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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

JESUS MARTINEZ RAMIREZ, an
individual, on behalf of himself, others
similarly situated,

PLAINTIFF,

v.

JAGUAR FARM LABOR CONTRACTING,
INC., a California Corporation, and DOES 1
thru 50, inclusive,

DEFENDANTS.

Case No.: BCV-23-102358-BCB

[Assigned for all purposes to the Hon. Bernard
C. Barmann, Jr., Division H]

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF
REPRESENTATIVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: June 16, 2025

Time: 8:30 a.m.

Division.: H

Complaint Filed: July 21, 2023

FAC Filed: September 26, 2023

Trial Date Set: None

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

2 **PLEASE TAKE NOTICE** that on June 16, 2025 at 8:30 a.m. in Division H of the above-
3 entitled court, located at 1215 Truxtun Avenue Bakersfield, CA 93301, Plaintiff Jesus Martinez
4 Ramirez will and hereby does move the Court to approve the Parties' Proposed PAGA Settlement,
5 enter an order granting approval of the Settlement, and entering Judgment in favor of Plaintiff and
6 the state of California.

7 The Motion will be made on the grounds that the proposed PAGA Settlement is fair, adequate,
8 reasonable, and in the best interest of the State of California and aggrieved employees. The Motion
9 will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the
10 Declaration of David S. Winston, the Declaration of Jesus Martinez Ramirez, the Parties' Settlement
11 Agreement, and all other papers and records on file in this action, and on such oral and documentary
12 evidence as may be presented at the hearing on this Motion. Plaintiff seeks attorneys' fees of up to
13 \$161,666.67, case costs of up to \$20,000, a service award for Plaintiff of up to \$5,000, and settlement
14 administration costs of up to \$30,000.00.

15 DATED: May 7, 2025

WINSTON LAW GROUP, P.C.

17 By: David Winston
18 DAVID S. WINSTON
19 Attorney for Plaintiff Jesus Martinez Ramirez and
20 the aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jesus Martinez Ramirez (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of this Motion for Approval of PAGA Settlement reached between Plaintiff
5 and Defendant Jaguar Farm Labor Contracting, Inc. (“Defendant” or “Jaguar”). This PAGA case
6 predates the July 1, 2024 PAGA Reform and therefore falls under the prior PAGA statutory scheme.
7 Under that statutory scheme pursuant to Labor Code § 2699(l)(2), the superior court is required to
8 “review and approve any settlement of any civil action filed pursuant to [PAGA].”¹ Now Labor Code
9 § 2699(v)(2) provides “[t]he amendments made to this section by the act adding this subdivision shall
10 not apply to a civil action with respect to which the notice required by subparagraph (A) of paragraph
11 (1) of subdivision (a), paragraph (1) of subdivision (b), or subparagraph (A) of paragraph (1) of
12 subdivision (c) of Section 2699.3 was filed before June 19, 2024.” Lab. Code § 2699. Since the initial
13 PAGA notice in this Action was filed on July 21, 2023 and the Amended PAGA Notice was filed on
14 September 29, 2023, this Action falls within the pre-amendment PAGA statutory scheme including
15 the prior 75%/25% split of PAGA penalties.

16 The Proposed Settlement, which provides genuine and meaningful relief despite Defendant’s
17 financial limitations represents a good result for the State of California and provides for a gross
18 penalty of approximately \$40.75 per employee affected by the alleged unlawful conduct (\$485,000.00
19 gross settlement amount/11,902 aggrieved employees). Declaration of David Winston In Support of
20 PAGA Settlement, ¶ 23 (hereafter the “Winston Decl.”).

21 By this Motion, Plaintiff requests that the Court:

22 (1) Grant approval of the PAGA Settlement and Release Agreement signed by the Parties (the
23 “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached to
24 the Winston Decl., as Exhibit 1;

25 (2) Appoint ILYM as the Settlement Administrator;

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27
28 ¹ Under the new PAGA statutory scheme, the Superior Court is still required to review and approve all PAGA settlements; however, the subdivision is now listed at Labor Code § 2699(s)(2).

(3) Award PAGA Representative Jesus Martinez Ramirez a Service Award in the amount of \$5,000.00; and

(4) Approve PAGA Counsel's Attorneys' Fees and Costs Request.

Plaintiff believes that the proposed settlement of this action is fair, reasonable, adequate, and in the best interests of the state of California and the aggrieved employees given the issues in this action. The Parties vehemently dispute the strength of the claims and the likely outcome, if Plaintiff prevailed in this Action. Winston Decl., ¶ 8. Defendant alleges that they have complied with California law, that this settlement exceeds their maximum potential exposure to civil penalties, and was agreed to merely to avoid costs of litigation and potential fee shifting. *Id.* Plaintiff alleges that if Plaintiff prevailed in this Action and unless the Court declined to exercise a considerable degree of discretion when awarding PAGA penalties, Plaintiff could obtain a multi-million dollar judgment at trial. *Id.* However, even if Plaintiff were to decline the settlement and endure the risks and costs to obtain such a judgment, it is unlikely that the State or Aggrieved Employees would actually see a more favorable recovery than that provided by the settlement due to Defendant's financial condition. *Id.*; Garcia Decl., ¶¶ 2 and 4-5. Defendant is a Farm Labor Contractor, which provides labor services for the production of agricultural products that Jaguar does not own or possess an interest in, and does not possess sufficient assets to fund a seven-figure judgement or settlement payment. Garcia Decl., ¶ 4. In fact, the payment of the settlement amount will place considerable strain on Defendant's operations, requiring a payment plan allowing Defendant time to pay the settlement in monthly payments to ensure that they could meet their other financial obligations. Garcia Decl., ¶ 5. Considering the costs of continued litigation, the risk of prevailing on the merits, the risk of reduction of penalties by the Court, and the risk of driving Defendant to bankruptcy even if Plaintiff were to obtain a considerably larger judgment, this settlement payment is fair and reasonable.

This Settlement is the product of a mediator's proposal from a retired judge following consideration of not only the strength of the Parties' legal positions, but also the realities of Defendant's financial limitations. Therefore, under the circumstances, the Parties' Proposed Settlement represents the best possible result to the State and the aggrieved employees. Winston

Decl., ¶ 7. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties' Proposed PAGA Settlement. The Proposed Settlement was provided to the LWDA as required by PAGA. Winston Decl., ¶ 20, Exh. 2.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On July 21, 2023, Plaintiff Jesus Martinez Ramirez filed a Class Action Complaint in Kern County Superior Court and also filed a PAGA Notice with the LWDA. Winston Decl., ¶ 9. Shortly thereafter, Defendant retained Counsel who advised Plaintiff of the existence of an arbitration agreement and the Parties began discussing the possibility of dismissing the class claims. *Id.* at ¶ 10. Plaintiff filed a First Amended Complaint adding the PAGA claims on September 26, 2023. *Id.* at ¶ 11. Due to the existence of the arbitration agreement, the Parties stipulated to dismiss the class claims without prejudice. *Id.* at ¶ 12. The Court granted the stipulation to dismiss the class claims without prejudice and dismissed the class claims on December 6, 2023. *Id.*

The Parties mediated this matter with respected mediator the Hon. Howard Broadman (Ret.) on January 13, 2025. Winston Decl., ¶ 13. Winston Decl., As part of the Mediation process, Defendant provided Plaintiff with information about the number of allegedly aggrieved employees (11,498) through December 31, 2024, the number of pay periods at issue during the PAGA period (176,323), pay records for 4,835 allegedly aggrieved employees, time records for 4,933 allegedly aggrieved employees, and relevant policy documents. *Id.* at ¶ 14. Plaintiff hired a third-party damages expert to analyze the time and pay records produced by Defendant in advance of the Mediation in order to ascertain the violation rates and the value of the claims. *Id.* at ¶ 15. At the Mediation on January 13, 2025, the Hon. Howard Broadman (Ret.) helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. *Id.* at ¶ 16. With significant assistance from the Mediator and based upon a mediator's proposal for \$485,000.00, the Parties agreed to the proposed non-reversionary, checks-mailed PAGA Settlement. *Id.* Since both the Mediation and release period extend beyond the pre-Mediation data pull, Defendant provided supplemental informal discovery that indicated that there are 11,902 aggrieved employees and 187,757 pay periods covered by the Parties' Proposed Settlement. *Id.* ¶ 17.

Plaintiff also negotiated a separate \$15,000.00 settlement of his individual claims currently pending before the Court that exist separate and apart from PAGA claims and that is being disclosed in the interest of transparency. *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims). Plaintiff’s Counsel is not receiving any attorneys’ fees or cost reimbursement associated with Plaintiff’s individual settlement. Winston Decl., ¶¶ 16, 18, and 83, Exhs. 1 and 7; Ramirez Decl., ¶ 2.

III. THE NATURE OF A PAGA ACTION

The Private Attorney General Act (“PAGA”) (Labor Code section 2698, *et seq.*) creates a means of “deputizing” citizens as private attorney generals to enforce the Labor Code on behalf of the state of California. *Brown v. Ralphs Grocery Co.*, 197 Cal. App. 4th 489, 501 (2011). Through PAGA, an aggrieved employee can recover civil penalties for violations of the Labor Code committed against the aggrieved employee on behalf of the State of California. Lab. Code § 2699 (a) and (f). Thus, in bringing a PAGA action, the aggrieved employee acts as the proxy or agent of the state labor law enforcement agencies, representing the same rights and interest of the state of California who remains the real party in interest. *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty.*, 234 Cal. App. 4th 1109, 1119 (2015) (holding “the government is always the real party in interest” in a PAGA action.).

Since in a PAGA action the state serves as the real party in interest, any judgment in a PAGA action binds only the state of California and does not alter the rights of any of the allegedly aggrieved employees except with respect to civil penalties that could be recovered by the state of California on behalf of the aggrieved employees. *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003 (2009); (holding that “[PAGA] does not create property rights or any other substantive rights.”); *Medina v. Vander Poel*, 523 B.R. 820, 825 (E.D. Cal. 2015) (holding “PAGA plaintiffs do not have property rights in their cases.”).

Moreover, as the Ninth Circuit, the California Supreme Court, and Appellate Courts have recognized, “a PAGA suit is fundamentally different than a class action.” *Baumann v. Chase Inv.*

Servs. Corp., 747 F.3d 1117, 1122 (9th Cir. 2014); *Kim*, 9 Cal. 5th at 81 (“A PAGA claim is legally and conceptually different from an employee’s own suit for damages and statutory”). Unlike in a class action, “PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class.” *Williams vs. Sup. Ct.*, 3 Cal. 5th 531, 546-547 (2017). PAGA also “has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.” *Baumann*, 747 F.3d at 1122.

IV. THE PROPOSED SETTLEMENT

The Proposed Settlement only covers the State’s claims for Labor Code violations committed against a group of aggrieved employees also referred to as PAGA Members defined as “all individuals who were employed by Defendant in California as a non-exempt employee at any point between July 21, 2022 and the earlier of March 14, 2025 or the date that the Court approves the Settlement.” Winston Decl., ¶ 17, Exh. 1 at § II(1). There are 11,902 aggrieved employees and 187,757 pay periods between July 21, 2022 and the March 14, 2025 covered period. Winston Decl., ¶ 18. Notably, as discussed above, none of the workers are waiving any of their own individual rights to pursue claims against Defendant, as only the State’s claims for civil penalties were ever at issue in this action, with the exception of Plaintiff, who has signed an individual settlement agreement for his own individual claims. *See Amalgamated Transit*, 46 Cal. 4th at 1003; *Kim*, 9 Cal. 5th at 81.

The Proposed PAGA Settlement provides for Defendant to pay a non-reversionary Gross Settlement Amount of \$485,000.00 subject to the following proposed allocation and/or in the lower amounts requested as part of this approval motion:²

Gross Settlement Amount:	\$485,000.00
Attorneys’ Fees: (1/3)	up to \$161,666.67
Case Costs:	\$15,138.88

² The proposed Settlement permits PAGA Counsel to request case costs of up to \$20,000 and settlement administration costs of up to \$30,000. However, since PAGA Counsel is only seeking costs incurred and/or expected to be incurred during the approval process and the settlement administration costs were also slightly less than originally anticipated, there is currently estimated to be an additional \$6,861.12 available to the State and aggrieved employees.

Settlement Administration Costs:	\$28,000.00
Service Award for Plaintiff Ramirez:	up to \$5,000.00

Estimated Net PAGA Penalties:	\$275,194.45
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Winston Decl., ¶¶ 16 and 20, Exh. 1 at § III(28).

The Net PAGA Payment is the amount to be distributed to the LWDA and the aggrieved employees and consists of the Gross Settlement Amount minus Court Approved PAGA Counsel’s attorneys’ fees and litigation costs, the settlement administrator costs charged by third-party settlement administrator ILYM Group, and Plaintiff Ramirez’s proposed service award. Winston Decl., ¶¶ 16 and 21, Exh. 1 at § III(28-29). The Net PAGA Payment Amount will be allocated pursuant to the version of Labor Code section 2699(i) that applies to this pre-PAGA reform action with 75% paid to the LWDA (\$206,395.84) and 25% paid to the aggrieved employees on a pro-rata basis (\$68,798.61). *Id.* at ¶¶ 16 and 21, Exh. 1 at § III(28-29).

The portion of PAGA penalties distributed to each PAGA Aggrieved Employee shall be calculated by dividing the number of PAGA periods worked by an aggrieved employee during the covered period by the total number of pay periods worked by all aggrieved employees during the covered period (187,757) and multiplying that amount by the 25% of the net PAGA penalties awarded to the aggrieved employees (*i.e.* \$68,798.61). Winston Decl., ¶ 22.

Based on the data provided by Defendant, the Proposed Settlement itself represents an average estimated gross settlement award per aggrieved employee is approximately \$40.75 (\$485,000.00 gross settlement amount/11,902 aggrieved employees) and the average estimated net settlement award when taking into account the proposed attorneys’ fees, case expenses, Plaintiff’s proposed service award, and PAGA’s 75%/25% split between the state and aggrieved employees is approximately \$5.78 (\$68,798.61 Net PAGA Penalties for the aggrieved employees/11,902 aggrieved employees). Winston Decl., ¶ 23. The proposed method of allocation, which reflects the amount of time an aggrieved employee worked during the PAGA Period relative to the other employees, is fair and reasonable. *Id.* at ¶ 24.

The Parties have also agreed to use a reputable third-party claims administrator ILYM Group,

1 Inc. to administer the Settlement. Winston Decl., ¶ 16, Exh. 1 at §§ II(11), III(28), and IV(43).

2 **V. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

3 Although a party need not bring a motion for approval of a PAGA settlement, nor must the
4 Court conduct a hearing on the fairness of a PAGA settlement, a court must nevertheless review and
5 approve the PAGA settlement. Lab. Code § 2699 (l)(2).

6 **A. The Standard the Court Should Consider When Reviewing the Settlement**

7 The California Court of Appeal established the standard applicable to review of a PAGA
8 settlement in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021). In *Adecco*, the Court of
9 Appeal held that when reviewing a PAGA Settlement, the “court should evaluate a PAGA settlement
10 to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate
11 present labor law violations.” *Id.* The Court explained that while unlike in a class case “PAGA does
12 not require the trial court to act as a fiduciary for aggrieved employees” the following “factors can be
13 useful in in evaluating the fairness of a settlement”: “the strength of the plaintiff’s case, the risk, the
14 stage of the proceedings, and likely duration of further litigation, and the settlement amount.” *Id.*
15 Further, the Court should also consider “whether a settlement is fair in view of PAGA’s purpose and
16 policies.” *Id.* The proposed Settlement provides genuine and meaningful relief for the State of
17 California and aggrieved employees.

18 **B. The Strength and Risks Associated with Plaintiff’s Case**

19 As an initial matter, as previously explained, if Plaintiff were to decline the settlement and
20 endure the risks and costs to obtain such a judgment, it is unlikely that the State or Aggrieved
21 Employees would actually see a more favorable recovery than that provided by the settlement due to
22 Defendant’s financial condition. Winston Decl., ¶¶ 25; Garcia Decl., ¶¶ 2 and 4-5. Nevertheless, to
23 comply with *Moniz*, Plaintiff also wishes to provide a claim specific analysis of the legal strength and
24 risks associated with each claim.

25 **1. The Experience and Views of Counsel and Mediator’s Involvement**
26 **Support Approval of the Parties Agreement**

27 Although not technically a factor in a PAGA action, PAGA Counsel is experienced in wage-
28 and-hour class actions and has worked on numerous class and representative PAGA wage and hour

1 cases. Winston Decl., ¶¶ 3-6.³

2 Plaintiff and PAGA Counsel, operating at arm's length and with the assistance of the mediator
3 the Hon. Howard Broadman (Ret.), weighed the strengths and risks of this case as well as the
4 Defendant's considerable financial challenges, the risk that Plaintiff might not prevail on all claims,
5 that even if Plaintiff prevailed the Court could exercise its discretion and decline to award as much
6 relief obtained through this Settlement, that even if Plaintiff achieved a more favorable outcome it
7 could still result in a paper or pyrrhic victory due to Defendant's financial constraints. Winston Decl.,
8 ¶ 26. Ultimately, this Settlement reflects the independent proposal of a third-party mediator as to what
9 is possible under these circumstances given the significant risks associated with the claims and
10 potential outcomes even if Plaintiff prevails and Defendant's financial condition. *Id.* at ¶ 27. PAGA
11 Counsel's knowledge and experience as well as a mediator's participation in the settlement
12 negotiation weighs considerably against any inference of collusion.⁴ Further, after factoring in the
13 risks explained below, PAGA Counsel believes that the proposed Settlement is fair and reasonable
14 and should be approved. *Id.* at ¶ 7.

15 **2. The Strengths and Risks Associated with Plaintiff's Minimum Wage**
16 **Related PAGA Claims**

17 Labor Code § 1197 states the California requirement that employees must be paid at least the
18 minimum wage fixed by the Commission or by any applicable state or local law, and any payment of
19 less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee
20 receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the
21 full amount of this minimum wage." IWC Wage Order Nos. 14-2001 and 14-2001 obligate employers
22 to pay each employee minimum wages for all hours worked. California's minimum wage standards
23 apply to each hour employees worked for which they were not paid. Further, California law does
24 "not allow employers to require employees to routinely work for minutes off the clock without
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26 ³ *Williams*, 3 Cal.5th at 546-547 (2017) ("PAGA does not make other potentially aggrieved employees parties or clients
of plaintiff's counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a
plaintiff or counsel to scrutiny with respect to the ability to represent a large class.").

27 ⁴ *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS, 108195 (N.D. Cal. Nov.
28 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *In re Amtel Corp.*
Derivative Litig., No. C 06-4592 JF (HRL), 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same).

1 compensation” regardless of the amount of compensation they receive while on-the-clock. *Troester*
2 *v. Starbucks Corp.*, 5 Cal. 5th 829, 833-834 (2018).

3 Plaintiff alleged that Defendant failed to pay him and the other aggrieved employees for all
4 hours worked, rounded employees’ time entries, adopted an automatic deduction policy and practice
5 whereby it automatically deducted thirty (30) minutes’ worth of aggrieved employees’ pay regardless
6 of whether or not the employee took a meal period and/or the full amount of their meal period.
7 Winston Decl., ¶ 28. Based upon the unique facts of this case, significant risk existed that the Court
8 might find that the claims were not manageable at trial. *Id.* For instance, the plaintiff failed to certify
9 the claims in *Troester* on remand. Winston Decl., ¶ 29, Exh. 3 (“Order Granting Defendant’s Motion
10 for Partial Summary Judgment and Denying Plaintiff’s Motion for Class Certification”). And, while
11 the standard for certification is not the same as what’s required in a PAGA case, it was still likely that
12 Plaintiff would encounter difficulties when seeking to establish liability on a per pay period basis for
13 each aggrieved employee meaning that the Court might seek to limit the claims at trial to those who
14 responded to voluntary surveys or only ultimately permit Plaintiff to proceed at trial if he could
15 establish that the survey results were statistically significant. Winston Decl., ¶ 30.

16 **3. The Strengths and Risks Associated with Plaintiff’s Overtime Wage**
17 **Related PAGA Claims**

18 Labor Code § 510 requires an employer to compensate an employee who works more than
19 eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
20 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
21 for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no
22 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
23 day or more than eight (8) hours on the seventh consecutive day of work.

24 As with the minimum wage claims, Plaintiff alleged that some of the hours that Defendant
25 failed to pay him and the other aggrieved employees for due to the rounding and auto-deduction
26 policies qualified as overtime hours. Winston Decl., ¶ 31. As previously explained, based upon the
27 unique facts of this case, significant risk existed that the Court might find that the claims were not
28 manageable. *Id.* For instance, the plaintiff failed to certify the claims in *Troester* on remand. *Id.* at

¶¶ 29-31, Exh. 3 (“Order Granting Defendant’s Motion for Partial Summary Judgment and Denying Plaintiff’s Motion for Class Certification”).

In addition to the off-the-clock and rounding claims, Plaintiff also alleged that Defendant failed to include piece rate compensation, incentive payments, and other non-discretionary bonuses when calculating and paying Plaintiff and the other aggrieved employees’ overtime wages. Winston Decl., ¶ 32. This includes, but is not limited to, failing to include the compensation associated with the pay code “Incentive” when calculating and paying overtime. *Id.* Defendant argued that although labeled as an incentive payment, the compensation included within the incentive pay code was actually a form of piece rate compensation. *Id.* at ¶ 33. Ultimately, it is immaterial whether such compensation constituted a piece rate or an incentive payment as both must be included when calculating and paying overtime wages. *Id.*

Plaintiff’s data expert analyzed the pay records for 4,835 aggrieved employees and determined using this sample that aggrieved employees received piece rate or incentive compensation during the same pay period that they also earned overtime during 1,669 of the 176,323 pay periods at issue.⁵ Winston Decl., ¶ 34. As such, while Plaintiff was likely to prevail on the regular rate related overtime PAGA claims, significant risk existed that Defendant might prevail on this claim if the Court found that the off-the-clock and rounding overtime PAGA penalty claims would not be manageable at trial. *Id.* Moreover, even if Plaintiff prevailed on the off-the-clock related overtime PAGA penalty claim, the Court might still exercise significant discretion when awarding these PAGA penalties as it is largely derivative of and based upon the same factual predicate as the PAGA claim for failure to pay minimum wages. *Id.* at ¶ 35.

4. The Strengths and Risks Associated with Plaintiff’s Meal Period Related PAGA Claims

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Similarly, IWC Wage Order Nos. 13-2001, 14-2001,

⁵ Defendant paid its employees on a weekly basis such that the term pay period and workweek are synonymous.

1 and other applicable wage orders prohibit an employer from “employ[ing] any person for a work
2 period of more than five (5) hours without a meal period of not less than 30 minutes.” IWC Wage
3 Order Nos. 13-2001, 14-2001, and other applicable wage orders further obligate employers to “pay
4 the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
5 that the meal period is not provided.”

6 Plaintiff alleged that Defendant failed to provide timely first meal periods, improperly
7 rounded the time entries associated with meal periods, and failed to authorize employees who worked
8 shifts in excess of ten (10) hours to take second meal periods. Winston Decl., ¶ 36. Defendant argued
9 that, unlike other industries, the Wage Orders applicable to the agricultural industry do not require an
10 employer to record the actual start and stop times of meal periods if all operations cease, but rather,
11 only that a meal period took place. Winston Decl., ¶ 37. IWC Wage Order Nos. 13-2001 and 14-2001
12 state at section 7 that “Meal periods during which operations cease and authorized rest periods need
13 not be recorded.” As such, Defendant argued that no presumptive meal period violation was created
14 by any failure to precisely record meal periods because there was no legal obligation to record meal
15 periods.

16 Plaintiff’s data expert reviewed the time records of 4,933 allegedly aggrieved employees.
17 Winston Decl., ¶ 38. According to Plaintiff’s data expert, Defendant’s time records indicated that
18 employees never received a late first meal period when working shifts of six (6) hours or more, never
19 received a meal period less than 30 minutes, and that there were only 1,965 shifts—not pay periods—
20 where the allegedly aggrieved employees may not have received a timely first meal period when
21 working a shift in excess of five (5) hours, but less than six (6) hours when extrapolating from the
22 sample to all pay periods at issue. *Id.* The data expert also determined that there were approximately
23 320 shifts during the PAGA period where aggrieved employees did not receive second meal periods,
24 but that Defendant also paid a meal period premium for each of these instances. *Id.*

25 Further risk existed that the Court might decline to award a significant amount of PAGA
26 penalties for several reasons. First, although the payment of the meal period premiums does not
27 absolve the employer of liability under the pre-PAGA reform statutory scheme, it is unlikely that the
28

1 Court would award a meaningful amount of PAGA penalties where the employer paid the meal period
2 premiums owed. *Kim*, 9 Cal.5th at 84 (“employers can pay an additional hour of wages as a remedy
3 for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this
4 statutory remedy ‘does not excuse a section 226.7 violation.’” and the employer remains liable under
5 PAGA for failing to provide lawful meal periods) (*quoting Kirby v. Immoos Fire Protection, Inc.*, 53
6 Cal.4th 1244, 1256 (2012)).

7 Second, some evidence existed that Defendant attempted to comply with California’s meal
8 period laws and to report whether or not they received a lawful meal period at the end of every shift.
9 Defendant engaged a law firm to provide it with legal advice regarding California’s meal period laws.
10 Third, employees can elect to waive their first meal period when they work a shift in excess of five
11 (5) hours, but less than six (6) hours meaning that the existence of some missing meal periods for
12 these shifts does not definitely prove whether or not the employee was not authorized and permitted
13 to take a timely first meal period. Fourth, since the *Donohue v. Amn Servs.*, 11 Cal.5th 58, 81 (2021)
14 presumption does not apply to agricultural employers, Plaintiff would need to establish the underlying
15 violations and cannot rely upon the near perfect nature of the time records to establish the existence
16 of late or short meal periods especially since the Wage Orders expressly allow agricultural employers
17 not to record meal periods where all operations cease. Winston Decl., ¶ 39. Fifth, real risk existed
18 that the Court might accept Defendant’s argument that the time records substantiate its argument that
19 their policy and practice was to record when all operations ceased, and that any rounding of time
20 benefitted the employees since they had at least 30 minutes for their meal periods, and sometimes
21 more. Sixth, given the extremely low violation rates and Defendant’s general practice of paying meal
22 period premiums, it was likely that the Court would exercise considerable discretion when imposing
23 meal period related PAGA penalties. Winston Decl., ¶ 41.

24 5. **The Strengths and Risks Associated with Plaintiff’s Rest Period Related**
25 **PAGA Claims**

26 Labor Code § 226.7 provides “an employer shall not require an employee to work during a
27 meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,
28 standard, or order of the Industrial Welfare Commission” Under IWC Wage Order Nos. 13-2001

1 and 14-2001, an employer must authorize and permit all employees to take ten (10) minute duty
2 free rest periods for every major fraction of four hours worked.

3 Plaintiff alleged that Defendant failed to provide him and the other aggrieved employees
4 with any lawful rest periods. Winston Decl., ¶ 42. As part of the informal discovery process,
5 Defendant produced employee handbooks that were in effect during the PAGA period. Winston
6 Decl., ¶ 43. The employee handbooks contained a facially deficient rest period policy that
7 incorrectly advised that “Non-exempt employees will be given two 10-minute (paid) rest periods,
8 for each 4 hour [sic] of work or major fraction thereof.” *Id.* California law does not require
9 employers to maintain records of rest periods; however, unlike most employers, Defendant actually
10 maintained records of rest periods for at least part of the PAGA period. *Id.* at ¶ 44. Plaintiff’s data
11 expert determined that the aggrieved employees records did not show a required lawful rest period
12 during 41.7% of pay periods. *Id.* at ¶ 45. Accordingly, Plaintiff was confident that he would prevail
13 on this claim. Nevertheless, as previously explained, even if Plaintiff could prevail on this claim
14 and establish liability for almost half of the pay periods at issue and the Court exercised discretion
15 to reduce the potential PAGA penalties on a single claim by 90%, Plaintiff would likely achieve
16 only a paper or pyrrhic victory. Garcia Decl., ¶ 4.

17 **6. The Strength of and Risks Associated With Plaintiff’s PAGA Claim for**
18 **the Failure to Maintain Accurate Time Records**

19 Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours
20 worked daily by and the wages paid to...employees employed at...establishments.” An employer
21 who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five
22 hundred (\$500) dollars under Labor Code § 1174.5.

23 Plaintiff alleged that Defendant failed to maintain accurate records of the total hours worked
24 by employees, including but not limited to off-the-clock work and rounded time entries. Winston
25 Decl., ¶ 46. Defendant alleged that it maintained records showing the hours worked and that it was
26 not obligated to maintain records when meal period operations cease. *Id.* It is uncertain whether or
27 not the Court would rule in either Parties favor on this specific issue. *Id.* Moreover, as discussed in
28 detail above, since this claim arises from the same factual predicate as other claims and given

Defendant’s precarious financial position, it is likely that the Court would decline to award a non-negligible amount of PAGA penalties for this claim. *Id.*

7. **The Strength of and Risks Associated with Plaintiff’s Sick Pay Related PAGA Claims**

Plaintiff alleged that Defendant failed to include non-discretionary bonuses and incentive payments when calculating and paying sick pay wages. *See Wood v. Kaiser Found. Hosps.*, 88 Cal. App. 5th 742, 759 (2023), as modified (Mar. 23, 2023). Plaintiff’s data expert determined that there were only 2 pay periods in the 4,835 pay record sample where Defendant failed to include incentive compensation when calculating sick pay. Winston Decl., ¶ 47. Accordingly, the value of this claim was less than \$1,000 without taking into account any of Defendant’s potential defenses or the Court’s ability to exercise its discretion to reduce the award of PAGA penalties. *Id.*

8. **The Strength of and Risks Associated With the Wage Statement Related PAGA Claims**

Labor Code § 226 (a) states, in relevant part: “(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing . . . (1) gross wages earned; (2) total hours worked;...(5) net wages earned;...and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Notably, since this Action predates the 2024 PAGA reform, it falls within the prior formula for calculating wage statement related PAGA penalties as opposed to the current more limited penalties and heightened standard of liability. Under the prior statutory PAGA scheme, there was a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a) that predate the July 1, 2024 PAGA reform. *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in

subdivision (a) of Section 226.” Unlike other provisions of the Labor Code, if Labor Code § 226.3 applies to violations of Labor Code § 226(a) the Court also possesses the discretion to “decide not to penalize an employer for a first violation.” Lab. Code § 226.3.

Based upon the informal discovery provided by Defendant, in order to prevail on this claim, Plaintiff would have had to establish that Defendant failed to pay minimum wages, overtime wages, meal period premiums, rest period premiums, and/or sick pay. Winston Decl., ¶ 48. As discussed above, Plaintiff was confident that he would prevail on at least some of the underlying claims, and therefore would prevail on the derivative wage statement claims. *Id.* Nevertheless, real risk existed that the Court could decline to stack—meaning award multiple PAGA penalties for the same underlying conduct—and/or exercise significant discretion when awarding these derivative PAGA penalties. *Id.*

9. The Strength of and Risks Associated With Plaintiff’s PAGA Claims Based Upon The Failure to Timely Pay Wages During Employment

Plaintiff also brought derivative PAGA claims for the late payment of wages during employment under Labor Code §§ 204 and 210. Winston Decl., ¶ 49. Since these claims were derivative in nature, Plaintiff first had to prevail on his other underlying PAGA claims. *Id.* While Plaintiff was confident that he would prevail on this claim if he could establish any of the other PAGA claims, significant risk existed that the Court could decline to stack—meaning award multiple PAGA penalties for the same underlying conduct—and/or exercise significant discretion when awarding these derivative PAGA penalties. *Id.*

10. The Strength of and Risks Associated With Plaintiff’s PAGA Claims Based Upon The Failure to Timely Pay Wages Upon Separation

Plaintiff also brought non-derivative and derivative PAGA claims alleging that Defendant failed to timely pay the aggrieved employees upon separation within the time constraints of Labor Code §§ 201-203. Winston Decl., ¶ 50. After factoring in the risks associated with the claims, the discretionary nature of the PAGA penalties, the questionable viability of stacking and the unique circumstances of this case, Plaintiff believes that this claim possessed negligible value. *Id.*

11. **The Strength of and Risks Associated With Plaintiff's Reimbursement Related PAGA Claims**

Labor Code §2802 provides that “[a]n employer shall 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Plaintiff alleged that Defendant required Plaintiff and the other aggrieved employees to use their own cell phone for work purposes, required their employees to use their own tools, and/or required them to use their own vehicle for work purposes. Winston Decl., ¶ 51. As part of the informal exchange of documents, Defendant produced a written document that “employees are not to be charged for their job, their ride to work, or their equipment/tools as a condition of employment.” *Id.* As such, significant risk existed that Defendant might prevail on this claim. *Id.*

C. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There are also always risks attendant to wage and hour cases given the evolving nature of such claims. Winston Decl., ¶ 52. Given the ever-evolving landscape of wage and hour law, there are always risks that a new case will come out that will clarify and/or potentially limit employees’ claims. *Id.* For example, although generally it was well-established that employees could recover both wage statement and waiting time penalties based upon an employer’s failure to provide lawful meal/rest periods, a recent appellate case held that such penalties are not recoverable before it was later overturned. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019); *aff’d in part, rev’d in part and remanded* 13 Cal. 5th 93, (2022). Similarly, in another recent decision, the California Court of Appeal held that employers could pay employees meal/rest period premiums at the employee’s hourly base rate instead of at their regular rate before that decision was also overturned by the California Supreme Court. *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239 (2019) *rev’d*, 11 Cal. 5th 858 (2021).

While Plaintiff was confident that he would prevail on his claims based upon present law, the plaintiffs in *Ferra* and *Naranjo* likely believed they would have as well, and actually did on their derivative claims prior to the California Court of Appeal’s recent ruling and before each matter

1 was eventually reversed by the California Supreme Court. As the California Court of Appeal
2 explained in the now overturned *Naranjo* decision, “[a]lthough wage and hour lawsuits are
3 ubiquitous in state courts, most settle before trial. Consequently, our appellate courts have not had
4 much opportunity to publish decisions addressing the derivative wage claim issue[s].” *Naranjo*, 40
5 Cal. App. 5th at 468. While Plaintiff acknowledges that the California Supreme Court reversed in
6 both cases, each nevertheless are emblematic of the inherent risk associated with litigating wage
7 and hour cases and the fact that a new appellate decision can dramatically alter the strength of the
8 employees’ claims at any time. Indeed, *Naranjo* was appealed again to the California Supreme
9 Court where the Court ruled in the employer’s favor. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.
10 5th 1056, 1064 (2024). And, PAGA itself was amended during the pendency of this Action.
11 Winston Decl., ¶ 52.

12 Further, this Settlement is the product of a mediator’s proposal from a retired judge
13 following consideration of not only the strength of the Parties’ legal positions, but also the realities
14 of Defendant’s financial limitations. Winston Decl., ¶ 53. If Plaintiff were to decline the settlement
15 and endure the risks and costs to obtain such a judgment, it is unlikely that the State or Aggrieved
16 Employees would actually see a more favorable recovery than that provided by the settlement due
17 to Defendant’s financial condition. Winston Decl., ¶ 54; Garcia Decl., ¶¶ 2 and 4-5. Defendant is a
18 Farm Labor Contractor, which provides labor services for the production of agricultural products
19 that Jaguar does not own or possess an interest in and does not possess sufficient assets to fund a
20 seven-figure judgement or settlement payment. Garcia Decl., ¶ 4. Thus, this Settlement affords the
21 aggrieved employees and the State of California with genuine and meaningful relief despite
22 Defendant’s financial condition. Winston Decl., ¶ 55.

23 **D. The Amount Offered in Settlement**

24 It was very difficult for the Parties to reach this Settlement. Winston Decl., ¶ 56. Defendant
25 denied that Plaintiff’s claims had any merit, and that Plaintiff could prevail on the PAGA claims or
26 that California law had been violated. *Id.* Even if Plaintiff prevailed, the pre-PAGA reform version
27 of PAGA that applies to this Action states that “a court may award a lesser amount than the
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1 maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
2 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.” Lab. Code § 2699(e)(2). Given Defendant’s financial limitations, Plaintiff believed
4 that the Court would likely exercise a significant amount of discretion when awarding PAGA
5 penalties.

6 a. The Maximum Penalties Potentially At Issue Without Taking Into
7 Account the Risks

8 A trial court should not evaluate a proposed settlement “against a hypothetical or speculative
9 measure of what might have been achieved had plaintiffs prevailed at trial.” *Munoz v. BCI Coca-*
10 *Cola Bottling Co.*, 186 Cal. App. 4th 399, 409 (2010). “The test is not the maximum amount
11 plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is
12 reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,
13 250 (2001), disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* 4 Cal.5th
14 260, 269 (2018). Nor does a *Kullar* showing require parties to submit the outer reaches of maximum
15 possible recovery without taking into account various risks. *Munoz*, 186 Cal. App. 4th at 409;
16 *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily
17 approving wage and hour class action settlement, stating, “[a]lthough 15% represents a modest
18 fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for
the Court to grant preliminary approval.”).

19 Nevertheless, to allow the Court to analyze the reasonableness of the Parties Proposed
20 Settlement, Plaintiff analyzed the maximum possible value of the claims at issue in this action.
21 Further, the Court should be aware that while one appellate court reversed and remanded a trial court’s
22 decision not to award stacked PAGA penalties—*i.e.* that a court can award more than one set of
23 PAGA penalties per pay period—the court left open the possibility of the court awarding the same
24 amount or no additional PAGA penalties within the exercise of its discretion. *Kaanaana*, 29 Cal.
25 App. 5th at 808. It is also important to note that although theoretically this is the maximum potential
26 recovery in this action if Plaintiff achieved complete and total victory based purely upon PAGA’s
27 mathematical formulas, Plaintiff and PAGA Counsel did not believe that this constituted a remotely
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1 plausible approximation of the actual expected recovery given Defendant's significant defenses to
2 several of the claims, the significantly lower actual violation rates, the Court's ability to decline to
3 award stacked PAGA penalties and/or exercise its discretion to reduce the amount of PAGA penalties
4 awarded, and Defendant's financial condition. Winston Decl., ¶ 57. It is also important to recognize
5 that the many courts that recognize stacking nevertheless have declined to actually award stacked
6 PAGA penalties at trial such that the likely realistic recovery was significantly less than the maximum
7 possible recovery. *See e.g. Carrington*, 30 Cal. App. 5th at 508 and 529.

8 When taking into account the stacking of PAGA penalties and assuming a 100% violation
9 rate on every single claim, and without taking into account any of Defendant's significant defenses
10 or the discretionary nature of PAGA penalties or Defendant's financial condition, Plaintiff and PAGA
11 Counsel determined the maximum exposure on the PAGA claims assuming Plaintiff could establish
12 a 100% violation rate on every single claim for every single pay period and the Court declined to
13 exercise any discretion was approximately \$138,563,700.00 calculated as follows:

14 **Labor Code § 2699 Penalties For Alleged Minimum Wage Violations**

- 15 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 187,757
16 pay periods x \$100=\$18,775,700.00

17 **Labor Code § 2699 Penalties For Alleged Overtime Violations**

- 18 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 187,757
19 pay periods x \$100=\$18,775,700.00

20 **Labor Code § 2699 Penalties For Alleged Meal Period Violations**

- 21 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 187,757
22 pay periods x \$100=\$18,775,700.00

23 **Labor Code § 2699 Penalties For Alleged Rest Period Violations**

- 24 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 187,757
25 pay periods x \$100=\$18,775,700.00

26 **Labor Code § 2699 Penalties For Alleged Reimbursement Violations**

- 27 • PAGA penalties assessed at the \$100 per pay period initial violation rate = 187,757
28 pay periods x \$100=\$18,775,700.00

**Labor Code § 210 Penalties Recoverable Pursuant to PAGA for Defendant's Violations
of Labor Code Section 204**

- Labor Code § 210 PAGA penalties are assessed at the rate of \$100 per pay period =
187,757 pay periods x \$100=\$18,775,700.00

Labor Code § 2699 Penalties Recoverable Pursuant to PAGA for Defendant's Violations of Labor Code Sections 201-203

- Labor Code §§ 201-203 PAGA penalties are assessed at the rate of \$100 per pay period = 11,828 pay periods associated with a termination or resignation x \$100= \$1,182,800.00

Labor Code § 1174.5 Penalties Recoverable Pursuant to PAGA for Defendant's Violations of Labor Code section 1174

- Labor Code § 1174.5 PAGA penalties are assessed at the rate of \$500 per employee = 11,902 aggrieved employees x \$500=\$5,951,000.00

Labor Code § 226 PAGA Penalties Related to the Issuance of Itemized Wage Statements⁶

- PAGA penalties assessed at the \$100 per pay period initial violation rate = 187,757 pay periods x \$100=\$18,775,700.00

Winston Decl., ¶ 58.

E. The Court Should Award PAGA Counsel Attorneys' Fees in the Amount of \$161,666.67

In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme Court unequivocally held that when “litigation established 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” without considering the amount of hours expended on the case. *Id.* The court further held that “[t]he 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 litigation* – convince us the percentage method is a valuable tool that should not be denied by our trial courts.” *Id.*

As the California Court of Appeal recently recognized and as other California Courts have consistently explained, “fee awards in class actions average around one-third of the recovery”

⁶ There is currently a split of authority regarding which PAGA penalties apply to violations of Labor Code § 226(a) under the pre-amendment PAGA statutory scheme that applies to this Action. *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to a Labor Code § 226.3 penalty). Plaintiff performed the calculations in accordance with the decision in *Gunther* as Plaintiff believes it is better reasoned.

1 regardless of “whether the percentage method or the lodestar method is used.” *Amaro v. Anaheim*
2 *Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (“[F]ee awards in class actions average around
3 one-third of the recovery” regardless of “whether the percentage method or the lodestar method is
4 used.”) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)); *McCrary v. Elations*
5 *Co., LLC*, No. EDCV 13-0242 JGB (SPx), 2016 U.S. Dist. LEXIS 24050, at *2 (C.D. Cal. Feb. 25,
6 2016) (“California Courts have consistently recognized “that most fee awards based on either a
7 lodestar or percentage calculation are 33%.”); *McClellan, LLC v. Chase Home Fin. LLC*, No. SACV
8 12-1331-JGB (JEMx) 2015 U.S. Dist. LEXIS 118005, at *20 (C.D. Cal. Aug. 31, 2015) (“California
9 district courts routinely award attorneys' fees in the range of 30-40% in class actions that result in the
10 recovery of a common fund under \$10 million.”).⁷

11 PAGA Counsel’s diligent and efficient litigation of this action resulted in the creation of an
12 ascertainable common fund of \$485,000.00 that will substantially benefit the state of California.
13 Consistent with numerous cases, including those identified above, PAGA Counsel seeks approval of
14 an award of attorneys’ fees in the amount of \$161,666.67 representing 1/3 of the common fund.
15 Moreover, in light of Defendant’s financial challenges and the contingent nature of the representation,
16 risk exist of non-payment existed. PAGA Counsel has also provided information about the time spent
17 on the case in his declaration, which included, drafting the PAGA notice, Complaint, informal
18 discovery requests, working with a data expert to analyze the informal discovery produced by
19 Defendant, drafting a mediation brief and supplement brief, attending mediation and negotiating the
20 settlement terms, drafting the Settlement Agreement, drafting the explanatory letter for the aggrieved
21 employees, and the Motion for Approval and related documents. *Id.* at ¶¶ 76-77. If the Court were to

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24 ⁷ See also *Miller v. CEVA Logistics USA, Inc.*, No. 2:13-CV-01321-TLN, 2015 U.S. Dist. LEXIS 104704, at *8 (E.D.
25 Cal. Aug. 10, 2015) (“California district courts usually award attorneys' fees in the range of 30-40% in wage and hour
26 class actions that result in the recovery of a common fund under \$10 million”); *Romero v. Producers Dairy Foods, Inc.*,
27 No. 05-0484, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (awarding 33% of the
28 settlement fund in a wage-and-hour case involving allegations of unpaid wages after explaining that “fee awards in class
actions average around one-third of the recovery.”); *Stuart v. RadioShack Corp.*, No. C-07-4499 EMC, 2010 WL 3155645
(N.D. Cal. Aug. 9, 2010) (noting that a fee award of 1/3 of the settlement was “well within the range of percentages which
courts have upheld as reasonable in other class action lawsuits.”); *Singer v. Becton Dickinson and Co.*, No. 08-cv-821-IEG
(BLM), 2010 WL 2196104, at * 8 (S.D. Cal. June 1, 2010) (approving fee award of 33.33% of the common fund); *Boyd*
v. Bank of Am. Corp., No. SACV 13-0561-DOC (JPRx), 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014)
(awarding a 33.34% fee on a \$5,800,000 settlement).

1 conduct a lodestar analysis, it would result in a lodestar multiplier of 1.85 (\$161,666.67 attorney fee
2 request/\$87,325.00 lodestar). Winston Decl., ¶¶ 76-77. The requested multiplier is consistent with
3 the amount commonly awarded by other courts. *See, e.g. Wershba v. Apple Computer, Inc.*, 91
4 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher).

5 And, Plaintiff's Counsel is not receiving any attorneys' fees or cost reimbursement associated
6 with Plaintiff's individual settlement. Winston Decl., ¶ 83, Exh. 7; Ramirez Decl., ¶ 2.

7 **F. The Court Should Award PAGA Counsel Cost Reimbursement Award in the**
8 **Amount of \$15,138.88**

9 PAGA Counsel further request that, in addition to awarding them reasonable attorneys' fees,
10 the Court grant its application for reimbursement of the reasonable out-of-pocket expenses advanced
11 and/or incurred by them in connection with the prosecution of this litigation in the amount of
12 \$15,138.88. Winston Decl., ¶ 80. All of these costs were necessarily incurred and/or are expected to
13 be incurred.

14 **G. The Court Should Award Plaintiff Ramirez a Service Award of \$5,000.00**

15 Plaintiff Ramirez expended time and effort assisting PAGA Counsel with the investigation of
16 the claims and gathering of information including contacting PAGA Counsel for updates regarding
17 the case, kept himself informed about the status of the settlement discussions and claims, and assisted
18 PAGA Counsel in evaluating possible settlements. Ramirez Decl., ¶¶ 8-9. As of the submission of
19 this Motion, Plaintiff Ramirez estimates that he spent approximately 26.1 hours on this Action
20 engaging in the following activities: 8 hours researching his possible claims, searching for
21 documents, and searching for counsel, 10 hours discussing the case, claims, and potential settlements
22 with his Counsel and his office staff, 5.6 hours participating in the Mediation by phone meaning that
23 he was available during this time and available to his Counsel and communicated with his Counsel
24 and the Mediator at times during this period, approximately 2 hour reviewing the settlement
25 agreement, and 0.5 hours assisting with the preparation of his declaration. *Id.* at ¶ 9.

26 In addition to the time and effort Plaintiff Ramirez invested in the prosecution of this action,
27 Plaintiff Ramirez's proposed service award also reflects the fact that neither the State of California
28 nor any of the aggrieved employees would have enjoyed any benefits if he did not initiate this action.

1 Thus, for the reasons discussed above, this Court should grant Plaintiff’s requested service award in
2 the amount of \$5,000.00. The requested service award also falls well within the range of incentive
3 payments typically awarded to Class Representatives in similar class actions. *Bond v. Ferguson*
4 *Enterprises, Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011)
5 (approving \$11,250 service award to each of the two class representatives wage and hour class
6 action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving
7 service awards in the amount of \$10,000 each from a \$300,000 settlement fund in a wage/hour class
8 action).

9 In the interest of transparency, Plaintiff and PAGA Counsel also wish to disclose to the Court
10 that Plaintiff and Defendant settled Plaintiff’s individual claims at issue in this lawsuit in addition to
11 a general release in exchange for \$15,000. Winston Decl., ¶ 83, Exh. 7; Ramirez Decl., ¶ 2. Although
12 the issues associated with Plaintiff’s individual claims were inextricably intertwined with this Action
13 since Plaintiff needed to establish that he experienced a violation of the Labor Code in order to possess
14 standing to pursue PAGA claims on behalf of the state, the individual claims existed separate and
15 apart from the PAGA claims. *Kim*, 9 Cal. 5th at 80 (the “[s]ettlement of individual claims does not
16 strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA
17 remedies” nor resolve the PAGA claims). PAGA Counsel is not receiving any compensation or cost
18 reimbursement associated with Plaintiff’s individual claims. Winston Decl., ¶ 83, Exh. 7; Ramirez
19 Decl., ¶ 2.

20 **VI. EXPLANATORY LETTER TO THE AGGRIEVED EMPLOYEES**

21 Although the aggrieved employees do not possess property rights in a PAGA action and this
22 action is not subject to the class action approval or notice process, the aggrieved employees will
23 receive an explanatory letter, in English and Spanish, a true and correct copy of which is attached to
24 the Declaration of David Winston as Exhibit 6. Winston Decl., ¶ 81, Exh. 6; *Arias v. Superior Court*,
25 46 Cal.4th 969 (2009) (explaining that in a PAGA action “nonparty employees...[are] not given
26 notice of the action or afforded an opportunity to be heard.”); *Baumann v. Chase Inv. Servs. Corp.*,
27 747 F.3d 1117, 1122 (9th Cir. 2014) (“PAGA has no notice requirements for unnamed aggrieved
28

employees, nor may such employees opt out of a PAGA action.”); *see also O’Connor v. Uber Technologies, Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. Aug. 18, 2016), (“PAGA does not require class action procedures, such as notice and opt-out rights.”).

VII. COMPLIANCE WITH CODE OF CIV. PROC. § 384 AND SUGGESTED TIMING OF THE COMPLIANCE HEARING

Code of Civ. Proc. § 384 requires that any funds associated with uncashed voided checks issued as part of this settlement be paid “nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, **to child advocacy programs**, or to nonprofit organizations providing civil legal services to the indigent.” (emphasis added). In accordance with Code of Civ. Proc. § 384, the Parties propose to designate CASA of Kern County as the proposed *cy pres* beneficiary. Winston Decl., ¶ 16, Exh. 1 at VI(41). The *cy pres* beneficiary will receive all unclaimed funds. CASA of Kern County is a child advocacy program within the meaning of Code of Civ. Proc. § 384 that provides advocates for foster children and/or children who have been removed from their homes for abuse, neglect, and/or substance abuse. Neither Plaintiff, Defendant, nor their Counsel have any interest and/or involvement with the governance of CASA of Kern County. Winston Decl., ¶ 84; Ramirez Decl., ¶ 12; Garcia Decl., ¶ 6.

With respect to the timing of the Code of Civ. Proc. § 384 compliance hearing, Plaintiff requests that the hearing be scheduled in late March 2027 in order to permit the Settlement Administrator sufficient time to complete the distribution in accordance with the terms of the Settlement. Under the terms of the Settlement, Defendant will finish funding the settlement under the payment plan no later than June 30, 2026, the settlement administrator will mail out the settlement checks 30 days after Defendant funds the entirety of the Gross Settlement Amount (July 30, 2026), and the aggrieved employees’ share of PAGA penalties will remain valid and negotiable for 180 days (January 26, 2027). Winston Decl., ¶ 16, Exh. 1 at § VI(38-39 and 42). In order to allow the Settlement Administrator to prepare a declaration and transmit any remaining funds to the *cy pres* recipient before the compliance hearing, the Parties would propose conducting the Code

1 of Civil Procedure § 384 compliance hearing in late March 2027 or another date convenient for the
2 Court thereafter.

3 **VIII. CONCLUSION**

4 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, and reasonable.
5 Therefore, Plaintiff respectfully requests that the Court (1) grant approval of the PAGA Settlement;
6 (2) appoint ILYM as the Settlement Administrator, direct that the explanatory Notice be sent to
7 aggrieved employees in the manner set forth in the Settlement Agreement; (3) award PAGA Counsel
8 their fees' and litigation costs; and (4) award Plaintiff Ramirez a service award of \$5,000.00.

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11 DATED: May 7, 2025

WINSTON LAW GROUP, P.C.

12 By: 
13 DAVID S. WINSTON
14 Attorney for Plaintiff Jesus Martinez Ramirez and
15 the aggrieved employees
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