

1 **MELMED LAW GROUP P.C.**

2 Jonathan Melmed (SBN 290218)

3 jm@melmedlaw.com

4 Kyle D. Smith (SBN 280489)

5 ks@melmedlaw.com

6 Jaqueline Antillon (SBN 358092)

7 ja@melmedlaw.com

8 1801 Century Park East, Suite 850

9 Los Angeles, California 90067

10 Phone: (310) 824-3828

11 Fax: (310) 862-6851

12 Attorneys for Plaintiff and the Aggrieved Employees

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF NAPA**

15 JESUS ASCENCIO CERILLO, an individual,
16 on behalf of himself, the State of California, as a
17 private attorney general, and on behalf of all
18 others similarly situated,

19 Plaintiff,

20 v.

21 NISSEN VINEYARD SERVICES, INC., a
22 California Corporation; and DOES 1 TO 50,

23 Defendants.

Case Number: 23CV000923

**Plaintiff's Notice of Motion and Motion for
Approval of Settlement Pursuant to the
California Labor Code Private Attorneys
General Act of 2004 ("PAGA");
Memorandum of Points and Authorities in
Support Thereof**

Complaint Filed: July 25, 2023

FAC Filed: September 25, 2023

Trial Date: None Set

Hearing Date: March 14, 2025

Time: 8:30 a.m.

Judge: Hon. Joseph J. Solga

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, please take notice that, on March 14, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Napa County Superior Court for the State of California, located at the Historic Courthouse, 825 Brown Street, Napa, California 94559, before the Honorable Joseph J. Solga, Plaintiff Jesus Ascencio Cerillo (“Plaintiff”) on behalf of himself and all other aggrieved employees, will and hereby does move this Court for entry of an order

1. Approving the terms of the *PAGA Settlement Agreement* (“Settlement Agreement”) entered into between Plaintiff, acting in his capacity as private attorney general for the State of California, and Nissen Vineyard Services, Inc. (“Defendant”) pursuant to Labor Code section 2699, subdivision (s)(2), including the gross settlement amount of **\$175,000.00** (“Gross Settlement Amount”);

2. Approving an award of attorneys’ fees in the amount of one-third of the Gross Settlement Amount (i.e., \$58,333.33), as provided in the Settlement Agreement and to be deducted from the Gross Settlement Amount;

3. Approving Plaintiff’s counsel’s requests for reimbursement of litigation costs in the amount of \$9,726.90, as provided in the Settlement Agreement and to be deducted from the Gross Settlement Amount;

4. Approving Plaintiff’s request for a PAGA representative service payment in the amount of \$7,500.00, as provided in the Settlement Agreement and to be deducted from the Gross Settlement Amount;

5. Appointing Simpluris, Inc. as the settlement administrator and approving the settlement administrator’s costs in the amount of \$3,500.00, to be deducted from the Gross Settlement Amount; and

6. Entering final judgment.

This motion is based on the included memorandum of points and authorities; the *Declaration of Jonathan Melmed in Support of Motion to Approve the Settlement Pursuant to PAGA* (“Declaration of Jonathan Melmed”); the Settlement Agreement, a true and correct copy of which is attached to the

1 Declaration of Jonathan Melmed as **Exhibit 1**; the proposed order granting approval of the Settlement
2 Agreement; all other records, pleadings, and papers filed in this action; and upon such other evidence
3 or argument as may be presented to the court at the hearing of this motion.

4 Dated: February 20, 2025

MELMED LAW GROUP P.C.

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7 **KYLE D. SMITH**

8 Attorneys for Plaintiff and the Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jesus Ascencio Cerillo (“Plaintiff”) seeks approval of a settlement entered into
4 pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) between
5 Plaintiff and Defendant Nissen Vineyard Services, Inc. (“Defendant”) (collectively, the “Parties”).
6 Pursuant to Labor Code section 2699, subdivision (s)(2), the superior court is required to “review and
7 approve any settlement of any civil action filed pursuant to [PAGA].” A true and correct copy of the
8 *PAGA Settlement Agreement* (“Settlement Agreement”) is attached as **Exhibit 1** to the concurrently-
9 filed *Declaration of Jonathan Melmed in Support of Plaintiff’s Motion for Approval of Settlement*
10 *Pursuant to PAGA* (“Declaration of Jonathan Melmed” or “Melmed Decl.”). The Settlement
11 Agreement, in its entirety, is incorporated herein by reference.

12 The Settlement Agreement provides for a gross settlement amount of **\$175,000.00** (“Gross
13 Settlement Amount”), to be distributed to the California Labor and Workforce Development Agency
14 (“LWDA”) and a group of approximately 450 aggrieved employees (Former Lab. Code, § 2699, subd.
15 (i)), less applicable deductions. (Settlement Agreement, at p. 6.) The “Aggrieved Employees” are
16 defined in the Settlement Agreement as “all individuals who are or were employed by Defendants as
17 non-exempt employees in California during the PAGA Period.” (Settlement Agreement, at p. 1.) The
18 “PAGA Period” for these purposes is the period from July 20, 2022, through September 19, 2024.

19 The Settlement Agreement further provides for deductions from the Gross Settlement Amount
20 for: Plaintiff’s counsel’s fees of one-third of the Gross Settlement Amount (or \$58,333.33); Plaintiff’s
21 counsel’s out-of-pocket costs not to exceed \$15,000, but which Plaintiff’s counsel currently estimates
22 to be \$9,726.90; settlement administration costs not to exceed \$10,000, but which Plaintiff’s counsel
23 currently estimates to be \$3,500.00 based on the lowest qualified bid from the proposed settlement
24 administrator; and an incentive award to Plaintiff in the amount of \$7,500.00. (Settlement Agreement,
25 at pp. 4–5; Melmed Decl., ¶ 46.) If the Court grants approval of this settlement, each Aggrieved
26 Employee is expected to receive a pro-rata share of approximately **\$23,984.94** (the “Net Settlement
27 Amount”), which is calculated as follows:
28

Gross Settlement Amount	\$175,000.00
Attorneys' Fees	(\$58,333.33)
Litigation Costs	(\$9,726.90)
Settlement Administration Costs	(\$3,500.00)
Service Award to Plaintiff	(\$7,500.00)
PAGA Penalty Amount	\$95,939.77
PAGA Payment to LWDA (75% of NSA)	\$71,954.83
PAGA Payment to Aggrieved Employees (25% of NSA)	\$23,984.94

The Settlement Agreement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff's claims and the potential defenses asserted by Defendants—represents an excellent result in this litigation based upon the risk factors associated with the claims and provides substantial benefits to the Aggrieved Employees and the State of California. (Melmed Decl., ¶ 42). As such, Plaintiff believes the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the State of California and the aggrieved employees. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties' proposed Settlement Agreement.

II. BACKGROUND

On July 20, 2022, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.6 ("PAGA"), of Plaintiff's intent to seek civil penalties under PAGA for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2804 as well as Industrial Welfare Commission ("IWC") Wage Orders 1-2001, 4-2001, and/or 8-2001 (the "Applicable Wage Orders"). (Melmed Decl., ¶ 14; Cal. Code Regs., tit. 8, §§ 11010, 11040, 11080.) A true and correct copy of Plaintiff's PAGA letter is attached as **Exhibit 2** to the Declaration of Jonathan Melmed. (Melmed Decl., ¶ 14.)

1 On July 25, 2023, Plaintiff filed a class action complaint in the Superior Court of California for
2 the County of Napa case number 23CV000923 (the “Action”). (Melmed Decl., ¶ 15.) The initial
3 complaint brought causes of action for: **(1)** failure to pay minimum wage for all hours worked in
4 violation of Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; **(2)** failure to pay
5 proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable
6 Wage Orders; **(3)** failure to provide compliant rest periods and pay missed rest break premiums in
7 violation of Labor Code section 226.7 and the Applicable Wage Orders; **(4)** failure to provide
8 compliant meal periods and pay missed meal period premiums in violation of Labor Code sections
9 226.7 and 512, and the Applicable Wage Orders; **(5)** failure to maintain accurate employment records
10 in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in
11 violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in
12 violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in
13 violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage
14 statements in violation of Labor Code sections 226 and 226.3; and **(10)** deceptive, fraudulent, or
15 otherwise unlawful business practices based on the foregoing in violation of California’s Unfair
16 Competition Law. (Melmed Decl., ¶ 15.)

17 On or about September 25, 2023, Plaintiff filed a First Amended Complaint, replacing the
18 causes of action above with one cause of action seeking PAGA penalties for the violations described
19 in Plaintiff’s PAGA letter. (Melmed Decl., ¶ 16.)

20 On September 19, 2024, the Parties attended an all-day mediation via Zoom with experienced
21 mediator Judge Howard R. Broadman. (Melmed Decl., ¶ 17.) The Parties, with the assistance of the
22 mediator, successfully reached an agreement to resolve the Action. On September 26, 2024, the Parties
23 executed a Memorandum of Understanding memorializing the broad terms of the agreement they
24 reached during the mediation. (Melmed Decl., ¶ 17.) Thereafter, the Parties continued to negotiate the
25 detailed terms of a fully executed settlement agreement. On February 11, 2025, Parties executed the
26 Settlement Agreement now before this Court for approval. (Melmed Decl., ¶ 17.)

27 The Parties concluded that there were benefits associated with settling the matter, and
28 concluded—after taking into account the sharply disputed factual and legal issues involved in this

1 litigation, the risks associated with further prosecution, the substantial benefits to be received pursuant
2 to the compromise and settlement of the PAGA representative penalty claims, as well as Plaintiff's
3 individual claims—that settlement on the terms set forth in the Settlement Agreement was and is in the
4 best interest of the Plaintiff, Defendants, the State of California, and the Aggrieved Employees.
5 (Melmed Decl., ¶ 18.)

6 The matter is now before this Court and Plaintiff respectfully requests that the Court grant
7 approval of the Parties' proposed Settlement Agreement.

8 **III. RELEVANT LAW**

9 PAGA provides an enforcement mechanism for California's labor laws by enlisting individual
10 plaintiffs as private attorneys general to recover civil penalties for the state, with a share also going to
11 the individual plaintiffs and other aggrieved employees. (Lab. Code, §§ 2698–2699.8.) Due to the lack
12 of financing for California's agencies, and the substantial number of Labor Code violations by
13 California employers, the California Legislature found that it was in the public interest to allow
14 aggrieved employees to act as "private attorneys general" to enforce and recover civil penalties on
15 behalf of the State of California for Labor Code violations committed by employers. (*Arias v. Superior*
16 *Court* (2009) 46 Cal.4th 969, 980.) As the Legislature that adopted PAGA observed, "the only
17 meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties
18 as provided in the Labor Code." (Stats. 2003, ch. 906, § 1(b).)

19 Moreover, the Labor Code's primary purpose is to "ensure employees are not required or
20 permitted to work under substandard unlawful conditions . . . and to protect employers who comply
21 with the law from those who attempt to gain a competitive advantage at the expense of their workers
22 by failing to comply with minimum labor standards." (Lab. Code, § 90.5, subd. (a).) Therefore, the
23 Legislature determined that "adequate financing of labor law enforcement was necessary to achieve
24 maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had
25 declined and were unlikely to keep pace with the future growth of the labor market, and that it was
26 therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to
27 recover civil penalties for Labor Code violations, with the understanding that labor law enforcement
28 agencies were to retain primacy over private enforcement efforts." (*Arias v. Superior Court, supra*, 46

1 Cal.4th at p. 980.) Thus, Plaintiff, acting as a private attorney general and proxy for the State of
2 California, filed this action seeking civil penalties for Defendants’ alleged violations of the Labor Code.

3 This action was initiated prior to PAGA’s 2024 revisions. PAGA’s 2024 revisions are therefore
4 not applicable to this action. (Lab. Code, § 2699, subd. (v) [“[T]he amendments made to this section
5 by the act adding this subdivision shall apply to a civil action brought on or after June 19, 2024.”].)
6 Penalties recovered under PAGA prior to its 2024 revisions “shall be distributed as follows: 75 percent
7 to the Labor and Workforce Development Agency for enforcement of labor laws and education of
8 employers and employees about their rights and responsibilities under this code and 25 percent to the
9 aggrieved employees.” (Former Lab. Code, § 2699, subd. (i).)

10 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
11 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the
12 employer has violated. (Lab. Code, § 2699.3, subd. (a)(1).) This notice provides the LWDA with the
13 opportunity to investigate and prosecute the claim, if it so chooses. The employee may only sue on the
14 state’s behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not intend
15 to investigate, or investigates and does not issue a citation within 185 days. (Lab. Code, §§ 2699,
16 2699.3, subd. (a)(2).) In this case, Plaintiff provided the LWDA with a notice letter advising it of the
17 alleged Labor Code violations, but the LWDA deferred the prosecution of these violations to Plaintiff
18 and his attorneys by failing to respond to Plaintiff’s notice within 65 days. (Melmed Decl., ¶ 14.)
19 Accordingly, the Settlement Agreement and the \$175,000.00 common fund created by it for the benefit
20 of the State of California and the Aggrieved Employees, is solely the result of the work performed by
21 Plaintiff and his attorneys on this case—all while the Aggrieved Employees will preserve their own
22 separate individual claims should they wish to pursue them.

23 Any settlement of a PAGA action brought by an aggrieved employee must be approved by the
24 Court. (Lab. Code, § 2699, subd. (s)(2).) In 2009, the California Supreme Court held that an aggrieved
25 employee’s representative action brought on behalf of the state and other aggrieved employees against
26 an employer for PAGA violations does not need to meet the requirements for class certification nor
27 does there need to be notice to the other employees. (*Arias v. Superior Court*, *supra*, 46 Cal.4th 969,
28 975.) Thus, the court simply reviews the settlement and approves it if it is deemed to be fair and

adequate in view of the purposes and policies of PAGA. (See *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1077 [reviewing a PAGA settlement to determine whether it was “fair and adequate in view of the purposes and policies of the statute”].)

IV. SUMMARY OF THE SETTLEMENT AGREEMENT

The Settlement Agreement was drafted, negotiated, and executed based on the Los Angeles Superior Court’s *[Model] PAGA Settlement Agreement*¹ (with minor revisions to reflect the Parties and their agreement). This model agreement has been generally accepted by courts throughout California. As such, the terms of the Settlement Agreement are presumptively fair as they follow the terms adopted and approved by California courts. In terms of the consideration under the Settlement Agreement, Defendant has agreed to pay the Gross Settlement Amount of \$175,000 in full settlement of the PAGA claims in this Action. (Settlement Agreement, at p. 4.) The Gross Settlement Amount is to be allocated as follows:

1. Plaintiff’s counsel’s attorneys’ fees request of one-third of the Gross Settlement Payment (\$58,333.33). (Settlement Agreement, at p. 5.) As will be explained below, the attorneys’ fees are reasonable based on case law, the experience and case work by Plaintiff’s counsel, and the effort put into securing the Gross Settlement Amount for the State of California and the Aggrieved Employees. (Melmed Decl., ¶¶ 29–44.)

2. Plaintiff’s counsel’s request for actual litigation costs and expenses up to the additional amount of \$15,000, but which Plaintiff’s counsel currently estimates to be \$9,726.90. (Settlement Agreement, at p. 5; Melmed Decl., ¶ 45.)

3. Actual administration costs of up to \$10,000, but which Plaintiff’s counsel currently estimates to be \$3,500 based on the lowest qualified bid from the proposed settlement administrator. (Settlement Agreement, at p. 5; Melmed Decl., ¶ 47.)

4. Plaintiff’s representative service award of up to \$7,500.00. (Settlement Agreement, at p. 4; Melmed Decl., ¶ 4.)

5. The remainder of the Gross Settlement Amount, after deducting the items above—which is currently estimated to be \$95,939.77—is designated as PAGA penalties to be allocated

¹ Available here: <https://www.lacourt.org/forms/pdf/LACIV298.pdf>

1 between the LWDA and the Aggrieved Employees pursuant to former Labor Code section 2699,
2 subdivision (i), with 75% paid to the LWDA (i.e., \$71,954.83) and 25% paid to the Aggrieved
3 Employees (i.e., \$23,984.94) on a pro-rata basis. (Settlement Agreement, at pp. 5–6; Melmed Decl., ¶
4 27.)

5 **V. THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS COURT**
6 **APPROVAL**

7 **A. STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

8 The legislative history of PAGA makes little mention of the approval requirements in Labor
9 Code section 2699. The original version of PAGA did not contain the court approval requirement now
10 codified in subdivision (s)(2). That subdivision was added as part of the amendments to PAGA that
11 became effective on August 11, 2004. (Stats. 2004, ch. 221 (S.B.1809), § 3, eff. Aug. 11, 2004.) Senator
12 Joseph L. Dunn authored both the original PAGA bill (S.B. 796) and the amendments (S.B. 1809). On
13 July 29, 2004, during the consideration of the amendments in S.B. 1809, Senator Dunn sent a letter
14 addressed to the President Pro Tempore of the Senate, which was published in the Senate Daily Journal,
15 “to clarify the intent of subdivision (1)” of Labor Code section 2699. (2003–2004 Sen. Daily J., Vol.
16 3, at pp. 4754–4755 (July 29, 2004).) In the letter, Senator Dunn stated:

17 “The purpose of the court review of penalties in subdivision (l) is to ensure that
18 settlements involving penalties arising under Labor Code Section 2699 do not undercut
19 the dual statutory purposes of punishment and deterrence, or result in unjust, arbitrary
and oppressive, or confiscatory settlements.” (*Id.* at pp. 4754–4755.)

20 These broad criteria appear to give the Court wide latitude in determining whether to approve
21 the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on the effect the
22 penalties may have on the defendant-employer rather than the benefit received by the LWDA or the
23 aggrieved employees. (See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348,
24 383 [while the state has an interest “in receiving the proceeds of civil penalties,” the penalties are “used
25 to deter violations.”].) This is different than the analysis of a class action settlement, which typically
26 focuses on the amount received by the class and compares that to the reasonable range of potential
27 outcomes in this case. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)
28

Moreover, “there is not requirement that the Court certify a PAGA claim for representative treatment” as in a class action. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *5.)

B. SUMMARY OF THE CLAIMS AND DEFENSES

Plaintiff alleged one core Labor Code violation: alleged underpayment due to regular rate violations for overtime and rest/recovery time. Most remaining Labor Code claims plead were derivative—in some form or another—of this core violation. (Melmed Decl., ¶ 21.)

In California, overtime wages must generally be paid out at no less than one and one-half times the employees’ regular rate of pay or twice the employees’ regular rate of pay, depending on the number of hours worked. (Lab. Code, § 510; *Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal.5th 542, 553.) The “regular rate of pay” for these purposes is not merely the employee’s base hourly rate, but must include an adjustment for many kinds of remuneration, including piece work compensation and nondiscretionary bonuses. (See, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 867 [“[C]ourts have consistently understood this language to encompass all nondiscretionary payments, not just base hourly rates.”].)

In this case, Plaintiff alleged that Defendant routinely miscalculated the overtime rates resulting in widespread underpayments. Plaintiff alleged that Defendant did this in three main ways. First, it made no adjustment for the regular rate for overtime purposes when it paid out non-discretionary bonuses. Second, it made improper adjustments when it paid out piece-rate work. Third, it made no adjustment for the regular rate for rest and recovery period pay when it paid out non-discretionary bonuses. (Melmed Decl., ¶ 22.)

Further, Plaintiff argued that, due to the alleged violations described above, Defendant committed several derivative Labor Code violations, including failure to provide accurate itemized wage statements, failure to pay all wages on time, and failure to pay waiting time penalties. Plaintiff also alleged that Defendant failed to reimburse the Aggrieved Employees for the costs associated with the use of their personal cell phones and vehicles. (Melmed Decl., ¶ 23.)

Defendant has persistently denied all liability or wrongdoing of any kind associated with the claims alleged in this Action. Defendant argued that the Aggrieved Employees were provided with all

1 payments owed. Specifically, Defendant argued that the alleged bonus payments were expressly
2 discretionary and therefore not calculable in the Aggrieved Employees' regular rate of pay. Defendant
3 further argued that even if Plaintiff was able to recover some PAGA penalties on behalf of the
4 Aggrieved Employees, courts frequently use their discretion to significantly reduce PAGA penalties
5 where such penalties would be unjust, arbitrary, and improper. (Melmed Decl., ¶¶ 19–20.)

6 **C. THE PAGA SETTLEMENT AGREEMENT IS FAIR AND REASONABLE**

7 Here, the penalties are appropriate when considered in light of the claims discussed above. A
8 non-reversionary Gross Settlement Amount of \$175,000.00 represents an excellent recovery that is
9 large enough to punish or deter Defendant, while not being so great as to be unjust, arbitrary,
10 oppressive, or confiscatory. The proposed Settlement Agreement provides a fair and reasonable
11 monetary recovery for the LWDA and the Aggrieved Employees in the face of hotly-disputed claims.
12 (Melmed Decl., ¶ 24.)

13 The proposed Settlement, even with deductions, provides a substantial sum of approximately
14 \$71,954.83 to the State of California and \$23,984.94 to the Aggrieved Employees. The Settlement
15 Agreement secured by Plaintiff and his counsel here is greater than other PAGA penalty awards
16 approved by California state courts, which often range between \$7,500 and \$15,000 for PAGA claims
17 impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on
18 a per capita basis. (See, e.g., *Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County, May 20, 2013)
19 Case No. BC471369, 2013 WL 2917624 at *2 [approving PAGA penalties of \$5,000.00 to class of 667
20 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County, March 12, 2013)
21 Case No. BC485259, 2013 WL 1182822 [approving PAGA penalties of \$10,000.00 for class of
22 approximately 3,000 members]; Melmed Decl., ¶ 25.)

23 Accordingly, the Gross Settlement Amount is extremely reasonable considering the risks and
24 uncertainties associated with the PAGA claims in this case. (Melmed Decl., ¶ 26.) The Settlement
25 Agreement commits Defendant to pay \$95,939.77 in PAGA penalties (after fees and costs), which is
26 large enough to punish Defendant for alleged violations and to deter such conduct in the future.
27 (Melmed Decl., ¶ 26.) At the same time, it is not so large as to be unjust or oppressive. (Melmed Decl.,
28

¶ 26.) Based upon the foregoing, the proposed settlement is fair, reasonable, and in the best interest of the State of California and the Aggrieved Employees. (Melmed Decl., ¶ 26.)

Finally, public policy strongly favors the settlement of litigation. (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.) Because the proposed Settlement Agreement is neither unjust nor ignores the public interest, it should be approved. (Melmed Decl., ¶ 27.)

VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND REASONABLE

For their efforts and the risk that they undertook in obtaining a common fund settlement that benefits the State of California and the Aggrieved Employees, the Parties allocated one-third of the Gross Settlement Amount to Plaintiff's counsel for reasonable attorneys' fees. These fees are warranted under the law and within the range of fees commonly awarded in similar cases.

A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEYS' FEES UNDER THE COMMON FUND DOCTRINE

PAGA provides for mandatory recovery of reasonable attorneys' fees, expenses, and costs under Labor Code section 2699, subdivision (k)(1), which states that, "Any employee who prevails in any action **shall** be entitled to an award of reasonable attorney's fees and costs . . ." (Lab. Code, § 2699, subd. (k)(1), emphasis added.) As discussed below, in a *qui tam* action, reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others. "A *qui tam* action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492.)

As the name of PAGA statute makes clear (i.e., the "Labor Code Private Attorneys General Act of 2004"), a PAGA action is a *qui tam* action because the statute allows the employee-plaintiff, acting as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise could only have been assessed and collected by the LWDA. (*Iskanian v. CLS Transportation Los Angeles, LLC*, *supra*, 59 Cal.4th 348, 380.) "A PAGA

1 representative action is therefore a type of qui tam action.” (*Id.* at p. 382.) Indeed, the majority of the
2 civil penalties recovered in a PAGA action are paid to the State of California, with a smaller portion
3 paid to the aggrieved employees (e.g., 75% paid to the state; 25% paid to the aggrieved employees).
4 (Former Lab. Code, § 2699, subd. (i).)

5 As here, where a common fund is created in a qui tam action by the successful litigation of
6 plaintiffs and their attorneys, the plaintiffs’ attorneys are entitled to recover their fees from the common
7 fund. (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91.) In this case, through the successful
8 efforts of Plaintiff and his attorneys, a common fund was created in the amount of \$175,000 for the
9 benefit of the Aggrieved Employees and the State of California. Thus, these beneficiaries must bear
10 their share of the costs and attorney’s fees, which fees and costs must be deducted from the \$175,000.00
11 Gross Settlement Amount under the common fund theory. (*Id.* at pp. 89–91.)

12 The California Supreme Court recently upheld the use of the common fund theory of recovery
13 for attorney’s fees in *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480. The *Laffitte* ruling is
14 consistent with the California Supreme Court’s other cases recognizing that “when a number of persons
15 are entitled in common to a specific fund, and an action brought by . . . plaintiffs for the benefit of all
16 results in the creation or preservation of that fund, such . . . plaintiffs may be awarded attorneys’ fees
17 out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34).

18 Awarding attorneys’ fees based on a one-third percentage of the gross settlement amount is
19 favored by California courts when a fund established for the common benefit of others is involved.
20 Accordingly, awarding one-third of the gross settlement amount is reasonable and appropriate.

21 **B. A FEE OF ONE-THIRD OF THE GROSS SETTLEMENT AMOUNT IS FAIR**
22 **AND REASONABLE BASED UPON THE FACTORS DEVELOPED BY THE**
23 **COURTS AND SERVES THE PUBLIC POLICY OF ATTRACTING**
24 **COMPETENT COUNSEL TO LITIGATE THESE CASES**

25 When awarding attorneys’ fees, courts have discretion to choose among two different methods
26 for calculating a reasonable attorneys’ fees award: (1) the common fund approach, or (2) the lodestar
27 approach. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504). In *Laffitte*, the
28 California Supreme Court noted that “[t]he recognized advantages of the percentage method-including

1 relative ease of calculation, alignment of incentives between counsel and the class, a better
2 approximation of market conditions in a contingency case, and the encouragement it provides counsel
3 to seek an early settlement and avoid unnecessarily prolonging litigation-convince us the percentage
4 method is a valuable tool that should not be denied by our trial courts.” (*Id.* at p. 503, emphasis added).
5 Similarly, the Ninth Circuit has found that counsel should not “receive a lesser fee for settling a case
6 quickly.” (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050 fn. 5).

7 Further, an award of fees from the gross settlement amount under the common fund doctrine
8 prevents unjust enrichment of those who benefit from the common fund created through the successful
9 efforts of Plaintiff’s counsel and furthers the important goal of attracting competent counsel to handle
10 representative actions enforcing minimum labor standards. (*Laffitte v. Robert Half Internat. Inc.*, *supra*,
11 1 Cal.5th 480, 503.)

12 Among the factors considered in determining whether the requested fee percentage is
13 reasonable are: **(1)** the results achieved; **(2)** the risk of further litigation; **(3)** the skill required of
14 plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; **(4)** the contingent nature
15 of the fee and the financial burden carried by the plaintiff; and **(5)** awards made in similar cases.
16 (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1050.) All these factors support an
17 award here of one-third of the common fund.

18 First, Plaintiff’s counsel’s efforts resulted in a common fund settlement amount of \$175,000.00.
19 As discussed above, this is an excellent PAGA settlement considering the contested issues, the number
20 of violations at issue, and the severity of those violations.

21 Second, Plaintiff’s counsel are experienced representative and class action litigators, and have
22 previously achieved significant PAGA and class action awards. (Melmed Decl., ¶¶ 7–13.) This
23 experience and expertise, combined with the high-quality of work performed in this case by Plaintiff’s
24 counsel, resulted in the settlement achieved.

25 Third, the request for attorneys’ fees in the amount of one-third of the common fund falls well-
26 within the norms accepted by state and federal courts in California in comparable wage and hour
27 actions. (See, e.g., *Laffitte v. Robert Half Internat. Inc.*, *supra*, 1 Cal.5th 480, 503; see also *Stuart v.*
28 *Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting

1 that the fee award of one-third of the total settlement was “well within the range of percentages which
2 courts have upheld as reasonable”].)

3 Plaintiff’s counsel’s diligent and efficient litigation of this action resulted in the creation of an
4 ascertainable gross settlement amount of \$175,000 that will substantially benefit the State of California
5 and the Aggrieved Employees. Consistent with numerous cases, including those identified above,
6 Plaintiff’s counsel’s seeks approval of an award of attorneys’ fees in the amount of \$58,333.33
7 representing one-third of the Gross Settlement Amount. (Melmed Decl., ¶ 32.)

8 For all of the above reasons, a common fund fee award here in the amount of one-third of the
9 \$175,000.00 common fund created by Plaintiff and his attorneys is fair and reasonable.

10 **C. THE CONTINGENT NATURE OF PLAINTIFF’S COUNSEL’S**
11 **REPRESENTATION FURTHER SUPPORTS THE FEE AWARD**

12 An additional factor militating in favor of the granting of the requested fee award is the fact that
13 this case was both legally and financially risky for Plaintiff’s counsel, who accepted this representation
14 on a contingency basis. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049
15 [noting that “[r]isk is a relevant circumstance” when considering attorneys’ fees].) There are always
16 risks attendant to billing cases on a contingency basis. It is not a foregone conclusion that every case
17 taken on a contingency fee basis will result in a recovery or that the attorneys’ fees recovered will
18 actually compensate the attorneys’ firm for the amount of time expended in an action. And, even when
19 successful, a PAGA representative action contingency law firm may only receive a small percentage
20 of the amount of attorneys’ fees incurred during the prosecution of a case. Where plaintiffs’ counsel
21 does succeed, therefore, it is appropriate to compensate the firm for the risks the firm regularly
22 undertakes. There is also always the possibility that the plaintiff will not prevail and PAGA Counsel
23 will not receive any compensation whatsoever for its services or that the defendant will declare
24 bankruptcy or lack the assets necessary to satisfy any judgment obtained against it—as has happened
25 in cases handled by Plaintiff’s counsel’s firm. (Melmed Decl., ¶ 31.)

26 Here, there was the prospect of enormous cost inherent in PAGA litigation, and the many
27 additional risks. Those risks include the risk of Defendant prevailing on the merits and the risk that a
28 court may not award the damages or penalties sought. In light of these risks, the chances of recovery

1 were far from certain. As explained by the California Supreme Court, “[a] lawyer who both bears the
2 risk of not being paid and provides legal services is not receiving the fair market value of his work if
3 he is paid only for the second of these functions. If he is paid no more, competent counsel will be
4 reluctant to accept fee award cases.” (*Ketchum v. Moses, supra*, 24 Cal.4th 1122, 1133, quotation marks
5 omitted.)

6 **D. PUBLIC POLICY CONSIDERATIONS REQUIRE THE AWARD OF**
7 **ADEQUATE FEES**

8 In many complex actions such as this one, able counsel for plaintiffs can be retained only on a
9 contingent basis. A large segment of the public would be denied a remedy and the ability to retain
10 counsel to pursue low value individual claims in actions such as the current case if fees awarded by the
11 courts in successful cases did not fairly and adequately compensate counsel for the services provided,
12 the serious risks undertaken, and the delay before any compensation is received.

13 Fair fee awards in successful cases ensure that competent legal services will be available. The
14 complexity and societal importance of this type of litigation calls for the most able counsel obtainable
15 for plaintiffs. To encourage first-rate attorneys to represent plaintiffs on a contingent basis in this type
16 of important litigation, attorneys’ fees awarded should reflect this goal. The express judicial policy of
17 California is to favor the maintenance of these types of representative actions. (See, e.g., *Sav-On Drug*
18 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340; *Pearce v. Superior Court* (1983) 149
19 Cal.App.3d 1058, 1065; *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126.)
20 Although this case involves a PAGA representative action, rather than a class action, the rationale for
21 awarding reasonable and fair attorneys’ fees remains the same.

22 Conversely, a reduction in attorneys’ fees due to the size of the settlement in this case would
23 create perverse incentives for class action attorneys—effectively penalizing them for obtaining more
24 favorable results on behalf of the State of California and the Aggrieved Employees. Public policy would
25 be best served by encouraging well-qualified attorneys to recover the greatest amount reasonably
26 possible on behalf of the injured class members.

27 These important public policy considerations support the Court’s approval of the fee requested.
28

1 **VII. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE**

2 Plaintiff's counsel requests reimbursement of their actual out-of-pocket expenses incurred to
3 prosecute this action. These expenses were incidental and necessary to the effective representation of
4 the employees. (See *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) The Settlement Agreement
5 authorizes Plaintiff's counsel to recover their litigation costs of up to \$15,000. (Settlement Agreement,
6 at p. 5.) The actual litigation costs in this case by Plaintiff's counsel to date amount to \$9,726.90.
7 (Melmed Decl., ¶¶ 44.) Plaintiff's counsel is requesting that the Court approve a distribution of
8 \$9,726.90 from the Gross Settlement Amount. (Melmed Decl., ¶¶ 63–64.)

9 **VIII. THE REQUESTED ENHANCEMENT AWARD IS FAIR AND REASONABLE**

10 The Settlement Agreement contemplates a service award to Plaintiff in the amount of \$7,500.00
11 to recognize the time, effort, and risk he undertook in bringing this case and helping to secure the relief
12 obtained for the State of California and the Aggrieved Employees. (See *Bell v. Farmers Ins. Exchange*
13 (2004) 115 Cal.App.4th 715, 726 [upholding “service payment” to named plaintiff for his efforts in
14 bringing class case].) Here, Plaintiff actively and aggressively represented the State of California and
15 the Aggrieved Employees throughout this litigation. (See generally Declaration of Jesus Cerillo in
16 Support of Plaintiff's Motion for Approval of Settlement Pursuant to PAGA.) Plaintiff was an essential
17 element in the successful prosecution and ultimate settlement of this case and was available to provide
18 input on the litigation, gather evidence, and provide other information that proved critical to the
19 prosecution. (*Ibid.*) The proposed service award is also fair given the amount of time and effort Plaintiff
20 spent on assisting in the prosecution of this case and the personal hardship and pressure faced as a result
21 of filing this lawsuit against their former employer.

22 **IX. CONCLUSION**

23 For the foregoing reasons, Plaintiff requests the Court approve the Settlement Agreement.

24 Dated: February 20, 2025

MELMED LAW GROUP P.C.

25
26 

KYLE D. SMITH

Attorneys for Plaintiff and the Aggrieved Employees