John G. Yslas (SBN 187324)
john.yslas@wilshirelawfirm.com
Jeffrey C. Bils (SBN 301629)
jbils@wilshirelawfirm.com
Courtney M. Miller (SBN 327850)
courtney.miller@wilshirelawfirm.com
Aram Boyadjian (SBN 334009)
aboyadjian@wilshirelawfirm.com
Lisa B. Iturriaga (SBN 339678)
lisa.iturriaga@wilshirelawfirm.com
Andrew Sandoval (SBN 346996)
andrew.sandoval@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa Street, Sky Lobby
Los Angeles, CA 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

THADNISHA CLARK and JENAIA RICHMOND, individually, and on behalf of the State of California and other aggrieved persons,

Plaintiffs,

v.

YUHCA HC LLC DBA YUCAIPA HILLS POST ACUTE, a California limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2320649

[Assigned for All Purposes to the Hon. Christian Towns, Dept. S26]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Settlement Approval Hearing:
Date: October 10, 2025
Time: 8:30 a.m.
Dept: S26

Action Filed: August 30, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 10, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department S26 of the above-entitled Court, located 247 West 3rd Street, San Bernardino, California 92415, Plaintiffs Thadnisha Clark and Jenaia Richmond (collectively "Plaintiffs") will and hereby do move for an order approving the settlement of the PAGA claim alleged against Defendant Yuhca HC LLC DBA Yucaipa Hills Post Acute ("Defendant") in accordance with Labor Code §2699(l). The proposed settlement is set forth in the accompanying PAGA Settlement Agreement ("Settlement Agreement").

This Motion will be based on this notice, the accompanying points and authorities, the Declaration of John G. Yslas, Plaintiffs' Declarations, and the complete files and records in this action. The Labor Workforce Development Agency has been served with this motion and the Settlement Agreement as set forth in the accompanying proof of service.

Dated: September 24, 2025

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller
Courtney M. Miller
Attorneys for Plaintiffs

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I. INTRODUCTION

Plaintiffs Thadnisha Clark and Jenaia Richmond (collectively "Plaintiffs") and Defendant Yuhca HC LLC DBA Yucaipa Hills Post Acute ("Defendant") (Plaintiffs and Defendant collectively, the "Parties") reached a settlement of the California Private Attorneys General Act, Cal. Labor Code § 2699, et seq. ("PAGA") claims asserted in this action. In accordance with Labor Code §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiffs' PAGA claims. This is PAGA Settlement for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than those of Plaintiffs. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

The PAGA Settlement is set forth in the accompanying PAGA Settlement Agreement ("Settlement Agreement"). A true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the PAGA claims is attached as Exhibit 1 to the Declaration of John G. Yslas in Support of Motion for Approval of PAGA Settlement ("Yslas Decl."), filed concurrently herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice of this Settlement on June 2, 2025. Yslas Decl. ¶ 31.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On August 30, 2023, Plaintiffs filed this representative action against Defendant, on behalf of themselves, the State of California, and other aggrieved persons for civil penalties pursuant to California Private Attorneys General Act, Cal. Labor Code § 2699, et seq. ("PAGA") alleging (1) failure to pay for all hours worked, including minimum, straight time, and overtime wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all earned wages twice per month; (5) failure to maintain accurate records of hours worked and meal periods; (6) failure to timely pay all wages at termination; (7) failure to furnish accurate itemized wage statements; (8) failure to indemnify for necessary expenditures; and (9) and failure to produce requested employment records ("PAGA Action"). Settlement Agreement § 1.18; Yslas

Decl. at ¶ 3.

Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely written notice on August 25, 2023, to the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories in support (LWDA-CM-977810-23). Settlement Agreement § 1.21; Yslas Decl. at ¶ 4.

Thereafter, the Parties met and conferred and agreed to mediate the PAGA Action with Kevin Barnes, Esq. ("Mr. Barnes") a well-respected and experienced mediator in wage-and-hour class and representative actions. Settlement Agreement § 2.3; Yslas Decl. at ¶ 5. In advance of mediation, PAGA Counsel conducted a thorough investigation into the facts of, and applicable law to, the PAGA Action. Settlement Agreement § 2.4; Yslas Decl. at ¶ 5. Prior to mediation, Plaintiffs obtained through informal discovery a representative sampling of time and payroll data for approximately 20% of Aggrieved Employees and the necessary policy documents to properly evaluate the strengths and weaknesses of the claims and engage in meaningful settlement discussions. *Id*.

On October 15, 2024, the Parties engaged in an all-day mediation session before Mr. Barnes. Settlement Agreement § 2.3; Yslas Decl. at ¶ 6. With the help of Mr. Barnes, the Parties were able to reach an agreement on general settlement terms at mediation. *Id*. The settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiffs not being able to maintain representative claims, the difficulty of proving Plaintiffs' claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of Mr. Barnes. Settlement Agreement § 2.4; Yslas Decl. at ¶ 6.

III. TERMS OF THE PAGA SETTLEMENT

A. Aggrieved Employees

"Aggrieved Employees" means all non-exempt hourly individuals who worked for Defendant in California as an employee at any time during the period beginning August 25, 2022, through December 14, 2024, or any earlier date of Defendant's choosing as set forth in Paragraph 9 of the Settlement Agreement. Settlement Agreement § 1.4. Defendant estimates that there are 395 Aggrieved Employees who worked a total of 5,988 PAGA Pay Periods. *Id*. at § 4.1.

B. Settlement Terms

The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount ("GSA") payment in the amount of $115,000.00 to resolve the PAGA Action. Settlement Agreement § 3.1; Yslas Decl. at ¶ 7. The GSA will be used to pay PAGA Penalties, PAGA Representative Service Payments, PAGA Counsel Fees, PAGA Counsel Litigation Expenses, and Administrator Expenses. Settlement Agreement § 1.11; Yslas Decl. at ¶ 7. After deducting PAGA Representative Service Payments, PAGA Counsel Fees, PAGA Counsel Litigation Expenses, and Administrator Expenses Payment from the GSA, the amount remaining is the Net Settlement Amount ("NSA"). Settlement Agreement § 1.16; Yslas Decl. at ¶ 7. The NSA, which is estimated to be $40,314.36, shall be distributed as PAGA Penalties with 75% of the NSA allocated to the LWDA PAGA Payment and 25% of the NSA allocated to Individual PAGA Payments. Settlement Agreement § 3.24; Yslas Decl. at ¶ 7.

<u>PAGA Penalties</u>: The NSA will be distributed as PAGA Penalties with seventy-five percent (75%) allocated to the LWDA PAGA Payment and the remaining twenty-five percent (25%) allocated to the Individual PAGA Payments for Aggrieved Employees. Settlement Agreement § 3.2.4. This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

<u>Individual PAGA Payments</u>: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement Agreement § 3.2.4. The PAGA Period is the period from August 25, 2022, through December 14, 2024. Settlement Agreement § 1.25.

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PAGA Representative Service Payments: Subject to Court approval, each of the two (2) Plaintiffs shall be paid a Representative Service Payment not to exceed $7,500.00 for their time and effort in bringing and presenting the Action. Settlement Agreement § 3.2.1.

PAGA Counsel Fees Payment: Subject to Court approval, PAGA Counsel shall be entitled to receive an award of reasonable attorneys' fees of not more than one third (1/3) of the GSA which is currently estimated to be $38,333.33. Settlement Agreement § 3.2.2.

PAGA Counsel Litigation Expenses Payment: Subject to Court approval, PAGA Counsel shall be entitled to receive reimbursement of costs, not to exceed $20,000. Settlement Agreement § 3.2.2. Counsel seeks reimbursement of actual costs incurred in the amount of $14,357.31. Yslas Decl. ¶ 29.

Administrator Expenses Payment: The Parties agreed to appoint Apex Class Action Administration ("Apex") as the Administrator for the Settlement. Settlement Agreement § 8.1. The Settlement Administration Expenses, which are not to exceed $6,995.00 shall be paid from the GSA. Settlement Agreement § 3.2.3.

C. Releases

Plaintiffs' Release: "Plaintiffs and Plaintiffs' respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences, including all claims that were, or reasonably could have been, alleged, based on the facts contained in the PAGA Action ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. Expressly excluded from this release are any and all possible claims concerning Plaintiffs' individual claims (including individual wage and hour claims) that are outside the scope of this Agreement, which are part of separate individual settlement agreements and general releases entered into between Plaintiffs and Defendant (the "Individual Settlements"). This is not a general release. Plaintiffs have concurrently agreed to a general release in favor of the Released Parties in connection with the resolution of the Individual Settlements with Defendant. All claims other than wage and hour related claims are preserved and not affected in any way by this Agreement." Settlement Agreement § 5.1.

Aggrieved Employees' Release: "All Aggrieved Employees, the State of California and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts and theories alleged in the PAGA Action and the PAGA Notice, including but not limited to, claims for PAGA civil penalties for: (1) failure to pay for all hours worked, including minimum, straight time, and overtime wages (including failing to pay overtime and the correct regular rate of pay); (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all earned wages twice per month; (5) failure to maintain accurate records of hours worked, payroll records, and meal periods; (6) failure to timely pay all wages at termination; (7) failure to furnish accurate itemized wage statements; (8) failed to indemnify for necessary expenditures; and (9) failure to produce requested employment records (Lab. Code §§ 1198.5, 432, 226). Aggrieved Employees, other than Plaintiffs, will not be deemed to have released any non-PAGA individual claims by virtue of this Agreement. This release applies only to PAGA penalty claims that accrued during the PAGA Period. There shall be no right to opt-out of the settlement by Aggrieved Employees, consistent with California law." Settlement Agreement § 5.2.

Release by PAGA Counsel: "PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notices." Settlement Agreement § 5.3.

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D. Settlement Administration

Defendant will provide the Aggrieved Employee Data to the Administrator not later than 14 days after the Court grants PAGA Approval. Settlement Agreement § 4.2. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted Aggrieved Employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. *Id*.

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 21 days after the Effective Date. Settlement Agreement §§ 1.11, 4.3. The Effective date is the date when all the following occurs: (1) the Settlement Agreement is fully executed and (2) the Court approves the Settlement Agreement through entry of an Order and Judgment. *Id*. at § 1.9.

Within 14 days after Defendant funds the GSA, the Settlement Administrator will issue checks for the Individual PAGA Payments and send them to Aggrieved Employees along with the PAGA Settlement Notice via First-Class U.S. Mail to Aggrieved Employees' last known mailing address. Settlement Agreement § 4.4.1. The Administrator must conduct an Aggrieved Employee Address Search for all other Aggrieved Employees whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. *Id*. at ¶ 4.4.2. Within 7 calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. *Id*.

The Individual PAGA payments will expire one hundred eighty (180) calendar days from the date they are issued by the Administrator. Settlement Agreement § 4.4.1. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Settlement Agreement § 4.4.3. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. *Id*. at § 3.2.4.

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Within 14 days after Defendant funds the GSA, the Administrator will also pay the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and the PAGA Representative Service Payments. Settlement Agreement § 4.4. Disbursement of the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment and the PAGA Representative Service Payments shall not precede disbursement of the Individual PAGA Payments. *Id*.

Within 10 days after the Administrator disburses all funds in the GSA, the Settlement Administrator will provide PAGA Counsel and Defense Counsel with a final report detailing its disbursements. Settlement Agreement § 8.4.1.

Pursuant to California Labor Code Section 2699(s)(2), Plaintiffs submitted the proposed Settlement Agreement to the LWDA on June 2, 2025. Yslas Decl. at ¶ 31, Exhibit 3. Plaintiffs will a copy of the Court's judgment and order approving the Settlement Agreement to the LWDA within ten (10) days after entry of judgment or order. *Id*.

IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT

A. Legal Standard

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." In doing so, the trial court must consider whether the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc*., 72 Cal. App. 5th 56, 77-78 (Cal. Ct. App. Nov. 30, 2021) (overruled in part on other grounds); *see also O'Connor v. Uber Technologies, Inc*., 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (adopting guidance from the LWDA providing that "when a PAGA claim is settled, the relief provided for under the PAGA [must] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public").

The court's role in reviewing PAGA settlements differs from its gatekeeping function in the class action context. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims will be discharged. *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129 (2008). In this role, courts conduct an "independent assessment of the adequacy of the settlement terms," which requires them to have sufficient data and information about the amount in controversy and the realistic range of outcomes. *Id*. at 132. Courts consider a variety of factors in conducting this analysis, including whether the settlement is negotiated at an arm's length, whether there is sufficient discovery and information to permit parties and the court to act intelligently, whether the attorneys have experience with the type of issues, and whether the number of objectors is small. *Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1800-1801 (1996).

However, a PAGA representative action is "not akin to a class action," it "is a species of qui tam action." *Flores v. Starwood Hotels & Resorts Worldwide, Inc*., 253 F.Supp.3d 1074, 1076 (C.D. Cal. 2017). When reviewing a PAGA-only settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. *See Kim v. Reins Int'l California, Inc*., 9 Cal.5th 73, 87 (2020) (PAGA claims differ from individual claims); *ZB, N.A. v. Superior Court*, 8 Cal.5th 175, 188 (2019) (noting that PAGA penalties do not seek damages that are compensatory in nature). "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." *Huff v. Securitas Sec. Servs., USA, Inc*., 23 Cal.App.5th 745, 760 (2018). Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." *Id*. at 756; *see also Iskanian*, 59 Cal.4th at 383 (noting that the goal of PAGA is to impose civil penalties for Labor Code violations "significant enough to deter violations"); *McKenzie v. Federal Exp. Corp*., 765 F.Supp.2d 1222, 1233 (C.D. Cal. 2011) ("Unlike a class action seeking damages… for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.").

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B. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful and Fulfill PAGA's Underlying Purpose to Benefit the Public

The Settlement of $115,000.00 penalizes Defendant for the alleged violations of California's labor laws in an amount that is significant enough to deter violations and provide genuine and meaningful relief – and approximately $40,314.36 in PAGA Penalties to the State of California and Aggrieved Employees – thus fulfilling the underlying purpose of PAGA to benefit the public. Yslas Decl. at §§ 7-11; *see Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018) ("The proposed settlement imposes a substantial penalty payment of $150,000.00, paid in exchange for a release of only those claims pled in the notice to the LWDA and the Complaint. This penalty has a substantial deterrent effect on NCI and other California employers. Furthermore, the proposed settlement encourages compliance with the specific requirements of the Labor Code, which has the effect of protecting workers from unlawful employment practices and working conditions."); *Echavez v. Abercrombie & Fitch Co.*, No. CV 11-09754-GAF, 2017 WL 3669607, at *3 (C.D. Cal. Mar. 23, 2017) (finding that "[t]he primary purpose of PAGA, i.e., the empowerment of aggrieved employees to act as private attorneys general to collect civil penalties from their employers for Labor Code violations, [was] served by the proposed PAGA penalty in the parties' settlement agreement," where $340,000 of $700,000 settlement was allocated to PAGA penalties which were divided 75% to the LWDA and 25% to an estimated 10,000 aggrieved employees).

This PAGA Settlement amount compares favorably to the estimated amount of PAGA penalties. Plaintiffs calculated that the maximum amount of statutory PAGA civil penalties was potentially $598,800.00 for an estimated 395 employees based on 5,988 pay periods.[1] Yslas Decl. at ¶ 8. Importantly, however, these calculations were performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at a lower

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[1] Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The valuation of $598,800.00 is the civil penalty amount without stacking. If stacking is permitted, then the valuation increases with each additional penalty added to each pay period. Courts to consider the issue have refused to "stack" penalties. *See Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018).

rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory." *See Carrington v. Starbucks Corp*., 30 Cal.App.5th 504 (2018) (affirming a judgment after trial that only provided for a PAGA penalty of $5 per pay period). Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. *See Fleming v. Covidien*, No. ED CV 10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (a federal court reduced PAGA penalties from $2,800,000.00 to $500,000.00, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries).

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

In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc*., No. BCV-23-102915, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. Jan. 31, 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each period the employee worked in relation to (1) failure to pay for all hours worked, including minimum, straight time, and overtime wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all earned wages twice per month; (5) failure to maintain accurate records of hours worked and meal periods; (6) failure to timely pay all wages at termination; (7) failure to furnish accurate itemized wage statements; (8) failure to indemnify for necessary expenditures; and (9) and failure to produce requested employment records.

Defendant maintains that Plaintiffs and the Aggrieved Employees were properly compensated, and that they did not violate the Labor Code as to any of them. Yslas Decl. at ¶ 9. Accordingly, Defendant disputes and denies Plaintiffs' allegations and claims asserted in the operative complaint which are resolved by the Settlement Agreement. *Id*. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. *Id*. Defendant could argue that no penalties prior to the PAGA notification should be awarded because the violations were not intentional, and at least one Court has so ruled. *Id*. These defenses present a risk to the PAGA claim and the potential that some or all the PAGA penalties sought may not be awarded. *Id*.

While Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to each cause of action for penalties, the factual allegations, the evidentiary basis, and the underlying claims. Yslas Decl. at ¶ 10. Plaintiffs also took into account the fact that continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and potentially reduce any recovery to the State of California and the Aggrieved Employees. *Id*. Assuming Plaintiffs could prove at least one violation per pay period and the Court awarded $100.00 in PAGA penalties for each of the 5,988 pay periods during the PAGA Period, the total penalties would be approximately $598,800.00. *Id*. As such, the Gross Settlement Amount of $115,000.00 is approximately 19.2% of the maximum realistic liability in this case. *Id*.

Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are considered, it is clear the settlement amount of $115,000.00 is reasonable and in the best interest of the State of California and the public. Yslas Decl. at ¶ 11. Plaintiffs objectively and knowledgably balanced the strengths and weaknesses of their claims against the risk of continued litigation and were able to determine a realistic range of settlement recovery for PAGA penalties. *Id*. The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2); *Iskanian*, 59 Cal. 4th at 384.

V. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount of $38,333.33 representing one third (1/3) of the GSA and costs not to exceed

$20,000.00. Settlement Agreement § 3.2.2. Plaintiffs are entitled to attorneys' fees under Labor Code section 2699(g)(l), which provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Lab. Code § 2699(g)(1); *see also Gouskos v. Aptos Village Garage, Inc.*, 94 Cal.App.4th 754, 765 (2001) (holding that attorneys' fees to prevailing party are mandatory when the statute uses the word "shall"). It is undisputed that Plaintiffs are the prevailing party. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 153 (2006) ("[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves some of the benefit the parties sought in bringing suit.") (internal citation omitted). Accordingly, Plaintiffs are entitled to recover attorneys' fees and costs.

A. Plaintiffs' Counsel's Requested Attorneys' Fees Are Reasonable under the Common Fund Method

The request for attorneys' fees as a percentage of the gross settlement amount is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal.3d 25, 35 (1977).

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal.3d 162, 167 (1975) ("[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.").

A number of other courts have recognized the advantages of awarding fees as a percentage of the common fund over the alternative lodestar approach, which usually involves wading through voluminous and often indecipherable time records. *See*, e.g., *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989). The percentage approach is preferable to the lodestar method because: (1) it provides predictability to counsel; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. *Id*. at 1378-79; *see also Lealao v. Beneficial Cal., Inc*., 82 Cal.App.4th 19, 28 (2000) (discussing findings of task force commissioned by the Third Circuit, which "concluded that the lodestar approach (1) increases the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disservice for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability.").

The percentage of attorneys' fees set forth in the Settlement Agreement – one third (1/3) of the Gross Settlement Amount – is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50% in common fund cases. *Newberg on Class Actions*, 4th Ed. 2002, § 14: 6. *Newberg* notes that achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed. *Id*. Furthermore, California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total value. *Boeing v. Van Gemert*, 444 U.S. 472, 480-481 (1980); *see also In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13 (2009) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.")

The Court should also consider that Plaintiffs' counsel's efforts have resulted in substantial benefits to the State of California and the Aggrieved Employees, in the form of a significant, non-reversionary settlement fund established to compensate the State of California and the Aggrieved Employees and to punish Defendant for the alleged PAGA violations. Without the efforts of Plaintiffs' counsel, the claims alleged in the complaint would likely have gone without remedy. Yslas Decl. at ¶ 28.

B. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of the Requested Fee

Although *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 489 (2016) makes clear that a lodestar cross-check is not required, Class Counsel's lodestar supports the reasonableness of the requested fee. The lodestar is determined by multiplying the number of hours reasonably expended by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *Id*. The factors that can be considered include "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." *Melnyk v. Robledo*, 64 Cal.App.3d 618, 623-624 (1976) (citations omitted).

PAGA Counsel's requested fees have been approved by other courts in California. Yslas MFA Decl. at ¶ 25. The total hours expended on this action were reasonable and in line with comparable cases. *Id*. While it is not necessary to substantiate the fee award with a lodestar in this PAGA Action, it should be noted that PAGA Counsel spent approximately 143.2 hours prosecuting this action, resulting in a lodestar of $117,525.00.00. Yslas Decl. at ¶ 26. PAGA Counsel dedicated significant resources to this case by dividing the tasks required according to skill level. Yslas Decl. at ¶ 27. The hours expended by each attorney were not duplicative and reflect the extensive investigation and analysis that was required to achieve this Settlement. *Id*.

Considered against the risks of continued litigation, and the importance of advocating for employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Aggrieved Employees. PAGA Counsel's fee request is fair and reasonable and should be approved.

C. PAGA Counsel's Costs Are Reasonable

PAGA Counsel is entitled to reimbursement of its litigation costs under PAGA. *See* Lab. Code § 2699(k)(l) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."). The Settlement provides for reimbursement of costs not to exceed $20,000.00. Settlement Agreement § 3.2.2. To date, PAGA Counsel has incurred costs in the amount of $14,357.31. [2] Yslas Decl. at ¶ 29, Ex. 2. These costs were reasonably incurred in prosecuting this Action on behalf of the Aggrieved Employees and should be approved by the Court. *Id*. Accordingly, PAGA Counsel respectfully requests the Court approve costs in the amount of $14,357.31.

VI. THE REQUESTED PAGA REPRESENTATIVE SERVICE PAYMENTS TO PLAINTIFFS ARE REASONABLE

Both the State of California and the Aggrieved Employees are beneficiaries of a settlement that would not have been made possible but for the effort and commitment of Plaintiffs. The Settlement provides that each of the two (2) Plaintiffs shall be paid a PAGA Representative Service Payment not to exceed $7,500.00, in recognition of their efforts in bringing and presenting the Action. Settlement Agreement § 3.2.1. The requested payment is intended to recognize Plaintiffs' effort in bringing the Action, serving as private attorneys general under PAGA, assisting counsel with the investigation, litigation, and settlement, regularly conferring with counsel on the status of the case, and reviewing the proposed settlement to ensure that its terms are fair and achieve PAGA's objectives.

Plaintiffs have provided declarations detailing the risk they faced in bringing the suit, the notoriety and personal difficulties they encountered, the amount of time and effort they spent on this litigation, the duration of this litigation, and the personal benefit they will receive as a result of the litigation. *See generally* Declaration of Plaintiff Thadnisha Clark in Support of

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[2] Because PAGA Counsel's costs are less than $20,000.00, upon approval of $14,357.31 for the PAGA Counsel Expenses Payment, the remaining $5,642.69 will revert to the NSA to be distributed as PAGA Penalties to the LWDA and Aggrieved Employees. Yslas Decl. at ¶ 29.

Plaintiffs' Motion for Approval of PAGA Settlement ("Clark Decl.") and Declaration of Plaintiff Jenaia Richmond in Support of Plaintiffs' Motion for Approval of PAGA Settlement ("Richmond Decl."). Plaintiffs estimate they each devoted approximately 25 hours of their time to the case. Clark Decl. at ¶ 7; Richmond Dec. at ¶ 7. Plaintiffs also faced the real risk that future employers may not hire them because they each lent their name as a PAGA representative in this case, and they could have been liable for Defendant's litigation costs if the case went to trial and they lost. Clark Decl. at ¶¶ 4, 6; Richmond Decl. at ¶¶ 4, 6. Accordingly, Plaintiffs respectfully requests that the Court approve the PAGA Representative Service Payments to each of them in the amount of $7,500.00.

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA settlement as set forth in the Settlement Agreement and enter the proposed order and judgment submitted herewith.

Dated: September 24, 2025

WILSHIRE LAW FIRM, PLC

By: /s/ Courtney M. Miller
Courtney M. Miller
Attorneys for Plaintiffs