settlement Agreement ¶¶ 6, 15 (Ex. 12); Motion for Preliminary Approval at 22 (Ex. 10). The Class Period was October 18, 2013 to July 31, 2019, and included all current and former non-exempt employees of the Defendants in the State of California. *Gomez* Settlement Agreement ¶¶ 3, 6, 15 (Ex. 12).

Courts have determined that settlements are, of course, reasonable even where plaintiffs recover only a portion of their actual losses. *See, e.g., Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff’d* 899 F.2d 21 (11th Cir. 1990) (“[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate.”). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even—a thousandth of a single percent of the potential recovery.” *Id.* (citing cases). A “proposed settlement is not to be [strictly] judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). This is because, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential

recovery will not per se render the settlement inadequate or unfair.” *Id.* at 628.

4. The Average Payout to Class Members

Regarding the average share of the GSA that individual Class Members will receive, assuming the approval of the requested attorneys’ fees and costs, service awards, and administrative expenses, the average payout per class member will be approximately \$204.57, including payments from the Net Settlement Fund and the portion of the PAGA Settlement Payment that will be distributed to aggrieved employees. Kick Decl. ¶ 12. On a per workweek basis, assuming 542,000 workweeks, class members will receive approximately \$6.55 per workweek.

5. The Risks, Expenses, and Duration of Further Litigation

The Settlement is reasonable when considered in light of the risks, expenses, and duration of continued litigation. As discussed *supra*, class members faced the risk that they might not prevail on one or more of their claims, and particularly the meal and rest break claims on which Mr. Devine did not prevail in arbitration. There was also the risk that class certification would be denied as to one or more claims, and that any PAGA penalties awarded would be substantially reduced.

Further litigation would likely cost hundreds of thousands of dollars. Kick Decl. ¶ 19. Capstone possesses substantial resources to defend the Actions and is defended by Duane Morris LLP, one of the nation’s preeminent employment litigation defense firms. *Id.* The arbitration in the *Devine* action alone cost \$233,545 in attorneys’ fees and \$18,706.02 in litigation expenses. *Id.* Claimant’s Motion for Fees and Costs at 5 (Ex. 13). Plaintiffs must still move for class certification and prevail at trial, and would likely need to oppose a summary judgment motion, among other motion practice. Kick Decl. ¶ 19. Whichever side did not prevail at trial would likely appeal, resulting in hundreds of hours of additional attorney time and tens of thousands of dollars in attorneys’ fees and costs, all of which would be paid by the class members. *Id.* The *Devine* action was filed on October 9, 2020, over five years ago, and this additional litigation activity would likely consume another three to five years. *Id.* In contrast, the proposed Settlement provides immediate relief to the class without the uncertainty and burden of these likely expenses. *Id.*

VI. NOTICE TO THE LWDA

Plaintiff Devine provided proper notice to the LWDA and Capstone prior to the filing of the *Devine* action via letter on August 4, 2020, 65 days before the filing of the initial complaint on October 9, 2020. *See* Devine Letter to LWDA (Ex. 14); LWDA Payment Confirmation (Ex. 15). This letter included the factual material required by Labor Code § 2699.3 alerting to the nature of the alleged violations. As of the

filing of this Motion, this Motion and the Settlement Agreement will have been uploaded to the Department of Industrial Relations' PAGA Filing Portal on October 31, 2025. Kick Decl. ¶ 20. Plaintiff Escobar also filed proper notice to the LWDA of the *Escobar* action. Lee Decl. ¶¶ 3, 8.

VII. CYPRES

Under no circumstances will any of the money from this settlement revert to Capstone. SA ¶ IV.A. Rather, the parties have agreed that, subject to this Court's approval, any residue from the settlement will be distributed to Public Citizen Foundation, a consumer advocacy 501(c) non-profit actively involved in employee rights issues such as those involved in this case. SA ¶ V.J. An extensive description of Public Citizen's work and the manner in which it would use the *cy pres* funds can be found at <https://www.citizen.org/about/>. None of Plaintiffs' attorneys are involved in the governance of Public Citizen nor on its Board of Directors. Kick Decl. ¶ 21.

VIII. SETTLEMENT ADMINISTRATION AND CLASS NOTICE

The manner of giving notice and the content of notice must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1164 (internal citations and quotations omitted). An appropriate notice has a "reasonable chance of reaching a substantial percentage of the class members." *Duran v. Obesity Rsch. Inst., LLC* (2016) 1 Cal. App. 5th 635, 648, 204 Cal. Rptr. 3d 896, 907 (quotation omitted); *see also* Cal. Rules of Court 3.766. The notice to be provided to class members is attached as Exhibit 17 to the Declaration of Taras Kick. The notice will be provided in English and Spanish. Kick Decl. ¶ 22. As explained further below, the proposed notice satisfies all applicable requirements.

The Settlement Administrator will identify class members using the Class Data provided by Capstone, which includes mailing addresses. SA ¶ IX.D. The administrator will update Settlement Class Member addresses using the National Change of Address database before mailing them the class notice and will remail notices returned as undeliverable to the appropriate forwarding address or conduct further research to determine a better address. *Id.* Class Counsel put the administration of this notice program out for bid to two class action administrators with experience in wage and hour class action settlement administration, and the lower of the two bidders is Phoenix Class Action Administration Solutions ("Phoenix"), which has estimated that its costs will amount to \$65,950. Kick Decl. ¶ 23. A true and correct copy of Phoenix's settlement administration resume is attached as **Exhibit 18** to the Kick Declaration.

1 **IX. ATTORNEYS' FEES AND COSTS**

2 Class Counsel will apply for an award of attorneys' fees of one-third of the GSA, which amounts
3 to \$1,983,333.33, plus reimbursement of reasonable litigation costs, to be approved by the Court. SA ¶
4 IV.B.2. This request for attorneys' fees is disclosed to class members in the Notice. Class Notice ¶ 6 (Ex.
5 17). The application will be pursuant to the percentage-of-the-fund method, although Class Counsel also
6 will provide the Court their lodestar, and detail for the lodestar, with the Motion for Final Approval for the
7 Court to perform a lodestar cross-check, and alternatively also apply pursuant to the lodestar approach,
8 should this Court wish to do so. California law allows the award of attorneys' fees in class actions based
9 on the percentage-of-the-fund method. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480;
10 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255. This method is appropriate because
11 when it is used, "counsel have an interest in generating as large a recovery for the class as possible, as their
12 fee increases with the class's take. By contrast, when class counsel's fee is set by an hourly rate, the lawyers
13 have an incentive to run up as many hours as possible in the litigation so as to ensure a hefty fee, even if
14 the additional hours are not serving the clients' interests in any way." 5 Newberg and Rubenstein on Class
15 Actions § 15:65 (6th ed.) (comparing the two approaches to fee awards).

16 The requested fee award represents reasonable compensation to Class Counsel for the time and
17 effort involved in prosecuting the case throughout its five-year history and overcoming the significant
18 procedural hurdles outlined above, as will be discussed in greater detail in Plaintiffs' Motion for Final
19 Approval. Further, the award would reasonably compensate Class Counsel for its risk of non-payment,
20 which it undertook by prosecuting this action on a contingent basis. Lee Decl. ¶ 13; Kick Decl. ¶ 24. Class
21 Members will have a chance to opt-out or object to the award.²

22 Class Counsel seek reimbursement of necessary litigation costs in an amount not to exceed
23 \$100,000. To date, the amount of costs incurred by TKLF alone exceeds \$67,000, and all costs will be
24 itemized for the Court's review with the Motion for Final Approval. Kick Decl. ¶ 25.

25 **X. THE PAGA AWARD**

26 The Court should also approve the settlement with respect to the PAGA claims. The California
27 Legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] by empowering
28 employees to enforce the Labor Code as representatives of the Agency." *Iskanian v. CLS Transp. Los*
29

30 ² The law firms have agreed to share fees in this matter, and Plaintiffs have been informed of this fee sharing. Kick Decl. ¶ 28.

1 *Angeles, LLC*, 59 Cal.4th 348, 383 (2014). An action under PAGA to recover civil penalties “is essentially
2 a law enforcement action designed to protect the public and not benefit private parties.” *Id.* at 381. “As the
3 state’s proxy, an employee-plaintiff may obtain civil penalties for violations committed against absent
4 employees . . . just as the state could if it brought an enforcement action directly.” *Sakkab v. Luxottica*
5 *Retail North America, Inc.* 803 F.3d 425, 435 (9th Cir. 2015). The Settlement therefore accomplishes
6 PAGA’s objectives by imposing sufficient civil penalties “to punish and deter” Defendant from future
7 alleged Labor Code violations, while also ensuring that the penalties are not “unjust, arbitrary and
8 oppressive, or confiscatory.” Lab. Code, § 2699, subd. (e)(2); *Iskanian*, 59 Cal.4th at 384. Under the
9 general provisions of the PAGA scheme, for PAGA notices filed with the LWDA before June 19, 2024,
10 75% of the civil penalties recovered go to the State, while the remaining amount is given to the aggrieved
11 employees. See Lab. Code, § 2699, subd. (i).

12 PAGA provides that “[t]he superior court shall review and approve any settlement of any civil
13 action filed pursuant to this part.” Lab. Code, § 2699, subd. (l)(2). PAGA, however, does not require a
14 two-step process or otherwise mimic the class action approval requirements when the parties reach a
15 settlement as to PAGA civil penalties. *Salazar v. Sysco Central Cal., Inc.*, 2017 WL 1135801, *2 (E.D.
16 Cal. Feb. 2, 2017). Rather, the LWDA has explained that courts should evaluate settlements of PAGA
17 claims based on whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent
18 with the underlying purpose of the statute to benefit the public.” *O’Connor v. Uber Techs., Inc.*, 201 F.
19 Supp. 3d 1110, 1133 (N.D. Cal. 2016). “[T]he purpose of PAGA is to incentivize private parties to recover
20 civil penalties for the government that otherwise may not have been assessed and collected by
21 overburdened state enforcement agencies.” *McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F. Supp.
22 2d 1222, 1233. The Parties’ settlement with respect to the PAGA claims is genuine and meaningful and
23 thus complies with PAGA’s text and purpose.

24 Here, the Settlement penalizes Defendant \$250,000 for its alleged violation of California’s labor
25 laws. Because Plaintiffs’ ability to recover is unlikely and any penalty they did recover would be limited,
26 this amount is both substantial and sufficient to deter Capstone and other companies from committing
27 similar violations in the future. As noted above, this sum is also part of the larger Gross Settlement Amount
28 of \$5,950,000.00, which serves as an even greater deterrent to employers. The settlement amount also
29 translates into a substantial recovery for the State of \$187,500. Because the sum is genuine and meaningful
30 and confers a substantial benefit on the public, the Court should approve the settlement.

1 Additionally, Defendant contends that Plaintiffs vastly overstate its potential exposure. First,
2 Defendant defends that PAGA penalties cannot and should not be stacked and that, even if they could be
3 combined, very few Courts have ever exercised discretion to stack them. Second, Defendant denies that a
4 violation for each pay period can be established. Third, Defendant contends that a Court is unlikely to
5 exercise its discretion to award civil penalties under PAGA where, Defendants maintain, no evidence has
6 shown or will show any Labor Code violations by Defendant, if any, is knowing and intentional that would
7 justify PAGA penalties. *Raines v. Coastal Pacific Food Distributors, Inc.*, (2018) 23 Cal. App. 5th 667,
8 681 (“a trial court has discretion in awarding civil penalties and may reduce the award for technical
9 violations that cause no injury”). Finally, Defendant asserts that individualized issues predominate the
10 PAGA claims, making the claims unmanageable for trial. Thus, Defendant contends that the Court would
11 not exercise its discretion to award any penalties under PAGA.

12 Therefore, when the risks of litigation, including, without limitation, the burdens of proof necessary
13 to establish liability, the mixed case law on manageability, as well as the probability of appeal of a favorable
14 judgment are considered, the Settlement is reasonable and in the best interest of the State and the public.

15 **XI. CLASS REPRESENTATIVE SERVICE AWARDS**

16 The Settlement Agreement provides for Service Awards in the amount of \$25,000 to Mr. Devine,
17 \$10,000 to Mr. Willis, \$10,000 to Ms. King, \$10,000, to Mr. Escobar, and \$10,000 to Ms. Verdugo. SA ¶
18 IV.B.1. The higher requested award for Mr. Devine is that not only is he the only representative who was
19 deposed in this matter, but he also appeared for and testified at the binding PAGA arbitration in this matter,
20 including spending additional days preparing for it. Kick Decl. ¶ 26; Devine Decl. ¶ 7. These awards are
21 intended to recognize the time, effort, and risk that Plaintiffs undertook in bringing this case and helping to
22 secure the relief obtained for the members of the Class. *See Bell v. Farmers Ins. Exchange* (2004) 115
23 Cal.App.4th 715, 726 (upholding “service payment” to named plaintiff for his efforts in bringing class
24 case); *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards are
25 “intended to compensate class representatives for work done on behalf of the class, to make up for financial
26 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act
27 as a private attorney general.”).

28 Here, as detailed in their concurrently filed declarations, Plaintiffs made significant contributions to
29 the success of this lawsuit for the Class, undertook reputational risks, and expended time and effort on behalf
30 of the Class. Kick Decl. ¶ 26.; Devine Decl. ¶ 7; Willis Decl. ¶ 7; Escobar Decl. ¶ 9; King Decl. ¶ 9.

The proposed service awards fall well within the range of reasonable incentive payments awarded to Class Representatives in similar class actions. *See, e.g., Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving \$20,000 service award to Class Representative in California wage-and-hour class action settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving “\$25,000 incentive award for each Class Representative” in wage and hour settlement).

XII. IMPACT ON PENDING LITIGATION

The Settlement will resolve the claims asserted in multiple related cases, including related cases brought by counsel before the Court, of *Devine v. Capstone Logistics, LLC*, No. 20STCV39030, Los Angeles Superior Court (the “*Devine*” case), *Escobar v. Capstone Logistics, LLC*, No. STK-CV-UOE-2020-0009429, San Joaquin Superior Court, and *Saige et al v. Capstone Logistics, LLC*, No. 5:24CV00195 (C.D. Cal.). The *Saige* action was filed on December 6, 2023, over three years after the filing of the *Devine* and *Escobar* actions and a year and a half after the filing of the *Verdugo* action. *Saige* Complaint (Ex. 6). As discussed *supra*, there is no reason to believe that the *Saige* plaintiffs could obtain a better result for the class members than the Settlement, and Judge Hogue was aware of the *Saige* action and the denial without prejudice of Capstone’s motion to compel arbitration therein when she developed the mediator’s proposal that resulted in this Settlement. Kick Decl. ¶ 27.

XIII. PROPOSED SCHEDULE GOING FORWARD

The parties propose the following schedule for the remainder of this case:

Defendant Transfers Class Data to Administrator	November 27, 2025 [15 days after Preliminary Approval]
Administrator Sends Notice	December 29, 2025 [30 days after Defendant Transfers Class Data to Administrator]
Last Day for Individuals to Object or Opt Out of Settlement Class	January 28, 2026 [30 days after Administrator Sends Notice]
Motion for Final Approval and Attorneys’ Fees Filed	January 29, 2026
Last Day to File Responses to Objections	February 5, 2026
Final Approval Hearing	February 13, 2026 (or _____)
Filing by Settlement Administrator of Final Report	November 4, 2026

XIV. CONCLUSION

Plaintiffs respectfully request that the Motion for Preliminary Approval be granted in its entirety.

1 Dated: October 31, 2025

Respectfully submitted,

2 THE KICK LAW FIRM, APC

3
4 By: /s/ Taras Kick
Taras Kick
Tyler Dosaj
5 Attorneys for Corey Devine and Jermaine Willis,
6 individually, and on behalf of all others similarly
situated

7
8 DIVERSITY LAW GROUP, P.C.

9 /s/ Larry W. Lee
Larry W. Lee (State Bar No. 228175)
10 Kristen M. Agnew (State Bar No. 247656)
11 Attorneys for Ivan Escobar and Sheri King,
12 individually, and on behalf of all others similarly
situated