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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SACRAMENTO**

11 ROSE WATSON, as an aggrieved employee
pursuant to the Private Attorneys General Act
12 (“PAGA”), on behalf of the State of California
and other non-party Aggrieved Employees,

13 Plaintiff,

14 vs.

15 PRESSED JUICERY, INC., a Delaware
16 corporation; and DOES 1 through 10, inclusive,

17 Defendants.
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Case No. 23CV011127

Assigned to the Hon. Jill H. Talley

RESERVATION NO. A-11127-003

**NOTICE OF MOTION AND MOTION FOR
COURT APPROVAL OF THE PARTIES’
PAGA SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

Date: September 6, 2024

Time: 9:00 a.m.

Place: Department 23

Complaint Filed: November 6, 2023

Trial Date: None Set

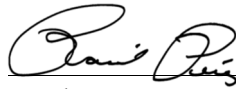
1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 6, 2024, at 9:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department 23 of the above-captioned court, located at 720 9th Street
4 Sacramento, California 95814, the Honorable Jill H. Talley presiding, Plaintiff Rose Watson will, and
5 hereby does, move this Court for entry of an order and judgment approving the Parties' PAGA
6 settlement pursuant to Labor Code section 2699(l)(2).

7 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
8 Points and Authorities in Support of Motion for Court approval of the PAGA Settlement; (3) the
9 Declaration of Raul Perez, which attaches the PAGA Settlement Agreement; (4) the Declaration of Rose
10 Watson; (5) the [Proposed] Order and Judgment Approving the PAGA Settlement Agreement; (6) the
11 records, pleadings, and papers filed in this action; and (7) upon such other documentary and oral
12 evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.
13

14 Dated: June 21, 2024

Respectfully submitted,

15 By:  _____

16 Raul Perez
17 Orlando Villalba
18 Helga Hakimi
19 Joey Parsons
20 **CAPSTONE LAW APC**

21 Attorney for Plaintiff Rose Watson
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code. §§ 2698, *et seq.*, “PAGA”), Plaintiff Rose Watson (“Plaintiff”) seeks Court approval of the settlement of her claim for PAGA civil penalties with Defendant Pressed Juicery, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

The PAGA provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). In *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the Court of Appeal explained that similar to class action settlements, the trial court should satisfy itself that the settlement is “fair, adequate, and reasonable” in view of PAGA’s “purposes and policies.” The statute does not, however, require the two-step process utilized in class actions. *See Salazar v. Sysco Central Cal.*, No. 15-01758-DAD, 2017 WL 1135801, *2 (E.D. Cal. Feb. 2, 2017) (rejecting the application of class action settlement rules and procedures for PAGA settlement approval). Nothing in the PAGA changes the strong judicial preference in support of approving settlements.

The principal terms of the PAGA Settlement Agreement¹ are as follows:

- (1) A non-reversionary Gross Settlement Amount of \$700,000, which includes payments to the LWDA and Aggrieved Employees for their respective shares of the PAGA Penalties Fund, Plaintiff’s Attorneys’ Fees and Costs, Plaintiff’s Service Award, and Settlement Administration Costs.
- (2) The creation of a PAGA Penalties Fund of approximately \$432,014.66, which will be paid to aggrieved employees and the LWDA in full satisfaction of all Settled Claims (“PAGA Penalties Fund”).
 - (a) Seventy-five percent of the PAGA Penalties Fund, or approximately \$324,011.00, will be paid to the LWDA pursuant to Labor Code section 2699(i).
 - (b) Twenty-five percent of the PAGA Penalties Fund, or approximately

¹ Unless indicated otherwise, all capitalized terms used herein have the same meaning as those defined by the PAGA Settlement Agreement, which is attached as Exhibit 1 to the Declaration of Raul Perez filed in conjunction with this motion.

\$108,003.66, will be paid to all persons who were employed by Defendant in California as non-exempt, hourly-paid employees at any time during the Settlement Period (“Aggrieved Employees”). There are approximately 1,800 Aggrieved Employees.

(3) A Service Award of \$10,000 to Plaintiff as consideration for her service on behalf of the State of California and Aggrieved Employees, and for a general release of all claims she may have against Defendant arising out of her employment.

(4) Reasonable attorneys’ fees and costs under Labor Code section 2699(g) for Plaintiff’s Counsel’s successful prosecution and resolution of this action. Plaintiff requests \$233,333 in attorneys’ fees and \$13,652.34 in costs for her counsel, Capstone Law APC (“Plaintiff’s Counsel”).

(5) Settlement Administration Costs of approximately \$11,000 to CPT Group, Inc.

The civil penalties secured by the settlement represent a fair compromise of Plaintiff’s PAGA claim in view of the risks of continued litigation and the hotly contested issues of law and fact relating to PAGA claims. The Settlement accomplishes PAGA’s objectives by imposing sufficient civil penalties “to punish and deter” Defendant from committing any of the Labor Code violations alleged, while also ensuring that the penalties are not “unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 384 (2014).

For these reasons, Plaintiff respectfully requests that the Court approve the Settlement and enter the proposed Order Approving the PAGA Settlement Agreement and the proposed Judgment.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

Defendant operates approximately over 60 plant-based juice and food retail store locations in California. Defendant employed Plaintiff as an hourly paid, non-exempt “Shift Leader” in Folsom, California from approximately August 2022 to May 2023. (Declaration of Rose Watson ¶ 2.) Plaintiff’s job duties included processing customer transactions, conducting inventory audits, and ordering ingredients and supplies, handling store deposits, and cleaning and maintaining equipment. (*Id.*)

Plaintiff filed this PAGA action against Defendant on November 6, 2023. (Declaration of Raul

1 Perez [“Perez Decl.”] ¶ 2.) On January 16, 2024, the court entered the Parties’ Stipulation to Submit
2 Plaintiff’s Individual PAGA claims to Arbitration and Stay Representative PAGA Claims and
3 Representative PAGA Action based on an arbitration agreement which Plaintiff signed upon the
4 commencement of her employment with Defendant. (*Id.*)

5 Following the exchange of informal discovery, including the production of Defendant’s
6 California labor policies and procedures manuals, and a sample of Aggrieved Employees’ time records,
7 the Parties participated in a mediation with Louis Marlin, Esq., an experienced mediator of wage and
8 hour actions, on May 1, 2024. (Perez Decl. ¶ 3.) At all times, the Parties’ negotiations were adversarial
9 and non-collusive, and Mr. Marlin helped to manage the Parties’ expectations and provided a useful,
10 neutral analysis of the issues and risks to both sides. (*Id.*)

11 With Mr. Marlin’s guidance, the Parties were eventually able to negotiate a complete settlement
12 of Plaintiff’s claims. (Perez Decl. ¶ 4.) The terms of the settlement are now set forth in complete and final
13 form in the PAGA Settlement Agreement. (*Id.*, Ex. 1.) The Settlement therefore constitutes a fair,
14 adequate, and reasonable compromise of the claims at issue. (*Id.* at ¶ 5.)

15 **B. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiff’s Claims**

16 **1. Terms of the Settlement and Distribution of PAGA Penalties**

17 The Settlement Agreement provides that Defendant will pay a total of \$700,000 to settle this
18 Action. (Settlement Agreement ¶ 11.) From this amount, payments will be made: (a) to the LWDA and
19 Aggrieved Employees; (b) to Plaintiff as compensation for her service on behalf of the State, and for a
20 general release of claims arising out of her employment with Defendant; (c) to Plaintiff’s Counsel for
21 their attorneys’ fees and litigation costs; and (d) and to the Settlement Administrator (CPT) for settlement
22 administration costs. (*Id.* at ¶¶ 12-16.)

23 The resulting balance will be distributed to the LWDA and Aggrieved Employees: the LWDA
24 will receive approximately \$324,011.00, and Aggrieved Employees will receive approximately
25 \$108,003.66. The Aggrieved Employees encompassed by the proposed Settlement are all persons who
26 were employed by Defendant in California as non-exempt, hourly-paid employees at any time during the
27 Settlement Period. (*Id.* at ¶ 2.) There are approximately 1,800 Aggrieved Employees.
28

1 **2. Allocations to the LWDA and Aggrieved Employees**

2 Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual
3 allocations will be calculated on a pro-rata basis using the number of pay periods worked by each
4 employee. Defendant will provide the total number of pay periods worked by each Aggrieved Employee
5 and the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.
6 (Settlement Agreement ¶ 12.) The Settlement Administrator will calculate each Aggrieved Employee's
7 payment using the proportional number of pay periods during which the employee worked. (*Id.*) Thus,
8 the Settlement Administrator will perform the following calculation to calculate individual payments:
9 Settlement Payment = (25% of PAGA Penalties Fund) × (pay periods worked by individual Aggrieved
10 Employee during the Settlement Period ÷ total pay periods worked by all Aggrieved Employees during
11 the Settlement Period). (*Id.*)

12 This is a fair and equitable means of allocating the penalties. Aggrieved Employees who worked
13 for a longer duration during the Settlement Period will receive proportionally larger payments than those
14 employees who worked for shorter durations.

15 **3. The Settled PAGA Claims**

16 Upon entry of the Order and Judgment, the LWDA and Plaintiff, on behalf of herself and the
17 Aggrieved Employees to the fullest extent allowed by law, will be deemed to have fully, finally, and
18 forever released, relinquished, and discharged Defendant from all claims for PAGA civil penalties
19 incurred during the Settlement Period under the California Labor Code, Wage Orders, regulations,
20 and/or other provisions of law alleged to have been violated in the Action, and any and all claims that
21 could have been alleged in the Action to have been violated during the Settlement Period based on the
22 facts alleged in the Action. (Settlement Agreement ¶¶ 9, 21.)

23 Additionally, Plaintiff has agreed to a broader general release of all claims of any kind against
24 Defendant. (*Id.* at ¶ 14.)

25 **III. ARGUMENT**

26 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and**
27 **Fulfill PAGA's Underlying Purpose To Benefit the Public**

28 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other

1 current or former employees to recover civil penalties for Labor Code violations. *Iskanian*, 59 Cal. 4th at
2 380. Seventy-five percent of any penalties recovered go to the LWDA, leaving the remaining twenty-
3 five percent for aggrieved employees. *Id.* PAGA is intended “to augment the limited enforcement
4 capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the
5 Agency.” *Id.* at 383. A judgment in a PAGA action binds all those, including non-party aggrieved
6 employees, who would be bound by a judgment in an action brought by the government. *Id.* at 381.

7 A superior court must review and approve any PAGA settlement. Cal. Lab. Code § 2699(l)(2).
8 The court’s review “ensur[es] that any negotiated resolution is fair to those affected.” *Williams v.*
9 *Superior Court*, 3 Cal. 5th 531, 549 (2017). The Court’s evaluation of the settlement must “determine
10 whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
11 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz, Inc.*, 72 Cal. App.
12 5th at 77.

13 The Court’s evaluation of the settlement should therefore not focus on “restitution”—the average
14 recovery per aggrieved employee, as in a class action settlement, but rather take into account PAGA’s
15 statutory purpose in deterring Labor Code violations through the imposition of civil penalties, with
16 special attention on whether the relief is “genuine and meaningful.” *Salazar*, 2017 WL 1135801 at *2.

17 **B. The Settlement Is Reasonable Given the Risks of Further Litigation**

18 In assessing whether the amount of civil penalties is genuine and meaningful, the Court may
19 balance the amount in penalties against the risks of further litigation. Here, Plaintiff obtained a
20 meaningful amount of civil penalties despite facing hurdles had the litigation continued. Based on
21 information and evidence produced by Defendant during discovery, Plaintiff’s Counsel determined that
22 Aggrieved Employees worked during a total of approximately 41,000 pay periods during the PAGA
23 statute of limitations period. Statutory penalties would be calculated according to Labor Code 2699(f)(2):
24 If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is
25 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
26 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

27 However, a number of courts have found that the “subsequent” penalty under PAGA applies
28 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.

1 *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) (“the increased \$200 civil penalty
2 for ‘subsequent violation[s]’ does not apply unless [Plaintiff] presents evidence that the Labor
3 Commission or a court notified [Defendant] that it was in violation of the Labor Code.”); *Bernstein v.*
4 *Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil
5 penalties” because the defendant was not given notice by the Labor Commissioner when the
6 “subsequent” violations occurred).²

7 Under this line of cases, Defendant’s exposure would be estimated at \$4,100,000; i.e., an
8 aggregate total of 41,000 pay periods worked by all Aggrieved Employees during the Settlement Period
9 with potential violations × \$100 penalty per violation. After calculating what Plaintiff contends would be
10 Defendant’s maximum exposure under PAGA, Plaintiff then discounted that exposure for settlement
11 purposes to account for the risks of continued litigation, including: (a) the strength of Defendant’s
12 defenses on the merits; (b) the risk of losing at trial; (c) the risk that the Court would exercise its
13 discretion under PAGA to significantly reduce the maximum civil penalties available by statute;³ (d) the
14 chances of a favorable verdict being reversed on appeal; and (e) the difficulties attendant to collecting on
15 a judgment. Taking into account the above contingencies, Plaintiff determined that a \$700,000 a
16 settlement was warranted by the circumstances of the case.

17 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
18 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
19 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
20

21 ² *See also Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5
22 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or
23 commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered
24 evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s
25 heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in
26 controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014
27 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice
28 that they are committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine
Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal.
Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
violations unless and until a court or commissioner notifies the employer that it is in violation of the
Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

³ *See* Lab. Code § 2699(e) (“In any action by an aggrieved employee seeking recovery of a civil
penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).

1 reducing PAGA penalties, courts have considered issues including whether the employees suffered
2 actual injury from the violations, whether the defendant was aware of the violations, and the employer's
3 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
4 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
5 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
6 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

7 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
8 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
9 **or 0.21% of the calculated maximum**—and stated that this reduction was warranted because (a) the
10 Court did not believe it was appropriate to impose multiple penalties per pay period in which a violation
11 occurred and (b) imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on
12 Starbucks’s “good faith attempts” to comply with meal period obligations and because the court found
13 the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517-18. The Court of Appeal affirmed the
14 lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had
15 been applied here, Plaintiff would have recovered only approximately \$8,610.00 ($\$4,100,000 \times 0.0021$
16 reduction).⁴

17 Considering the issues, defenses, and the risks, a \$700,000 settlement for a limited release of
18 PAGA penalties—no individual wage and hour claims will be extinguished by the Settlement—is a fair
19 and just result and furthers PAGA’s objectives, and is not “unjust, arbitrary, and oppressive.”
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22 ⁴ Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
23 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
24 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
25 under specified PAGA claim where the employer produced evidence that it took its obligations
26 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
27 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
28 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*
Perfect Day Franchise, Inc., No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
Logistics, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
(reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
other PAGA claims).

1 **C. The Court Should Award the Requested Attorneys' Fees in the Amount of**
2 **Approximately One-Third of the Gross Settlement Fund**

3 For the reasons discussed in detail below, an award of attorneys' fees in the amount of
4 approximately one-third of the gross settlement fund is fair and reasonable, and in line with what other
5 California courts, both state and federal, have awarded in settlements of similar litigation.

6 The PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses,
7 and costs. Section 2699(g)(1) of the California Labor Code provides that "[a]ny employee who prevails
8 in any action shall be entitled to an award of reasonable attorney's fees and costs." In a *qui tam* action,
9 reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as
10 here, the litigation creates a common fund of money in a specific amount for the benefit of others. PAGA
11 "is a type of *qui tam* action." *See Iskanian*, 59 Cal. 4th at 382. "A *qui tam* action 'is a type of private
12 attorney general lawsuit' [citation], in which 'the *qui tam* plaintiff stands in the shoes of the state or
13 political subdivision [citation].'" *People ex rel. Strathmann v. Acacia Research Corp.*, 210 Cal. App. 4th
14 487, 501 (2012).

15 A PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as
16 the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code
17 violations and recover civil penalties that otherwise would have been assessed and collected by the
18 LWDA. *See Iskanian*, 59 Cal. 4th at 382. Indeed, the majority of the civil penalties recovered in a PAGA
19 action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g., 75% paid to the
20 state; 25% paid to the aggrieved employees). *See* Cal. Lab. Code § 2699(i). Where, as here, a common
21 fund is created in a *qui tam* action by the successful litigation of a plaintiff and her attorneys, the
22 plaintiff's attorneys are entitled to recover their fees from the common fund:

23 Those benefiting from the recovery of the fund, in this case some depositors and eventually
24 the People of the State of California, must bear their share of the cost of litigation. Fees for
25 taxpayers' attorneys will be deducted from the judgment, and each claimant's share
26 reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery
of attorney fees, it must be modified to confine the award of fees to the common fund
theory.

27 *Bank of America v. Cory*, 164 Cal. App. 3d 66, 91 (1985) (authorizing common fund fees in a *qui tam*
28 taxpayer suit against certain banks).

1 Likewise, through the successful efforts of Plaintiff and her attorneys, a common fund was
2 created in the amount of \$700,000 for the benefit of the employees and the State of California. Thus,
3 these beneficiaries must bear their share of the costs and attorneys' fees, to be deducted from the gross
4 settlement fund under the common fund theory. *Id.* Such fees are deducted as a percentage of the
5 settlement amount. *See, e.g., Boeing Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican*
6 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe*
7 *Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th
8 Cir. 2003).

9 The California Supreme Court recently upheld the use of the common fund theory of recovery
10 for attorneys' fees in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (2016). In *Laffitte*, the
11 settlement created a common fund of \$19 million. The Court approved the award of attorneys' fees in
12 the amount of one third of the gross \$19 million settlement (e.g., an award of \$6.33 million) under the
13 common fund theory. *Id.* By awarding counsel a percentage of the total recovery, rather than fees based
14 on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the
15 best results possible. *See Laffitte*, 1 Cal. 5th at 492-494. Indeed, "the percentage method is generally
16 favored in common fund cases because it allows courts to award fees from the fund in a manner that
17 rewards counsel for success and penalizes it for failure. *Id.* at 493 (quoting *In re Rite Aid Corp. Securities*
18 *Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (internal quotations omitted).

19 As a California appellate court very recently confirmed, "fee awards in class actions average
20 around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is
21 used." *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v.*
22 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)).

23 Consistent with that observation, California state and federal courts routinely award attorneys'
24 fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App.
25 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range of, awards
26 in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("Empirical studies show that,
27 regardless whether the percentage method or the lodestar method is used, fee awards in class actions
28 average around one-third of the recovery."); Eisenberg & Miller, *Attorney Fees in Class Action*

1 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35
2 (independent studies of class action litigation nationwide conclude that fees representing one-third of the
3 total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v.*
4 *Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte*, 231 Cal. App.
5 4th at 506.

6 A one-third common fund⁵ attorneys' fee award is also consistent with what courts have
7 awarded in other representative action cases. The following list shows PAGA actions where attorneys'
8 fees were awarded on a common fund basis:

- 9 • *Cruz v. Wal-Mart Associates, Inc.*, Los Angeles Superior Court, No. 18STCV03128 (May 28,
10 2021) (approving fee award from PAGA-only settlement of \$5 million against a common fund
11 of \$15 million);
- 12 • *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court, Case No. BC451823 (April 20,
13 2017) (approving fee award from PAGA-only settlement of \$1.375 million against a common
14 fund of \$3.2 million (42%));
- 15 • *Garcia v. Macy's*, San Bernardino County Superior Court, Case No. CIVDS1516007 (Sept. 13,
16 2017) (33.33% fee awarded on \$12,500,000 settlement of a PAGA only case);
- 17 • *Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-CJC
(July 14, 2016) (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);
- 18 • *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-
19 OC-CXC (June 15, 2017) (33.33% fee awarded on a PAGA only case);
- 20 • *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137
(May 23, 2016) (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).

21 An award of fees from the gross settlement amount under the common fund doctrine prevents
22 unjust enrichment of those who benefit from the common fund created through the successful efforts of
23 plaintiff's counsel and furthers the important goal of attracting competent counsel to handle
24 representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal. 5th at 503. In affirming the use

25 ⁵ Court have also approved fees in amounts greater than one-third of the common fund. See
26 *Charles v. JPMorgan Chase Bank*, No. CGC-14-538933 (San Francisco County Superior Court June 18,
27 2019) (awarding plaintiffs \$2.88 million in attorneys' fees on PAGA penalties totaling \$2.7 million);
28 *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los Angeles County Superior Court Jan. 3,
2019) (awarding plaintiff \$750,000 in attorneys' fees and costs on general PAGA penalties totaling
\$585,000); *Salas v. Hallmark Aviation Services LP*, No. BC586585 (Los Angeles County Superior
Court February 17, 2017) (awarding plaintiff \$600,000 in attorneys' fees on PAGA penalties totaling
\$605,000); *Monroe v. Continental Design Co., Inc.*, No. RG16817667 (Alameda County Superior Court
June 21, 2017) (awarding plaintiff \$110,000 in fees on PAGA penalties totaling \$90,000); *Ramirez v.*
Benito Valley Farms, LLC, No. 16-CV-04708-LHK, 2017 WL 3670794, at *6 (N.D. Cal. Aug. 25,
2017) (awarding attorneys' fees under the lodestar method with no regard to the proportion of the fees to
civil penalties).

1 of the common fund doctrine in California, the California Supreme Court summarized the benefits of the
2 percentage method of recovery stating: “The recognized advantages of the percentage method—
3 including relative ease of calculation, alignment of incentives between counsel and the class, a better
4 approximation of market conditions in a contingency case, and the encouragement it provides counsel to
5 seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the
6 percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

7 For all of these reasons, a common fund fee award in the amount of \$233,333 is fair and
8 reasonable.

9 **D. A Lodestar Cross-Check Confirms that the Requested Attorneys’ Fees Are Fair**
10 **and Reasonable**

11 The trial court may use an abbreviated lodestar “cross-check” for common fund awards if the
12 court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to
13 displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly
14 instructed that “the lodestar calculation, when used in this manner, does not override the trial court’s
15 primary determination of the fee as a percentage of the common fund and thus does not impose an
16 absolute maximum or minimum on the fee award.” *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in
17 *Laffitte II* emphasized that only where the “multiplier calculated by means of a lodestar cross-check is
18 **extraordinarily high or low**” should the court “consider whether the percentage should be adjusted so
19 as to bring the imputed multiplier within a justifiable range.” *Id.* (emphasis added). Accordingly, when
20 the cross-check multiplier is within a normal range, the lodestar-cross check does not provide a basis for
21 a court to reduce the fee award. Furthermore, in conducting a lodestar cross-check, the court is not
22 “required to closely scrutinize each claimed attorney-hour.” *Laffitte II*, 1 Cal. 5th at 505. An evaluation
23 may be done by reviewing “counsel declarations summarizing overall time spent.” *Id.*

24 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
25 multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re*
26 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested
27 rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region.
28 *PLCM Group v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community

1 for comparable legal services even though party used in-house counsel). Here, Plaintiff's Counsel's
2 hourly rates are comparable to, or less than, those charged by other representative action plaintiffs'
3 counsel and the firms defending PAGA actions, and have been approved by numerous federal and state
4 courts. (Perez Decl. ¶¶ 20-23, Ex. 2.)

5 Likewise, the total attorney hours expended on this action are reasonable and in line with
6 comparable cases. In determining the reasonableness of the hours expended, "the court should defer to
7 the winning lawyer's professional judgment as to how much time he was required to spend on the case;
8 after all, he won, and might not have, had he been more of a slacker." *Kerkeles v. City of San Jose*, 243
9 Cal. App. 4th 88, 104 (2015) (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir.
10 2008)). Plaintiff's Counsel billed a total of approximately 187.9 hours. (Perez Decl. ¶ 20.)

11 Multiplying the total hours billed by Plaintiff's Counsel to the litigation by their reasonable
12 hourly rates yields a lodestar of \$111,197.50. (Perez Decl. ¶ 20.) Applying a 2.1 multiplier to that
13 lodestar yields the requested fees. A 2.1 multiplier is not "extraordinarily high"—to the contrary, the
14 normal range for a multiplier on a lodestar cross-check "can range from 2 to 4 or even higher." *Wershba*
15 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also Vizcaino v. Microsoft Corp.*, 290
16 F.3d 1043, 1047 (9th Cir. 2002) (multipliers "ranging from one to four are frequently awarded ... when
17 the lodestar method is applied"; affirming fees where the cross-check multiplier is 3.65).

18 Courts routinely accept multipliers ranging from 2 to 4 on a lodestar cross-check. *See, e.g., Sutter*
19 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a
20 lodestar cross-check); *Chavez*, 162 Cal. App. 4th at 66 (applying a 2.5 multiplier in a consumer class
21 action); *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22,
22 2015) (approving a 2.10 multiplier on settlement of California Labor Code violations); *Dyer v. Wells*
23 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (approving attorneys' fees that resulted in
24 lodestar multiplier of 2.83); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358,
25 at *5 (N.D. Cal. Feb. 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

26 Indeed, courts following *Laffitte* have reaffirmed that a multiplier between 2 and 4 to be
27 reasonable and not so "extraordinarily high" as to require greater judicial scrutiny. *See Spann v. J.C.*
28 *Penney Corp.*, 211 F. Supp. 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (finding that a 3.07 multiplier is

“well within the range for reasonable multipliers” under *Laffitte II*); *Beaver v. Tarsadia Hotels*, No. 11-CV-01842-GPC-KSC, 2017 WL 4310707, at *13 (S.D. Cal. Sept. 28, 2017) (“The one-third fee Class Counsel seeks reflects a multiplier of 2.89 on the lodestar which is reasonable for a complex class action case.”).

The lodestar cross-check thus confirms that Plaintiff’s fee request is fair and reasonable and should be approved.

E. The Requested Recovery In Litigation Expenses Is Reasonable

Plaintiff’s Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on other grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary costs may be claimed as part of an attorneys’ fees motion when seeking statutory fees under the Labor Code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are necessarily incurred). The following chart reflects the costs incurred by Plaintiff’s Counsel:

Cost & Expense Categories	Amount
Court Fees, Courier Fees, Filings & Service of Process	\$2,320.01
Fountain Consulting	\$2,300.00
Mediation Fees	\$9,000.00
Research Services (PACER, Westlaw, etc.)	\$32.33
Total	\$13,652.34

Because these reasonable costs were necessarily incurred during the case’s pendency, these costs are reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) (“[i]tems not mentioned in this section and items assessed upon application may be allowed or denied in the court’s discretion.”); *Hsu v. Semiconductor Sys., Inc.*, 126 Cal. App. 4th 1330, 1341 (2005) (“[W]hile it is reasonable to interpret a general contractual cost provision by reference to an established statutory definition of costs, we do not discern any legislative intent to prevent sophisticated parties from freely choosing a broader standard authorizing recovery of reasonable litigation charges and expenses.”).

1 **F. The Court Should Approve the Negotiated Service Award Payment**

2 Paragraph 14 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiff the
3 sum of \$10,000 for her service on behalf of the LWDA and Aggrieved Employees, and for a general
4 release of all claims arising out of her employment. This release covers not only the settled PAGA
5 claims but any and all claims arising out of Plaintiff's employment.

6 The additional settlement payment is justified in light of the reputational risk that Plaintiff
7 assumed by litigating claims against a former employer. *See Billingham v. Tractor Supply Co.*, 306
8 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding "personal detriment" upon testimony that future
9 employers can easily learn that a prospective employee served as a plaintiff through the internet); *see*
10 *also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at **4, 20
11 (S.D.N.Y. Oct. 28, 2011) ("[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the
12 internet and may become known to prospective employers when evaluating the person . . . Even where
13 there is not a record of actual retaliation, notoriety, or personal difficulties, [representative Plaintiffs]
14 merit recognition for assuming the risk of such for the sake of absent [parties].").

15 Employers commonly screen employee candidates to determine whether they have ever filed
16 suit, and employee candidates who might be branded "litigious" are likely to be screened out of the
17 process. In fact, an entire industry has developed for providing employers with background information
18 on employee candidates. By bringing this action against an employer, Plaintiff has assumed considerable
19 reputational risk that may impact her ability to find employment in the future. *La Fleur v. Medical*
20 *Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, *8 (C.D. Cal. June 25, 2014)
21 (awarding \$15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will harm
22 their future job prospects in the industry).

23 Second, the separate settlement payment is reasonable because Plaintiff "remained fully
24 involved and expended considerable time and energy during the course of the litigation." *See In re Toys*
25 *'R' Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted her time and effort
26 toward assisting her attorneys with the prosecution of the claims, and assisted counsel with finalizing the
27 settlement.

28 The separate payment is also appropriate because Plaintiff otherwise "will not gain any benefit

beyond that [she] would receive as an ordinary [Aggrieved Employee].” *In re Toys “R” Us FACTA Litig.*, 295 F.R.D. at 472; *Van Vranken*, 901 F. Supp. at 299 (holding that a substantial award is appropriate where a [representative’s] claim made up “only a fraction of the common fund.”). Here, absent the separate payment, Plaintiff will recover no more than other Aggrieved Employees, despite undergoing personal sacrifice in bringing this suit on behalf of the State of California and Aggrieved Employees.

Lastly, because PAGA is a “type of qui tam action,” it is appropriate for the Plaintiff to receive a modest additional payment from the settlement as a “bounty” for her special effort in vindicating the State’s interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 (“A PAGA representative action is therefore a type of qui tam action.”); *see also People ex rel. Strathmann v. Acacia Research Corp.*, 210 Cal. App. 4th 487, 500 (2012) (“The person who brings the qui tam action, called the ‘relator,’ stands in the shoes of the People of the State of California, who are deemed to be the real party in interest . . . The relator in a qui tam action under section 1871.7 does not personally recover damages but, if successful, receives [a portion] of the recovery as a bounty.”) (internal citations omitted).

Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) (“The bounty advances the public purpose and benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only means of inducing such private parties to come forward with their information.”) (internal quotations omitted). This is especially important in this context, as “the lack of government resources to enforce the Labor Code led to a legislative choice to deputize and incentivize employees uniquely positioned to detect and prosecute such violations through the PAGA.” *Iskanian*, 59 Cal. 4th at 390. Absent the incentive payment, fewer employees would be willing to step forward, and PAGA’s primary purpose—enforcement of the Labor Code—would be substantially undermined.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of Plaintiff’s PAGA claims. Having appropriately presented the materials and information necessary for approval, the Parties request that the Court approve the PAGA Settlement Agreement.

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Dated: June 21, 2024

Respectfully submitted,

By: _____

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