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1
2 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
3 **FOR THE COUNTY OF RIVERSIDE**
4

5 SARAH ROBERTSON and WILLIAM
6 DOUGLAS, on behalf of all those similarly
7 situated to them,

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9 Plaintiffs,

10 vs.

11 RAISING CANE'S USA, LLC, RAISING
12 CANE'S RESTAURANTS, LLC, and DOES 1
13 THROUGH 100, inclusive,

14 Defendants.
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) **Case No.: CVRI2306468**

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) **NOTICE OF MOTION AND MOTION**
) **FOR APPROVAL OF PAGA**
) **SETTLEMENT; MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**

) **DATE: July 22, 2025**

) **TIME: 8:30 am**

) **DEPT: 1**

) Judge: The Hon. Harold Hopp

) Action Filed: 12/1/2023

) Trial Date: Unassigned
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 8:30 am on July 22, 2025, or as soon thereafter as
3 the matter can be heard, in Department 1 of the above-entitled Court before the Honorable Harold
4 Hopp, located at 4050 Main Street, Riverside, California, Plaintiffs Sarah Robertson and William
5 Douglas (collectively, “Plaintiffs”), will and hereby do move for an order approving the settlement
6 of the claim for civil penalties under the California Labor Code Private Attorneys General Act alleged
7 against Defendants Raising Cane’s USA, LLC and Raising Cane’s Restaurants, LLC (collectively,
8 “Raising Cane’s” or “Defendants”) in accordance with Labor Code § 2699(l).¹ The proposed
9 settlement is set forth in the Settlement Agreement (“Settlement”), which is Exhibit C to the
10 Declaration of Rebecca Peterson-Fisher filed herewith.

11 This Motion will be based on this notice, the accompanying points and authorities, the
12 Declaration of Rebecca Peterson-Fisher, and the complete files and records in this action. Plaintiffs
13 submitted this motion and the Settlement to the Labor Workforce Development Agency on June 27,
14 2025. (Peterson-Fisher Decl. Exh. E.)

15 Dated: June 27, 2025

Respectfully submitted,
KATZ BANKS KUMIN LLP

16
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18 By:
19 Rebecca Peterson-Fisher
20 Attorney for Plaintiffs
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28 ¹ All citations to PAGA herein refer to Labor Code § 2699 *et seq.* as it existed prior to July 1, 2024.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Sarah Robertson and William Douglas (collectively, “Plaintiffs”) move for approval
4 of a \$240,000 Private Attorneys General Act (“PAGA”) settlement for civil penalties arising from the
5 alleged misclassification of approximately 240 Operations Managers (“OMs”)² at Raising Cane’s
6 fast-food restaurants in the state of California pursuant to Labor Code § 2699(l).³ The Proposed
7 Settlement provides significant value to OMs that is fair, reasonable, and adequate in light of the fact-
8 intensive nature of the misclassification analysis on which the PAGA claims depend and the attendant
9 risks of continued litigation. After engaging in investigation and substantial discovery in Plaintiff
10 Robertson’s individual arbitration, including depositions, Plaintiffs and Defendants Raising Cane’s
11 USA, LLC and Raising Cane’s Restaurants, LLC (“Raising Cane’s” or “Defendants”) agreed to
12 mediate this matter, and ultimately entered into the Settlement Agreement (“Agreement”). The
13 Proposed Settlement releases only PAGA claims, preserving the rights of PAGA Group members to
14 seek relief for the underlying Labor Code violations if they wish. The Gross Settlement Amount
15 (“GSA”) is \$240,000. After deduction of fees and costs and settlement administration costs, the
16 anticipated remaining amount to be divided between the Labor and Workforce Development Agency
17 (“LWDA”) and the alleged aggrieved employees is \$160,000, with \$101,969.99 (or 75%) going to
18 the LWDA and \$33,990.00 (or 25%) going to the Aggrieved Employees.

19 **II. FACTS AND PROCEDURAL HISTORY**

20 Raising Cane’s is a rapidly expanding fried chicken fast food chain started in Louisiana that
21 operates more than 80 restaurants in California, and over 800 restaurants across the United
22 States. (Peterson-Fisher Decl. ¶27.) On September 26, 2023, Plaintiff Sarah Robertson
23 (“Robertson”) submitted notice to the California Labor and Workforce Development Agency
24 (“LWDA”) of her intent to pursue claims under PAGA. (*Id.* at ¶28.) On October 11, 2023,
25 Defendants filed an Arbitration Demand with the American Arbitration Association (“AAA”), to
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27 ² “OMs” includes all other salaried restaurant-level employees who perform the same or similar duties to Operations
28 Managers regardless of their exact title.

³ All citations to PAGA herein refer to Labor Code § 2699 *et seq.* as it existed prior to July 1, 2024.

1 which Robertson responded on November 30, 2023. (*Id.* at ¶28.) On December 1, 2023, Robertson
2 filed a PAGA action in this matter on behalf of current and former Operations Managers, including
3 all other salaried restaurant-level employees who perform the same or similar duties to Operations
4 Managers regardless of their exact title (excepting General Managers/Restaurant Leaders)
5 (collectively, “OMs”), employed by Raising Cane’s at any of its restaurant locations in California
6 beginning September 26, 2022 and extending through litigation. (*Id.* at ¶28.) At the time of filing,
7 the majority of Raising Cane’s restaurants in California employed two OMs per restaurant whom
8 Plaintiff asserts were misclassified as “exempt.” (*Id.* at ¶27.) Robertson filed the Complaint in this
9 action, which alleges violations of Labor Code sections relating to unpaid wages, overtime, meal and
10 rest periods, late payment of wages, inaccurate paystubs, and inaccurate pay records. (*Id.* at ¶28.)

11 On January 26, 2024, Defendants filed a Motion to Compel Arbitration and Stay Proceedings;
12 Request for Sanctions Against Plaintiff and her Counsel. (*Id.* at ¶30.) On February 28, 2024,
13 Robertson filed her Opposition to Defendants’ Motion to Compel Arbitration and Stay Proceedings;
14 Request for Sanctions Against Plaintiff and her Counsel. (*Id.* at ¶30.) On February 5, 2024,
15 Robertson filed her First Amended Representative Action Complaint to include reimbursement
16 claims under Labor Code § 2802. (*Id.* at ¶31.)

17 On February 26, 2024, Plaintiff William Douglas (“Douglas”) submitted notice to the LWDA
18 of his intent to pursue claims under PAGA. (*Id.* at ¶32.)

19 Defendants’ Motion to Compel Arbitration and Stay Proceedings; Request for Sanctions
20 Against Plaintiff and her Counsel was heard on March 12, 2024. (*Id.* at ¶33.) The Court took the
21 matter under submission and ordered the Parties to submit supplemental briefing addressing two
22 cases raised during the hearing, *Gavriiloglou v. Prime Healthcare* (2022) 83 Cal.App.5th 595 and
23 *Howitson v. Evans Hotels LLC* (2022) 81 Cal.App.5th 475. (*Id.* at ¶33.) In response to the Court’s
24 Order, Robertson filed a Supplemental Memorandum of Points and Authorities in Opposition to
25 Defendants’ Motion to Stay Proceedings on March 20, 2024, and Defendants filed a Supplemental
26 Memorandum of Points and Authorities in Support of Its Motion to Compel Arbitration and Stay
27 Proceedings on March 28, 2024. (*Id.* at ¶33.)

1 On May 3, 2024, Robertson filed a Motion for Leave to file a Second Amended Complaint
2 (“SAC”) adding Plaintiff William Douglas. (*Id.* at ¶35.) On May 16, 2024, the Parties filed a Joint
3 Stipulation to File Second Amended Complaint. (*Id.* at ¶35.) The Court directed the Parties to appear
4 on May 29, 2024, to address the effect of the proposed SAC on the pending Motion to Stay and to
5 Compel Arbitration. (*Id.* at ¶35.) After the hearing, the Court denied the Motion to Compel
6 Arbitration as moot and directed Plaintiffs to file their SAC by May 31, 2024, and Defendants to file
7 their responsive pleading by July 1, 2024. (*Id.* at ¶35.) On June 24, 2024, Plaintiff Douglas filed a
8 demand for arbitration with the AAA, alleging violations of the Labor Code but which did not include
9 an individual PAGA claim. (*Id.* at ¶36.)

10 On July 1, 2024, Defendants filed a Motion for Stay of Proceedings and a Demurrer to
11 Plaintiffs’ Second Amended Complaint. (*Id.* at ¶37.) On July 9, 2024, Molly Cuenca filed a PAGA
12 Notice with the LWDA against Defendants alleging violations of Labor Code sections relating to
13 unpaid wages, overtime, meal and rest periods, late payment of wages, inaccurate wage statements,
14 and failure to reimburse expenses. (*Id.* at ¶38.)

15 During an August 9, 2024, hearing, the Court overruled Raising Cane’s Demurrer and ordered
16 Raising Cane’s to file an Answer to the SAC within 30 days. (*Id.* at ¶39.) The Court also took the
17 Raising Cane’s Motion for Stay of Proceedings under submission, and the Court’s decision remains
18 pending. (*Id.* at ¶39.) On September 9, 2024, Defendants filed their answer to the SAC. (*Id.* at ¶39.)
19 On October 8, 2024, Plaintiffs and Defendants filed a Joint Stipulation for Stay after agreeing to
20 mediation of both this PAGA action and the individual arbitrations between them. (*Id.* at ¶45.)

21 On November 12, 2024, Plaintiffs and Defendants engaged in a full-day mediation before
22 Stephen Benardo, a highly experienced wage-and-hour mediator. (*Id.* at ¶53.) The Parties were
23 unable to reach an agreement as to all the terms of the settlement on the day of mediation. (*Id.* at
24 ¶54.) On December 16, 2024, all Parties accepted a mediator’s proposal from Mr. Benardo
25 finalizing the terms of the settlement. (*Id.* at ¶54.) The Parties executed a Memorandum of
26 Understanding (“MOU”) on April 14, 2025, and negotiated the long-form settlement agreement in
27 the weeks thereafter. (*Id.* at ¶55.) Plaintiffs provided the Agreement to the LWDA on June 27,
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2025. (*Id.* at ¶56.)

III. SUMMARY OF THE SETTLEMENT TERMS

A. Gross Settlement Amount (“GSA”)

The Settlement provides for a GSA of \$240,000 to be paid within 14 days after Defendants fund the GSA. (Settlement, § 4.4.) The Settlement Administrator will issue checks for all Individual PAGA Payments along with the LWDA PAGA Payment, the Administrator Costs Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. (*Id.*) The Settlement requires that payments to Counsel for fees and litigation expenses occur either concurrently with or following Individual PAGA Payments. (*Id.*)

B. Workers and Time Period Covered by the Settlement (“Aggrieved Employees”)

The Settlement covers all “Aggrieved Employees,” defined as “an employee who worked in the exempt role of Operations Manager or a salaried restaurant-level employee who performed the same or similar duties, regardless of their exact title, for Defendants in California at any time [during the PAGA Period] with the exception of Plaintiffs.” (Settlement, § 1.5.) The Settlement defines the “PAGA Period” as the time from September 26, 2022 (one year before Robertson’s LWDA notice) to December 31, 2024. (*Id.* at § 1.24.) The Settlement contains an escalator clause to ensure that the settlement does not become diluted. (*Id.* at § 8.)

C. Distributions from the Gross Settlement Amount

Subject to Court approval, the following amounts will be subtracted from the GSA of \$240,000 to yield the civil penalty amount (the “Net Settlement Amount”):

- PAGA Counsel Fees Payment of \$80,000, one-third of the GSA (Settlement, § 3.2.1);
- PAGA Counsel Litigation Expenses Payment of \$17,166.73 (Settlement, § 3.2.1; Peterson-Fisher Decl. ¶49);
- Settlement Administrator Costs Payment of \$7,000 (Settlement, § 3.2.2; Peterson-Fisher Decl. ¶49).

D. Distribution of the Net Settlement Amount

Assuming these distributions are approved, the Net Settlement Amount (“NSA”) is estimated

1 to be \$135,833.27. (Peterson-Fisher Decl. ¶51.) Per PAGA’s allocation requirements, 75% will go
2 to the LWDA and 25% percent will go to Aggrieved Employees. (Settlement, § 3.3.) Each Aggrieved
3 Employee will receive a share based on the number of pay periods worked during the PAGA Period.
4 (*Id.* at § 3.3.2.1.) If the NSA is \$135,833.27, the distribution will result in \$101,874.95 being paid to
5 the LWDA and \$33,958.32 being paid to Aggrieved Employees. (Peterson-Fisher Decl. ¶51.) This
6 means that each of the 240 Aggrieved Employees will receive an average of \$141.49 in civil penalties.
7 (*Id.* ¶52.)

8 The Parties propose using Rust Consulting Inc. (“Rust”) to administer the settlement.
9 (Settlement, § 7.1.) Based on a quote provided by Rust, administration costs are estimated to be no
10 more than \$7,000.00. (Administrator Decl. ¶4.) Within fourteen calendar days after Defendants fund
11 the GSA, Rust will issue each Aggrieved Employee a check for their settlement share at their last
12 known address, along with the PAGA Notice, attached to the Peterson-Fisher Declaration as Exhibit
13 D. (Settlement, § 4.4.1.) If checks are returned, Rust will conduct an Aggrieved Employee Address
14 Search to determine a working address and re-mail the checks within seven days of receiving the
15 returned check. (*Id.* at § 4.4.2.) Settlement checks remaining uncashed for more than 180 days will
16 be paid to the California Controller’s Unclaimed Property Fund. (Settlement, § 4.4.3.)

17 **E. The Scope of the Release**

18 The release is narrowly tailored to the PAGA claims. It does not release any non-PAGA
19 claims, and does not preclude any Aggrieved Employees from pursuing their own individual claims
20 against Raising Cane’s. (Peterson-Fisher Decl. ¶91-92; Settlement, § 5.1, 5.2.) The release provides
21 as follows:

22 Release by Plaintiffs: Effective on the date when Defendants fully fund the entire Gross
23 Settlement Amount, Plaintiffs and the State of California will release claims against all Released
24 Parties as follows:

25 Plaintiffs and the State of California will release and discharge the Released Parties for any
26 claims for civil penalties recoverable through PAGA that were actually alleged or that could have
27 been alleged against the Released Parties based on the facts stated in the PAGA Notice and the
28 Operative Complaint, including PAGA claims for civil penalties based on alleged violations of
Labor Code sections 201, 202, 203, 204, 210, 218.5, 226(a), 226.7, 227.3, 246, 510, 512,
558(a)(1)(2), 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802,

1 California Code of Regulations, Title 8, Sections 11040(5)(A)-(B) and 11070(14), Wage Order
2 5, and for interest, attorneys' fees, and costs recoverable through a PAGA claim for violations of
3 Labor Code provisions or other statutes that relate to the following causes of action alleged to
4 have occurred during the PAGA Period:

- 5 a. Any claims for alleged unpaid compensation or compensation paid at the incorrect rate
6 of pay (including but not limited to minimum wages, overtime pay, double time pay,
7 on-call, off-the-clock, incentive pay, sick pay, reporting time pay, etc.);
- 8 b. Any claims for alleged failure to provide meal periods in accordance with the
9 California Labor Code and/or applicable Wage Orders, including any claims regarding
10 failure to pay premium pay at the correct rate of pay;
- 11 c. Any claim for alleged failure to authorize and permit rest breaks in accordance with
12 the applicable California Wage Orders or Labor Code, including any claims regarding
13 failure to pay premium pay at the correct rate of pay;
- 14 d. Any claim for alleged failure to provide reimbursements for business related expenses,
15 expressly including but not limited to cell phone use, mileage, and home office
16 expenses;
- 17 e. Any claim for alleged failure to pay wages timely during employment or upon
18 termination of employment; and
- 19 f. Any claim for alleged failure to provide all /accurate information required to be on
20 wage statements or to maintain records required by the California Labor Code.

21 Plaintiffs have each entered into a separate settlement agreement with Defendants releasing
22 their individual claims for additional monetary compensation. (Peterson-Fisher Decl. ¶92.) PAGA
23 Counsel sets forth the relevant contents of each settlement in the Peterson-Fisher Declaration.
24 Because the terms of these agreements are confidential, Plaintiffs have redacted the confidential
25 information about these settlements from the Peterson-Fisher Declaration and will simultaneously
26 seek to file the unredacted version of the Peterson-Fisher Declaration under seal.

27 **F. No Right to Object to, or Opt Out of, the Settlement**

28 The Settlement does not provide for notice or opting out because PAGA does not confer such
rights on absent non-party alleged aggrieved employees. (Settlement, § 5.2.) An aggrieved employee
“cannot opt out of [a PAGA] settlement and thereafter pursue civil penalties for the same violations
again on behalf of the LWDA.” (*Robinson v. Southern Counties Oil Co.* (2020) 53 Cal.App.5th 476,

1 483; *see also* *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777,
2 at *5 [“Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability
3 to opt-out of the representative PAGA claim.”].)

4 **IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

5 **A. Legal Standards Applicable to Review of a PAGA Settlement**

6 The settlement of a PAGA claim requires court approval. (Lab. Code § 2699(l)(2).) PAGA
7 does not contain any approval criteria, but a California appellate court held that “a trial court should
8 evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of
9 PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize
10 enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77,
11 *disapproved of on other grounds by Turrieta v. Lyft, Inc.* (2024) 16 Cal. 5th 664). Because a
12 representative action under PAGA is “a type of qui tam action” rather than a class action, the Court
13 does not have the same fiduciary duty to aggrieved employees as it would to absent class members.
14 (*Id.* at 76). Instead, the Court must review PAGA settlements to ensure they prevent “fraud, collusion,
15 or unfairness.” (*Id.*) To enact this standard, the *Moniz* court held that the Court may borrow well-
16 developed settlement standards from the class action context, in which courts typically consider the
17 following: “the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity
18 and likely duration of further litigation, and the settlement amount.” (*Id.* at 77 [citing *Dunk v. Ford*
19 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.]) “The list of factors is not exclusive and the Court is
20 free to engage in a balancing and weighing of the factors depending on the circumstances of each
21 case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

22 **B. The Proposed Settlement is Entitled to a Presumption of Fairness**

23 The settlement here is entitled to a presumption of fairness. Under *Dunk*, “a presumption of
24 fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation
25 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
26 experienced in similar litigation; and (4) the percentage of objectors is small.”⁴ (48 Cal.App.4th at
27 _____)

28 ⁴ There is no right to object to a PAGA settlement, making this factor irrelevant.

1 1802.) This settlement meets each of the relevant criteria. First, it was reached through arm’s-length
2 bargaining, facilitated by Stephen Benardo, an experienced wage-and-hour mediator. (Peterson-
3 Fisher Decl. ¶61.) The Parties negotiated the terms of the settlement for several weeks following the
4 mediation before coming to an agreement with the help of Mr. Benardo on December 16, 2024. (*Id.*
5 at ¶54, 73.)

6 Second, Plaintiffs engaged in extensive investigation and discovery before eventually
7 reaching this settlement. Before filing the lawsuit, PAGA Counsel investigated the misclassification
8 claims by obtaining relevant documentation for several California OMs and interviewing Plaintiffs
9 and numerous other witnesses extensively. (*Id.* at ¶62.) After filing, Plaintiffs took the deposition
10 of one of Raising Cane’s managers and Raising Cane’s took Robertson’s deposition. (*Id.* at ¶62,
11 78.) Plaintiff Robertson also conducted extensive written discovery in her individual arbitration that
12 included the production of tens of thousands of pages of documents, including standard reports and
13 policies that would be common to all Raising Cane’s restaurants in California, which enabled PAGA
14 Counsel to evaluate the documentary evidence available to support or contradict misclassification
15 claims statewide. (*Id.* at ¶62.) Third, PAGA Counsel is highly experienced in similar PAGA and
16 class action wage-and-hour litigation. They have collectively litigated dozens of similar cases, and
17 have received settlement approval for dozens of similar settlements. (*See* Peterson-Fisher Decl. ¶1
18 - 25; Pardell Decl. ¶4 - ¶10.) Accordingly, the settlement reached in this case is entitled to a
19 presumption of fairness.

20 **C. Application of the *Dunk* Factors Supports Approval**

21 **1. The Strength of Plaintiffs’ Case and the Risk of Further Litigation**

22 While Plaintiffs’ believe their claims have merit, they would nevertheless face daunting
23 obstacles on the merits. The bulk of Plaintiffs’ claims rest on their contention that Raising Cane’s
24 misclassified OMs as exempt employees because Plaintiffs argue that OMs spent more than half of
25 their time performing the same duties as hourly workers. (Peterson-Fisher Decl. ¶27.) First, on the
26 merits, Raising Cane’s strenuously disputed that it misclassified OMs. Raising Cane’s presented
27 significant evidence that it believes supports their argument that OMs’ primary job duties are
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1 managerial, including documents reflecting policies and procedures setting forth the expectation
2 that OMs perform primarily exempt work, and testimony that OMs spend the majority of their time
3 managing employees and exercising discretion and independent judgment to evaluate the
4 operational needs of the restaurant. (*Id.* at ¶64.) While Plaintiffs dispute that Raising Cane's would
5 ultimately satisfy their burden of proving that OMs are exempt under either the executive or
6 administrative exemptions, to the extent Raising Cane's satisfies this burden, then Plaintiffs would
7 not be entitled to any relief whatsoever (aside from potentially the expense reimbursement claim).

8 With respect to the expense reimbursement claim, Raising Cane's disputes that OMs actually
9 incurred any reasonable and necessary business expenses to carry out their jobs. And, to the extent
10 that OMs did so, Raising Cane's argues that it did not know about those expenses because OMs
11 failed to submit them for reimbursement in contravention of Raising Cane's written policies.
12 Further, Raising Cane's argues that even if there was a violation, OMs incurred these expenses so
13 rarely that Plaintiffs' damages figure, which contemplates a violation during each pay period, is
14 inflated. While Plaintiffs dispute each of Raising Cane's defenses, Plaintiffs recognize that they
15 face risk in light of these defenses. (*Id.* at ¶65.)

16 Additionally, this Court has not yet ruled on Raising Cane's pending motion to stay the PAGA
17 action pending the outcome of the *Robertson* and/or *Douglas* arbitrations. If the Court ruled in
18 Defendants' favor, the PAGA claims would be contingent upon the results of the Plaintiffs'
19 respective arbitrations. The Parties engaged in significant discovery in the *Robertson* arbitration
20 and were on the eve of final hearing in the *Robertson* arbitration before ultimately reaching a
21 settlement. PAGA Counsel believes there were significant risks on the merits of the individual
22 arbitrations, including because Raising Cane's could produce witnesses at arbitration hearings that
23 were not deposed. And, if Plaintiffs did not prevail in their arbitrations, the PAGA matter could be
24 dismissed entirely on the grounds that they were not aggrieved and therefore lacked standing. (*Id.*
25 at ¶66.)

26 From a procedural standpoint, if the Court granted a stay of the PAGA action, it would create
27 considerable expense, complexity, and delay. Plaintiffs would be required to arbitrate, to
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1 completion, multiple separate arbitration actions with separate arbitrators, increasing the likelihood
2 of inconsistent rulings. Moreover, advancing multiple separate arbitrations would likely require
3 many years of protracted arbitration, requiring the Parties to incur significant expense, before
4 Plaintiffs could finally return to Court to litigate the PAGA Action. Such a delay would likely lower
5 the quality of available testimonial evidence. Because of the critical role of witness testimony in this
6 case, Raising Cane's duty to preserve documents would not mitigate the prejudice to Plaintiffs or
7 the State of California. (*Id.* at ¶67.)

8 **2. The Amount Offered in Settlement Relative to Defendants' Exposure.**

9 A comparison of the settlement amount to Defendants' exposure demonstrates that \$240,000
10 is reasonable. Plaintiffs' Counsel calculated that the total PAGA exposure was \$7,310,512.34
11 assuming success and maximum penalties on all claims. (Peterson-Fisher Decl. ¶59.) However,
12 this figure is highly unrealistic for several reasons. (*Id.* at ¶68.) To reach the full amount Plaintiffs
13 would ultimately seek at trial, Plaintiffs would need to: (i) prevail on the merits; (ii) prove that
14 violations occurred as often as claimed and across all Raising Cane's restaurants in California; and
15 (iii) win on both the argument that penalty stacking is available under PAGA and their contention
16 that Defendants are liable for penalties at the subsequent violation rate. (*See Amaral v. Cintas Corp.*
17 *No. 2*, 163 Cal.App.4th 1157, 1209 (2008) [PAGA allows "twice the rate" of penalties after notice
18 of an initial violation]). The California Supreme Court has not expressly addressed the availability
19 of stacked penalties under "Old" PAGA, so the Court might not find stacking PAGA penalties
20 permissible. Moreover, the Court could follow *Amaral v. Cintas Corp.* and decline to award any
21 penalties at the subsequent violation rate because Raising Cane's has not previously been found by
22 a Court or the Labor Commissioner to have violated the various Labor Code provisions at issue.
23 Furthermore, Defendants could argue that Labor Code § 203 penalties are not available without a
24 finding that the violation was willful, Labor Code § 226(e)(1) penalties require the violation to be
25 knowing and intentional, and Labor Code § 226.3 penalties should not be awarded when a mistake
26 was "inadvertent." Defendants could argue against the imposition of these penalties on the basis
27 that they believed in good-faith that Plaintiffs were spending the bulk of their time doing managerial
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1 work and were properly classified as exempt. Disproving this position would require significantly
2 more fact-based inquiries into the circumstances of Aggrieved Employees' work environment,
3 raising again the specter of inconsistent testimony. If the Court declined to allow stacking and did
4 not award subsequent violation penalties, the total PAGA penalties would be only \$863,200.

5 Moreover, even if Plaintiffs prevailed on the merits, the Court could exercise its discretion
6 under Labor Code § 2699(e)(2) to further reduce any PAGA award. (*See, e.g., Thurman v. Bayshore*
7 *Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135-36 [reducing PAGA penalties by 30
8 percent]; *Ghrdilyan, et al. v. RJ Financial* (Apr. 23, 2012) Los Angeles County Superior Court, No.
9 BC430633 [94% reduction in PAGA penalties from \$5,433,000 to \$325,000]; *Fleming v. Covidien*
10 *Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 [reducing \$2.8 million penalty to \$500,000];
11 *Parr v. Golden State Overnight Delivery Serv., Inc.* (Alameda Sup. Ct. July 10, 2014) No. RG12-
12 618103 [reducing PAGA penalties from \$5,845,250 to \$350,835]; *In re Taco Bell Wage and Hour*
13 *Actions* (E.D. Cal. April 8, 2016) 2016 U.S. Dist. LEXIS 48555 [awarding no PAGA penalties
14 notwithstanding a jury verdict finding employer liable for break violations].) (*Id.* at ¶69.)
15 Defendants could also argue that because of their good-faith belief, the Court should exercise its
16 discretion to reduce any penalty award because subjecting them to the full penalty would be unjust.
17 Labor Code § 2699(e)(2), *Amaral*, 163 Cal.App.4th at 1213.

18 Given the risks of Plaintiffs prevailing on the merits of not only their PAGA claims, but the
19 merits of the underlying arbitrations, the risk Plaintiffs face in obtaining stacked penalties, the risk
20 that Plaintiffs would be unable to obtain penalties for all violations alleged, and the risk that the
21 Court would exercise its discretion to substantially reduce the total amount of civil penalties on the
22 basis that awarded such significant penalties would be unjust, arbitrary, oppressive, or confiscatory,
23 the total amount penalties that Defendants would ultimately likely be liable for would be a small
24 percentage of the maximum theoretical recovery. The \$240,000 settlement is also reasonable
25 because it means that the gross per-pay-period recovery is about \$27.80, which is a favorable result
26 in a PAGA action. The result here is particularly fair because no Aggrieved Employee is releasing
27 their own Labor Code claims, and they may still pursue such claims if they so choose. (*Id.* at ¶70 -
28

72.)

3. Plaintiffs' Counsel are Experienced and Based on Their Extensive Investigation, Believe the Settlement is Reasonable.

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” (*In re Pacific Enterprises Securities Litigation I* (9th Cir. 1995) 47 F.3d 373, 378.) Plaintiffs are represented by competent and experienced counsel with extensive wage-and-hour PAGA and class action litigation experience. (See Peterson-Fisher Decl. ¶1 - ¶25; Pardell Decl. ¶4 - ¶10.) Counsel performed a substantial amount of work, and drew upon extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs’ case. (Peterson-Fisher Decl. ¶61; Pardell Decl. ¶6.) Given Defendants’ potential defenses to the violations at issue, and the risks and expense of continued litigation, Plaintiffs’ Counsel believe that the PAGA settlement is fair and reasonable. (Peterson-Fisher Decl. ¶70 - ¶72.)

VI. THE ATTORNEYS’ FEES AND COSTS ARE FAIR AND REASONABLE

A. Plaintiffs’ Counsel are Entitled to Fees Under the Common Fund Doctrine.

A prevailing PAGA plaintiff is entitled to recover reasonable attorneys’ fees and costs. (See Labor Code § 2699(g)(1) [“Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.”].) Reasonable attorneys’ fees and costs are typically awarded under the common fund doctrine in a *qui tam* action such as this one, where the litigation creates a common fund of money in a specific amount for the benefit of others. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382 [“A PAGA representative action is therefore a type of *qui tam* action.”]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 [“[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.”].)

In 2016, the Supreme Court reaffirmed use of the common fund approach. (*Lafitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 506 [“We join the overwhelming majority of . . . courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members . . . the court may determine the amount of a reasonable fee by choosing an appropriate

percentage of the fund created.”].) Fee awards typically range from 20% to 50% of the common fund, with awards of 33.33% being the most typical. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n. 11 [“Empirical studies show that ... fee awards in class actions average around one-third of the recovery.” (citation omitted)]; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 n.13 [same].)

Here, Plaintiffs’ Counsel’s fee request of \$80,000, or one-third of the common fund, is fair and reasonable. The result achieved in this case—a \$240,000 settlement—is a strong recovery for the LWDA and Aggrieved Employees in the face of heavily disputed claims. The litigation here was extremely risky: Counsel took this case on contingency, working about 1,350 hours since mid-2023 without payment, and advancing approximately \$17,000 in costs without any guarantee of reimbursement. (Peterson-Fisher Decl. ¶77; *In re Heritage Bond Litig.* (C.D. Cal. June 10, 2005) 2005 WL 1594403, at *21 [“Courts consistently recognize that the risk of non-payment or reimbursement of expenses is a factor in determining the appropriateness of counsel’s fee award.”].) Plaintiffs’ Counsel undertook this representation to the exclusion of other paying work. (Peterson-Fisher Decl. ¶90.) Indeed, Plaintiffs’ PAGA Counsel has extensively litigated this case, both in advancing this PAGA Action and in advancing corresponding arbitrations that have a direct impact on the underlying merits and viability of the PAGA Action.

Specifically, PAGA Counsel: (i) conducted extensive pre-filing investigation and legal research regarding the ultimate viability of the claims; (ii) prepared and filed the LWDA notices and three separate complaints; (iii) opposed Raising Cane’s multiple motions to compel arbitration and/or stay proceedings; (iv) opposed Raising Cane’s demurrer; (v) propounded and responded to written discovery regarding the merits of the case, the corresponding arbitrations, and litigated several discovery disputes in arbitration; (vi) reviewed and analyzed tens of thousands of pages of documents that were produced in those arbitrations that were directly relevant to the PAGA Action; (vii) prepared for and travelled to San Diego to defend the deposition of Robertson; (viii) prepared for and took the deposition of Raising Cane’s key fact witness; (ix) prepared for and appeared before the Court for: (a) four pro hac vice hearings, (b) three case management conferences, and (c) hearings on the

1 following motions: (1) Robertson’s motion for leave to file an amended complaint, (2) Robertson’s
2 motion for leave to file a second amended complaint, (3) Raising Cane’s motion to compel arbitration,
3 (4) Raising Cane’s motion for a demurrer to Plaintiffs’ second amended complaint, and (5) Raising
4 Cane’s motion for a stay of proceedings; (x) prepared for and attended an in-person mediation; (xi)
5 engaged in extensive negotiations with the assistance of the mediator post-mediation to reach an
6 agreement in principle; (xii) negotiated the Agreement; and (xiii) prepared this motion. (Peterson-
7 Fisher Decl. ¶79.) These factors support the requested fee award in this case. Plaintiffs’ Counsel
8 have disclosed their fee arrangements to the clients, and their fee splits are confirmed in their
9 declarations. (Peterson-Fisher Decl. ¶80; Pardell Decl. ¶15.)

10 **B. The Reasonableness of the Fee Award is Confirmed by a Lodestar Cross-Check**

11 The Court may also confirm the reasonableness of the requested fees through comparison to
12 the lodestar amount. *Laffitte, supra*, 1 Cal.5th at 504 [“A lodestar cross-check . . . provides a
13 mechanism for bringing an objective measure of the work performed into the calculation of a
14 reasonable attorney fee.”].) The requested fees of \$80,000 represent a fraction of Plaintiffs’ Counsel’s
15 lodestar of \$1,053,730.70. (Peterson-Fisher Decl. ¶81, 83). Plaintiffs’ Counsel
16 have devoted about 1,350 hours to this litigation. (Peterson-Fisher Decl. ¶83; Pardell Decl. ¶15).
17 Given the numerous litigation tasks required and the results obtained, the hours of work performed
18 by PAGA Counsel (which have been reduced in the exercise of billing judgment) are reasonable.

19 The rates used in calculating the lodestar are likewise reasonable. The lodestar should be
20 calculated using hourly rates that are “the prevailing market rates in the relevant community.” (*Blum*
21 *v. Stenson* (1984) 465 U.S. 886, 895.) Courts typically apply each attorney’s current rates for all
22 hours of work regardless of when performed to account for the delay in payment resulting from the
23 years it took to litigate the case. (*Missouri v. Jenkins by Agyei* (1989) 491 U.S. 274, 283.) Here,
24 Counsel’s experience, reputation, and ability justify the rates charged. (Peterson-Fisher Decl. ¶84;
25 Pardell Decl. ¶13, ¶14.) Further, these rates are commensurate with the rates of attorneys with
26 comparable skill and experience, and courts have historically approved Counsel’s hourly rates.
27 (Peterson-Fisher Decl. ¶85; Pardell Decl. ¶17.)

1 In addition to fees, Plaintiffs respectfully request that the Court approve Plaintiffs' Counsel's
2 costs of \$17,166.73 and settlement administration costs up to \$7,000.00. These costs are well-
3 documented and were reasonably incurred. (Peterson-Fisher Decl. Exh. F [cost report]; Pardell Decl.
4 ¶18.)

5 **VII. CONCLUSION**

6 For all the foregoing reasons, Plaintiffs respectfully request that the Court approve the
7 Settlement and enter judgment consistent with the Settlement's terms. Plaintiffs have submitted a
8 proposed order and judgment granting approval of the PAGA settlement.

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11 Dated: June 27, 2025

Respectfully submitted,
KATZ BANKS KUMIN LLP

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15 By: _____
16 Rebecca Peterson-Fisher
17 Attorney for Plaintiffs
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