Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com
Cody D. Archer [CSB No. 361361]
cody@sullivanlawgroupapc.com
SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff ARACELI ALEXANDER in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ARACELI ALEXANDER, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

NUWEST GROUP HOLDINGS, LLC, a Washington Limited Liability Company; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2024-00001006-CU-OE-CTL

PLAINTIFF'S *EX PARTE* APPLICATION *RE:*

(1) *UNOPPOSED* PAGA SETTLEMENT APPROVAL, or in the alternative,

(2) ORDER SHORTENING TIME TO HEAR A MOTION FOR PAGA SETTLEMENT APPROVAL

Date: February 18, 2026
Time: 8:45 a.m.
Dept: C-69
Judge: Hon. Evan P. Kirvin

I. <u>SUMMARY OF APPLICATION</u>

This is a Labor Code §2698 *et seq.* "Wage and Hour" ("PAGA") action brought against NUWEST GROUP HOLDINGS, LLC ("Defendant" or "NGH"). As this is a "PAGA" action <u>only</u>, the Limitations Period begins on November 1, 2022. There are approximately **970** PAGA Members at issue who worked approximately **20,000 pay periods**. (Yaeckel Decl., ¶ 3; Ex. 1: § 7.)

Following the exchange of discovery, analysis of numerous sets of time and wage data, a mediation and direct settlement negotiations between the Parties, the Parties reached a proposed settlement that includes a payment of penalties to the LWDA. (Yaeckel Decl., ¶ 4.)

Based on the below figures, each PAGA Member would receive an average payment of approximately **$58.52**. This figure represents an average only, as the actual amounts paid will vary depending on the amount of workweeks employed during the PAGA period.

On **January 26, 2026**, Plaintiff's counsel gave notice of the instant Settlement to the LWDA. (Yaeckel Decl., ¶ 5.)

On **February 17, 2026**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶ 6; See Proof of Service on LWDA.) To date, Plaintiff's counsel has not received any response. *(Id.*)

Request for *Expedited* Approval

Plaintiff submits that approval on an *ex parte* basis (or alternatively an O.S.T.) is appropriate in this matter for numerous, and *separate*, reasons.

First, Mr. Sullivan (who is the primary client contact) is going on an extended medical leave, and the client asked if this matter could be finalized before that occurs. (Yaeckel decl. ¶¶ 16-19).

Second, this is an older case where the limitations period extends back more than 3.5 years. It becomes harder to notify all ex-employees given the passage of time. (*Id.*)

Finally, this request is **<u>un</u>**-opposed by any party. Based on counsel's experience, this Superior Court (including Hon. Katherine Bacal, Hon. Richard Whitney, Hon. Gregory Pollack and several other since retired Superior Court Judges) have encouraged PAGA settlement approvals on an *ex-parte* basis in such "**<u>un</u>**-opposed" cases, so as not to overburden the Court's already impacted "noticed motion" calendar. (*Id.*)

The Total Value of the proposed Settlement is **$395,000.00** which is broken down as follows:

* **$19,935.00** Costs of Litigation.
* **$10,000.00** Payment for Plaintiff's Enhancement Award
* **$6,325.71** Administration Expenses
* Sub-Total of **$227,072.62**. 75% **($170,304.47**) shall be assigned/paid to the LWDA as penalties.
* **$131,666.67** Attorneys' Fees (1/3 of total settlement value);
* The remaining 25% (**$56,768.20)** will be disbursed among all employees based on work weeks employed during the PAGA period. (Yaeckel Decl., ¶ 7.)

Given the above, the average payment to each individual employee will be approximately **$58.52**. (*Id.*) Further, there are no restrictions for any of the approximately **970** employees to file individual actions, as the settlement agreement covers PAGA claims only. (Yaeckel Decl., ¶ 8; **Exhibit 1**: "Releases of Claims" § 5.1, p. 8.)

Plaintiff's counsel is well versed in class/representative (PAGA) litigation. Counsel submits the settlement represents a fair payment to the LWDA and the employees. (Yaeckel Decl., ¶9-15).

Should the Court deem it necessary, a lodestar cross-check confirms the propriety of the requested attorneys fees. Given the actual fees incurred, in the amount of approximately **$167,447.50**, no lodestar multiplier is necessary. (Yaeckel Decl. ¶ 33).

The parties' proposed notice, to accompany the settlement checks following approval, is attached to the declaration of Eric K. Yaeckel as **Exhibit 3**. CAC Services, LLC will serve as the settlement administrator. They are experienced settlement administrators with detailed security protocols in place. (Johnson decl. ¶ 7).

Please Note: Neither Plaintiff nor her counsel have *ever* requested an "expedited approval" before this time period, and due so here only because of Mr. Sullivan's current medical condition. (Please see Yaeckel Dec., ¶ 16). For reasons "out of Plaintiff's hands," Mr. Sullivan cannot delay his treatment in order to accommodate a "regular" motion calendar.

III. DISCUSSION

The parties reached the terms of their proposed settlement agreement following the exchange of extensive information and employment records. The parties submit the proposed settlement of

PAGA penalties is fair, adequate, and reasonable.

A. THE BASIS FOR THE *EX PARTE* REQUEST

The request to expedite this matter on an *ex parte* basis is proper for several separate reasons.

The primary reason for this requests is due to the fact that Mr. Sullivan (Plaintiff's counsel who is the principal client contact) is going on an extended medical leave, and Plaintiff has specifically requested that this matter be finalized *before* that occurs, in case further involvement by Mr. Sullivan is necessary. If requested by the Court, Mr. Sullivan is willing to share additional information about his ongoing medical issues. (Yaeckel decl. ¶ 16).

Additionally, the instant *Ex Parte* request is also based on the fact that notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees may change their mailing address without filing a proper "forwarding address"). (Yaeckel Decl., ¶ 17.)

Moreover, an expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. The "fixes" provide a guarantee of future Labor Code compliance, and an immediate monetary benefit. It also allows Defendant the opportunity to move on, and focus on future business. (Yaeckel Decl., ¶ 18.)

Finally, this is request is **un**-opposed by any party. Based on counsel's experience, this Superior Court has encouraged PAGA settlement approvals on an *ex-parte* basis (in such **un**-opposed cases), so as not to overburden the Court's already impacted motion calendar. (Yaeckel Decl., ¶ 19)

The Parties submit that the Court can (and should) approve the settlement on an *Ex Parte* basis. However, if the Court is not inclined to approve the settlement via the instant *Ex Parte*, the Parties request that the Court grant an "Order Shortening Time" to hear the instant request via noticed motion.

B. *VERIFIED* FACTS, RE: SPECIFIC APPROVAL FACTORS, ARE ATTACHED

To the extent the Court wishes to fully analyze the settlement and a additional facts which support settlement approval and this(**un**-opposed) request, all said factors are set forth within **Exhibit A** to the instant *Ex Parte* request. Please see Yaeckel Dec.,¶ 47).

Dated: February 16, 2026

SULLIVAN & YAECKEL LAW GROUP, APC

Eric Yaeckel

Eric K. Yaeckel
Cody D. Archer
Attorneys for Plaintiff ARACELI ALEXANDER, in a Representative capacity only, and on behalf of other members of the general public similarly situated

EXHIBIT A

ADDITIONAL FACTORS SUPPORTING PAGA APPROVAL

I. CONTROLLING AUTHORITY

PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." (*Iskanian v. CLS Trans. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360.) "To compensate for the lack of'[a]dequate financing of essential labor law enforcement functions,' the California legislature enacted PAGA to permit aggrieved employees to act as private attorneys general to collect civil penalties for violations of the Labor Code." (*Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425, 430.)

Recently the Court of Appeal has given guidance to trial courts in reviewing a PAGA settlement:

> We therefore hold that **a trial court should evaluate a PAGA settlement to determine whether it 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**. (*See Williams , supra* , 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 (PAGA "sought to remediate present violations and deter future ones"); *Arias , supra* , 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 (the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws).)

(*Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 77.)

Prior to *Moniz*, other Courts have followed the rationale in *O'Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 132-35, which states a court is permitted to approve a PAGA settlement if it is "fair and adequate in view of the purposes and policies of the statute." (*Id.*)

A court may award a lesser amount than the maximum civil penalty amount 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. (Lab. Code, § 2699(e)(2); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214; See *e.g.*, *Fleming v. Covidien Inc*. (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 [reducing PAGA penalties by 82%].)

In *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* ("*Flores*"), the court was asked to approve a PAGA settlement (the "Settlement"). (*Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F. Supp. 3d 1074, 1075–76.) In deciding whether the court should approve the Settlement, the court looked to the California legislature, the California Courts of Appeal, the California Supreme Court, and the California Labor & Workforce Development Agency for a definitive answer as to what precedent the court should follow in either approving or denying the settlement. (*Id.*) The court was not able to find a definitive answer. (*Id.*) As such, the court followed the rationale in *O'Connor v. Uber Techs. Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 132-35, which states a court is permitted to approve a PAGA settlement if the settlement is "fair and adequate in view of the purposes and policies of the statute." (*Id.*)

In deciding whether the settlement was "fair and adequate," the court's have looked at how the parties divvied up the civil penalties under Section 2699(i) of the California Labor Code. (*Flores,* 253 F. Supp. 3d at 1076–77.) As the court felt the parties' division of penalties was fair and adequate pursuant to the statute, the court approved the Settlement. (*Id.*)

<u>II.</u> <u>THE NATURE AND SCOPE OF THE ALLEGED VIOLATIONS</u>

The Complaint alleges Labor Code violations which triggered penalties under the PAGA statute. (Labor Code §2698 *et seq*.; See ROA #1 [Civil Complaint].) Plaintiff also alleged all employees were denied compliant Meal and Rest Periods, minimum wages, overtime, accurate wage statements, reimbursements, and suffered waiting time violations. (See ROA #1 [Civil Complaint]; Exhibit 1: "Recitals", § 2.1, p. 3.)

Specifically, Plaintiff alleges that she – and other employees – received "short," "late," or "missing" Meal Periods, including those documented within Defendant's Time Records. (Yaeckel Decl., ¶ 20.) Plaintiff also challenged whether Defendant maintained lawful meal and rest periods. Plaintiff alleged she – and other employees – were not properly compensated due to Defendant's failure to maintain accurate time records. (*Id.*)

III. <u>ANALYSIS OF POTENTIAL LIABILITY, ON A REPRESENTATIVE BASIS</u>

The catalyst of this litigation concerned allegations that Ms. Alexander was denied legally compliant meal and rest periods, and was not paid for all Overtime hours worked. (Yaeckel Decl., ¶ 20.) Plaintiff claims that investigations completed by Plaintiff's counsel support Plaintiff's allegations that Defendant's timekeeping policies and employee records were not in compliance with California law. (Yaeckel Decl., ¶ 21.) Defendant disputes this allegation. However, Plaintiff concedes these investigations also revealed that the "rate of violation" by Defendant was significantly less than 100%. (*Id.*) On many of those occasions, it appears that Defendant did comply with the law. (*Id.*)

1. <u>The Parameters of the Proposed PAGA Group</u>

Plaintiffs' expert has independently <u>verified</u>, that there are approximately **970** employees who worked a total of 20,000 pay periods from November 1, 2022 to January 15, 2026. (Yaeckel decl. ¶ 3; Exhibit 1: "Settlement Funding and Payments, § 4.1, p.6.)

If the Court approves the "contingent costs" as requested in the moving papers, the total amount of PAGA penalties will be **$227,072.62**. 75% (**$227,072.62**) shall be assigned/paid to the LWDA as penalties. The remaining 25% (**$56,768.20**) will be disbursed among all employees based on pay periods worked during the PAGA period. If you divide the $56,768.20 in penalties between the 970 employees, it results in an average payout of $58.52 per employee. (Yaeckel Decl. ¶ 7.)

Please Note: This is an average only. The actual payout per employee will vary based on the total pay periods worked during the PAGA period. (Exhibit 1: "Monetary Terms", § 3.2.4.1, p. 6.)

2. The Analysis of the Claims and Scope of Liability

Prior to settlement, Plaintiffs and retained experts conducted a through expert analysis of the documents and data produced by Defendant. This included an analysis of all relevant written policies and a sampling of time and wage records for other putative aggrieved employees. Given the export report, Plaintiffs' Counsel were able to realistically assess the value of Plaintiffs' claims, and intelligently engage Defense Counsel in settlement discussions that culminated in the proposed settlement now before the Court.

Plaintiffs' expert calculated the estimated maximum scope of liability as being between $4,000,000 and $4,550,000**.** Defendant disputed this calculation. However, as is set forth more fully below, all counsel are aware that "maximum" awards in PAGA only cases are exceedingly rare. Moreover, most trial Courts (including this Trial Court, in the *Carrington* matter) decline to "stack" PAGA penalties. "Stacking" refers to imposing multiple penalties for one alleged "harm" (*e.g.* one single late meal period could arguably violate at least four Labor Code provisions that allow for separate penalties pursuant to PAGA). (Yaeckel Decl. ¶¶ 22-23.)

Taking these facts into consideration, if penalties were awarded for only three out of the six claims (i.e. the non-derivative claims), and the penalties were further reduced from $100 per employee to $10 per employee, in line with the *Carrington* decision, the maximum recovery would be reduced to **$400,000 - $455,000**. (Yaeckel Decl. ¶ 24.) Accordingly, Plaintiff submits this settlement is properly valued given this more realistic range of settlement.

i. Meal and Rest Period Claims

Plaintiff alleged that NuWest denied its employees of compliant Meal and Rest Periods – and Meal and Rest Period payments – and failed to possess compliant Meal and Rest Period policies and practices based on NuWest's Time Records. Plaintiff claimed that many pay periods were missing, late, or short meal periods in violation of, *inter alia,* Labor Code sections 226.7 and 512. (Yaeckel Decl., ¶¶ 13-14.) NuWest denied these allegations and NuWest asserted that employees were given the opportunity for breaks and self recorded their meal periods in compliance with California law. (Yaeckel Decl., ¶ 25.)

Plaintiffs also alleged that NuWest's written rest period policies failed to fully inform employees of their rights with respect to rest periods. (Yaeckel Decl., ¶ 26.) NuWest disputed these allegations and disputed that its written policies violate the Labor Code. (*Id.*)

ii. Unpaid Wage Claims

Plaintiff claimed that NuWest failed to pay its employees all compensation due in violation of, among other statutes, Labor Code section 1197. Plaintiff alleged that although NuWest would receive "to-the-minute" start and end times (due to the mandated timekeeping practices required of employees), NuWest would thereafter alter – and deduct time from – the Time Records, prior to payment of compensation to the employees. Plaintiff alleged that Defendant failed to pay its employees all compensation due. (Yaeckel Decl. ¶ 27.) NuWest disputed these claims.

Plaintiff alleged that NuWest's payments for non-compliant Meal Periods were not paid at the employee's regular rate. Instead, Plaintiff alleged that these payments were made at an employee's base rate and did not include the value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for example, non-discretionary compensation and other employee benefits. NuWest disputed that it incorrectly calculated the regular rate and further disputed any shortcoming in paying meal period premiums. (Yaeckel Decl. ¶ 28).

iii. Wage Statements, Reimbursement and Other Derivative Penalties

The remaining claims are largely derivative, in that Wage Statement and Labor Code § 203 penalties would only be permissible if the above claims are proven. Plaintiff had also alleged violations for failure to reimburse business expenses pursuant to Labor Code § 2802.However, it appeared that NuWest had compliant reimbursement policies and any un-reimbursed expenses would have been very rare. (Yaeckel Decl. ¶ 29.)

iv. The Arguments for Mitigation of PAGA Penalties

Moreover, Plaintiff's counsel is aware of the Court's discretion to mitigate penalties pursuant to California Labor Code section 2699(e)(2). (Yaeckel Decl., ¶ 30.) To confirm, Plaintiff's counsel experienced the mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504. (*Id.*) In *Carrington*, Judge Bacal significantly mitigated PAGA penalties ($5 per violation), due to the efforts made by the employer to comply with the law. (*Id.*)

Plaintiff's counsel agrees with the Court, and with the provision of the Labor Code, that penalties *should* be mitigated where violations are minimal (or rare), or where the employer makes significant efforts to comply with the Labor Code. (Yaeckel Decl., ¶ 31.)

As the above factors exist in this case, it is the opinion of Plaintiff's counsel that the settlement is fair, adequate, and reasonable. (Yaeckel Decl., ¶ 32.)

3. <u>Counsel Are Well Experienced in PAGA Matters and Recommend the Settlement</u>

Plaintiff's counsel, William B. Sullivan has approximately 30 years of experience in "class action" litigation, both as plaintiff and defense counsel. (Yaeckel Decl., ¶ 9-12) Plaintiff's counsel, Eric K. Yaeckel, has over 15 years of experience prosecuting class and representative action claims under the California Labor Code. (*Id.*) Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the attorneys of record in a matter that was recently heard (and favorably decided) before the California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. (*Id.*) The *Donohue* matter was a certified class and PAGA action. (*Id.*)

Plaintiff's counsel were lead counsel on approximately 50 employment "wage and hour" claims with class action, or representative action allegations. (Yaeckel Decl., ¶ 12-15.) Based on said experience, it is the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment. (*Id.*)

IV. <u>THE ALLOCATION OF PENALTIES, AND *LIMITED RELEASE* OF CLAIMS</u>

While Labor Code section 2699(*l*) requires a court to "review and approve any penalties sought as part of a proposed settlement agreement," it does not provide any guidance as to what is considered an 'adequate' allocation of these penalties. However, Trial Courts have held that *where the* division of penalties was fair and adequate and in accordance with the PAGA statute, the court should approved the settlement. (*Flores,* 253 F. Supp. 3d at 1076–77.)

After subtracting the contingent costs set forth above, the parties seek to allocate **$227,072.62** of the total settlement to the Total Value of the PAGA Fund. 75% (**$170,304.47**) shall be assigned/paid to the LWDA as penalties. The remaining 25% **($56,768.15)** will be allocated and distributed among the current or ex-employees within the PAGA representation period. (Yaeckel Decl., ¶ 32.)

The parties contend the settlement agreement amount is fair, adequate, and reasonable. (Yaeckel Decl., ¶¶15, 32.) Moreover, the PAGA settlement does not bar any employee from pursuing their own individual Labor Code claims. (Yaeckel Decl. ¶ 8.) The release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's operative Complaint. (**Exhibit 1**: "Releases of Claims", § 5.1, p. 8.)

V. REQUEST FOR ATTORNEYS' FEES, COSTS & ENHANCEMENT AWARDS

Plaintiffs also request that the Court approve the requested attorneys' fees, costs reimbursement and plaintiffs' enhancement awards for the reasons set forth below.

1. Request for Reasonable Costs of Litigation

Plaintiffs' 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* (1991) 235 Cal.App.3d 1407, 1419 [*overruled in part on other grounds in Olson* v. *Automobile Club of Southern Calif.* (2008) 42 Cal.4th 1142].) 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* (2008) 163 Cal.App.4th 1157, 1218 n.27 [awarding costs that are necessarily incurred].)

As itemized in Plaintiffs' Counsel's declaration, Counsel advanced **$19,935.00** in out-of-pocket costs to the State for, among other things, filing fees, expert fees, and mediation fees. (Yaeckel Decl. ¶ 34; Ex 2.) 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"].)

2 Request for Reasonable Attorneys' Fees

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

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

Where, as here, a common fund is created in a qui tam action by the successful litigation of a plaintiff and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund:

> Those benefitting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must bear their share of the cost of litigation. Fees for taxpayers' attorneys will be deducted from the judgment, and each claimant's share 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.

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

Likewise, through the successful efforts of Plaintiffs and their attorneys, a common fund was created in the amount of **$395,000.00** for the benefit **of the employees and the State of California.**

The California Supreme Court recently upheld the use of the common fund theory of recovery for attorneys' fees in *Laffitte* v. *Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the settlement created a common fund of $19 million. The Court approved the award of attorneys' fees in the amount of one third of the gross $10 million settlement (e.g., an award of $6.33 million) under the common fund theory. (*Id.*) By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common fund method encourages attorneys to efficiently litigate to achieve the best results possible. (See *Laffitte*, 1 Cal.5th at 492-494.) Indeed, "the percentage method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that awards counsel for success and penalizes it for failure. (*Id.* at 493 [quoting *In re Rite Aid*

Corp. Seurities Litig. (3d Cir. 2005) 396 F.3d 294, 300 [internal quotations omitted].**)**

California state and federal courts routinely award attorneys' fees approximating one-third of the common fund. (See, e.g. *Laffitte* v. *Robert Half Internat. Inc.* (2016) 231 Cal.App.4th 860, 871 ["33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"]; *Chavez*, 162 Cal.App.4th at 66 n.11 ["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"].)

A fee award in the amount of one-third of the common fund is also reasonable because it best reflects the market rate for contingency fees. (See *Lealoa* v. *Beneficial Cal. Inc.* (2000) 82 Cal.App.4th 19, 47 ["attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace . . ."].) Fees representing one-third of the recovery reflect the rate negotiated in "typical contingency fee agreements [which] provide that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried." (*Fernandez* v. *Victoria Secret Stores, LLC* (C.D. Cal. July 21, 2008) No. CV 06-04149 MMM SHX, 2008 WL 815086, at *16 [citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34% of the fund is reasonable on that basis].) Because the negotiated fee structure mimics the marketplace, it is reasonable and should be approved.

For all of these reasons, a common fund fee award in the amount of one third of the total settlement (**$131,666.67**) is fair and reasonable.

3. <u>A Lodestar Cross Check Further Confirms or is Unnecessary</u>

Should the Court deem it necessary, lodestar cross-check confirms the propriety of the requested attorneys fees. Given the actual fees incurred, in the amount of approximately **$167,447.50**, the request is further supported by a lodestar analysis.

Counsel submits its fees are reasonable and in line with (or lower) than rates charged in the community by attorneys with similar experience. (See Yaeckel Decl. ¶ 35).

<u>Please Note</u>: there is no authority Plaintiff is aware of requiring a lodestar analysis in a PAGA only settlement, which is why Plaintiff has relied upon the Class Action authority cited above. Moreover, the results obtained here, including the average net recovery per PAGA Member exceed those normally observed in PAGA only settlements. (See Yaeckel Decl. ¶ 36.)

4. <u>Request for PAGA Representative Enhancement</u>

The named Plaintiff requests an enhancement payment of **$10,000** for her service as the PAGA representative and for recognition that she was also required to release all of their underlying Labor Code claims via a full section 1542 release. (Yaeckel Decl. ¶ 37.) There is <u>no</u> such restriction on the other alleged aggrieved employees. (*Id.*)

An enhancement is justified in light of the "reputational risk" that Plaintiff assumed by litigating claims against a former employer. (Yaeckel Decl. ¶ 38-41; See *Billinghausen* v. *Tractor Supply Co.* (N.D. Cal. 2015) 306 F.R.D. 245, 267-68 [finding "personal detriment" upon testimony that future employers can easily learn that a prospective employee served as a plaintiff through the internet].)

Second, the separate settlement payment is reasonable because Plaintiff "remained fully involved and expended considerable time and energy during the course of the litigation. (See *In re Toys "R" Us-Del FACTA Litig.*, 295 F.R.D. at 471 [citation omitted].) Plaintiff devoted her time and effort toward assisting their attorneys with the prosecution of the claims, and assisted counsel with finalizing the settlement. (Yaeckel Decl. ¶ 39).

The separate payment is also appropriate because Plaintiffs otherwise "will not gain any benefit beyond that [they] 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"].

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.* (2012) 210 Cal.App.4th 487, 500 ["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)].)

Here, by "sticking her neck out" as PAGA Representatives in a publicly filed lawsuit, Plaintiff took a substantial risk that may adversely impact her ability to work in this field in the future. Any company who does a detailed background check, will be able to determine that Plaintiff asserted legal claims against her former employer. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allow employers to weed out litigious employment candidates. (Yaeckel Decl. ¶ 38-42).

Plaintiff also risked personally owing a large cost award, into the tens of thousands of dollars, had her claims been unsuccessful. (Yaeckel Decl., ¶ 43.)

The enhancement also recognizes that although this involves a PAGA only settlement, Plaintiff agreed to release all claims (e.g., a full 1542 release) as a part of the proposed settlement. (Yaeckel Decl., ¶ 33; **Exhibit 1**: "Releases of Claims" §§ 4.5, 5; pp. 8-11.) In addition to the PAGA claims, Plaintiffs possessed individual Labor Code violations that were required to be released as a result of this settlement. All other employees are subjected to a limited release of PAGA claims only.

The Enhancement Award Payment will be issued using an IRS 1099 Form. (**Exhibit 1**: "Monetary Terms", § 3.2.1, p. 5.)

5. <u>CAC Services Group, LLC Will Serve as the Settlement Administrator</u>

The parties have agreed to engage CAC Services Group, LLC ("CAC") as the Settlement Administrator. CAC has agreed to carry out all Administration duties for an amount not to exceed **$6,325.71**. (Johnson Decl., ¶ 8; **Exhibit 1**: "Monetary Terms", § 3.2.3, p. 5.)

CAC has extensive experience acting as a Settlement Administrator and is prepared to carry out all Settlement Administration duties consistent with the parties Agreement and the Final Order of this Court. (Johnson Decl. ¶ 3-7.)

VI. <u>THE LWDA WAS NOTIFIED MULTIPLE TIMES, AND DOES *NOT* OBJECT</u>

On **January 26, 2026**, Plaintiff's counsel gave notice of the hearing and instant Settlement to the LWDA. (Yaeckel Decl., ¶ 5.) To date, Plaintiff's counsel has not received notice that the LWDA would intervene. (*Id.*)

On **February 17, 2026**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies of this entire *ex parte* application, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment. (Yaeckel Decl., ¶ 6; See Concurrent Proof of Service on the LWDA). To date, Plaintiff's counsel has not received any response. (*Id.*)

To date, Plaintiff has not received a response from the LWDA regarding the proposed settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the hearing, Plaintiff's counsel will provide an updated declaration to the Court. (Decl. Yaeckel ¶ 6.)

CONCLUSION

The parties respectfully request that the Court approve their proposed allocation of PAGA penalties to the LWDA and the represented employees.

In the alternative, should the Court wish to have a noticed motion, Plaintiff asks for an order shortening time to have the motion heard based on these unopposed moving papers.

Dated: February 16, 2026

SULLIVAN & YAECKEL LAW GROUP, APC

Eric Yaeckel

Eric K. Yaeckel
Cody D. Archer
Attorneys for Plaintiff ARACELI ALEXANDER, in a Representative capacity only, and on behalf of other members of the general public similarly situated