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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

HADLEY DATE GARDENS, INC., a California Corporation; HADLEY, INC., a California Corporation; and DOES 1-10, inclusive,

Defendants

Case No. CVPS2404374

Assigned to the Hon. Harold W. Hopp

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

Date: July 16, 2025
Time: 8:30 a.m.
Place: Department 11

Reservation ID: 327054829855

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

3 **PLEASE TAKE NOTICE** that on July 16, 2025 at 8:30 a.m., or as soon thereafter as
4 counsel may be heard, in Department 1 of the above-captioned court, located at 4050 Main Street,
5 Riverside, California 92501, the Honorable Harold W. Hopp presiding, Plaintiff Yaneth Guzman
6 will, and hereby do, move this Court for entry of an order and judgment approving the Parties'
7 PAGA settlement pursuant to Labor Code section 2699(l)(2).

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

16 Dated: May 30, 2025

Respectfully submitted,

17
18 By: 
19 Eric K. Yaeckel
20 Ryan T. Kuhn
21 **SULLIVAN & YAECKEL LAW GROUP, APC**
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23 Attorneys for Plaintiff Yaneth Guzman.
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Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code. §§ 2698, *et seq.* “PAGA”), Plaintiff Yaneth Guzman (“Plaintiff”) seeks Court approval of the settlement of her claim for PAGA civil penalties with Defendant Hadley Date Gardens, 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). Recently, the Court of Appeal in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021) 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 Gross Settlement Amount of \$100,000, which includes Plaintiff's attorneys' fees, litigation costs and expenses, consideration for Plaintiff's service on behalf of the LWDA and Aggrieved Employees, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Gross Settlement Amount will be retained by, or revert to, Defendant.
- (2) The creation of a PAGA Penalties Fund of approximately \$51,431.94, which will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims Settled Claims ("PAGA Penalties Fund").

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 Eric K. Yaeckel filed in conjunction with this motion. (Yaeckel Decl. ¶13).

1 (3) Seventy-five percent of the PAGA Penalties Fund, or approximately
2 \$38,573.96, will be paid to the LWDA pursuant to Labor Code section
3 2699(I).

4 (4) Twenty-five percent of the PAGA Penalties Fund, or approximately
5 \$12,857.98, will be paid to all persons who, at any time during the period from
6 May 8, 2023 through February 1, 2025, worked for Defendant as a non-
7 exempt, hourly employee in the State of California (“Aggrieved Employees”).
8 There are approximately 114 Aggrieved Employees.

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

12 (4) Reasonable attorneys’ fees and costs under Labor Code section 2699(g) for
13 Plaintiff’s Counsel’s successful prosecution and resolution of this action.
14 Plaintiff requests \$33,333.33 in attorneys’ fees and up to \$2,097.03 in costs
15 for their counsel, Sullivan & Yaeckel Law Group, APC and Capstone Law
16 APC (“Plaintiff’s Counsel”).

17 (5) Settlement Administration Costs of approximately \$3,137.70 to CAC
18 Services Group, LLC.

19 The civil penalties secured by the settlement represent a fair compromise of Plaintiff’s PAGA
20 claim in view of the risks of continued litigation and the hotly contested issues of law and fact
21 relating to PAGA claims. The Settlement accomplishes PAGA’s objectives by imposing sufficient
22 civil penalties “to punish and deter” Defendant from committing any of the Labor Code violations
23 alleged, while also ensuring that the penalties are not “unjust, arbitrary and oppressive, or
24 confiscatory.” Cal. Lab. Code § 2699(e)(2); *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th
25 348, 384 (2014).

26 For these reasons, Plaintiff respectfully requests that the Court approve the Settlement and
27 enter the proposed Order Approving the PAGA Settlement Agreement and the proposed Judgment.
28

1 **II. FACTS AND PROCEDURE**

2 **A. Brief Overview of the Litigation**

3 Defendant is a California corporation headquartered in La Quinta, California. Defendant is
4 a grower and packer of California dates. Plaintiff worked for Defendant as a non-exempt employee
5 from approximately October 13, 2023 through January 29, 2024. (Yaeckel Decl. ¶4).

6 Plaintiff filed this action against Defendant on July 12, 2024 in the California Superior Court,
7 County of Riverside. The Complaint seeks civil penalties under the PAGA for violations of the
8 following Labor Code² sections: (1) Sections 1198 and 512 for Defendant's alleged violation of
9 establishing workings conditions below the standard of the applicable Wage Order and alleged
10 violation of meal and rest periods; (2) Section 1197 for Defendant's alleged failure to pay for any
11 work time in violation of minimum wage laws; (3) Section 510 for Defendant's alleged failure to
12 provide Aggrieved Employees with full and accurate compensation, including overtime
13 compensation; (4) Section 226(a) for Defendant's alleged failure to provide accurate and complete
14 wage statements to Aggrieved Employees; (5) Section 2802 for Defendant's alleged failure to
15 reimburse Aggrieved Employees for all business expenses necessarily incurred; and (6) Sections 201,
16 202, 203 for Defendant's alleged failure to pay all earned wages upon termination and Sections
17 226.7, 510, 512, and 2802 for Defendant's alleged failure to provide accurate and complete
18 compensation to Aggrieved Employees. (Yaeckel Decl. ¶5).

19 **B. Plaintiff's Counsel Conducted a Thorough Investigation Into the Factual and**
20 **Legal Issues Implicated by Plaintiff's Claims**

21 The Parties' settlement is the product of a thorough investigation into the factual and legal
22 issues implicated by Plaintiff's claims and Defendant's defenses. For example, prior to filing the
23 action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing their action
24 against Defendant for Labor Code violations. Plaintiff was intimately familiar with Defendant's labor
25 policies and practices, and over the course of multiple interviews, knowledgeably summarized those
26 policies and practices to Plaintiff's Counsel. During those conversations, they explained how the
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28 ²Unless indicated otherwise, further statutory references are to the California Labor Code.

1 policies and practices were instituted and provided valuable insight into how they gave rise to the
2 alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff's Counsel
3 determined that there were legally sufficient grounds for pursuing an action against Defendant.
4 (Yaeckel Decl. ¶6).

5 Plaintiff's Counsel also prepared detailed letters to notify the LWDA of Plaintiff's intent to
6 seek civil penalties recoverable under PAGA for Labor Code violations. Significant research and
7 effort were expended to prepare PAGA notices that was consistent with the developing legal
8 requirements so as to withstand any challenge from Defendant regarding the notice's sufficiency.
9 And in preparation for drafting the Complaints, Plaintiff's Counsel conducted their own preliminary
10 investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
11 examination of Plaintiffs' personnel files and associated records. (Yaeckel Decl. ¶7).

12 Following the filing of the actions, and in response to Plaintiff's formal and then informal
13 discovery requests, Plaintiff's Counsel received a considerable amount of documents and data,
14 including employee demographic data, a sample of time and pay records, and Defendant's policies
15 and procedures manuals which covered a broad range of topics including, *inter alia*, employee clock-
16 in policies and procedures, meal periods/rest periods, overtime & premium pay, etc. The document
17 and data exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims
18 being settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel to
19 make an independent assessment of the reasonableness of the settlement's terms. (Yaeckel Decl.
20 ¶8).

21 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue,
22 which included: (1) determining Plaintiff's suitability as private attorneys general through interviews,
23 background investigations, and analyses of their employment files and related records; (2) evaluating
24 all of Plaintiff's potential representative claims; (3) researching similar wage and hour actions as to
25 the claims brought, the nature of the positions, and the type of employer; (4) analyzing a sample of
26 employees' time and wage records; (5) reviewing Defendant's employment policies and practices;
27 (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and estimating
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1 Defendant's liability for purposes of settlement; (8) drafting a mediation brief; and (9) then engaging
2 in back and forth direct negotiations that led to settlement before the scheduled mediation took place.
3 (Yaeckel Decl. ¶9).

4 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
5 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
6 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Aggrieved
7 Employees in light of all known facts and circumstances, including the risk of significant delay and
8 uncertainty associated with litigation, and various defenses asserted by Defendant. (Yaeckel Decl.
9 ¶10).

10 **C. The Parties Settled After Direct Negotiation**

11 Following the above investigation and evaluation of their respective claims and defenses, the Parties
12 set up a mediation. However, prior to mediation, the parties engaged in direct negotiations.(Yaeckel Decl. ¶11.)
13 The terms of the settlement are now set forth in complete and final form in the PAGA Settlement Agreement.
14 (*Id.*, Ex. 1) At all times, the Parties' negotiations were adversarial and non-collusive. The Settlement therefore
15 constitutes a fair, adequate, and reasonable compromise of the claims at issue. (Yaeckel Decl. ¶ 11).

16 **D. The Parties Negotiated a Fair and Reasonable Settlement of Plaintiff's Claims**

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

18 The Settlement Agreement provides that Defendant will pay a total of \$100,000 to settle this Action.
19 (Yaeckel Decl ¶3, Ex. 1, ¶ 4.) From this amount, payments will be made to the LWDA and Aggrieved
20 Employees, to Plaintiff Guzman as compensation for her service on behalf of the State and for a general release
21 of claims arising out of her employment with Defendant, to Plaintiff's Counsel for their attorneys' fees and
22 litigation costs, and to the Settlement Administrator (CAC Services Group, LLC) for settlement administration
23 costs. (Yaeckel Decl ¶3, Ex. 1, ¶¶ 12-16.)

24 The resulting balance will be distributed to the LWDA and Aggrieved Employees. The LWDA will
25 receive approximately \$38,573.96. (*Id.* at ¶ 13). Aggrieved Employees will receive approximately \$12,857.98.
26 (*Id.*) The Aggrieved Employees encompassed by the proposed Settlement are all persons who, at any time
27 during the period from May 8, 2023 through February 1, 2025, worked for Defendant as a non-exempt, hourly
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1 employee in the State of California. (*Id.* at ¶¶ 2 and 11.) There are approximately 114 Aggrieved Employees.
2 (*Id.* at ¶ 16.)

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

4 Payments to Aggrieved Employees will be made from the PAGA Penalties Fund. The individual
5 allocations will be calculated on a pro-rata basis using the number of pay periods worked by each employee.
6 Defendant will provide the total number of pay periods worked by each Aggrieved Employee and the total
7 number of pay periods worked by all Aggrieved Employees during the Settlement Period. (Yaeckel Decl ¶3,
8 Ex. 1, ¶ 13(a).) The Settlement Administrator will calculate each Aggrieved Employee's payment using the
9 proportional number of pay periods during which the employee worked. Thus, the Settlement Administrator
10 will perform the following calculation to calculate individual payments: Settlement Payment = (25% of PAGA
11 Penalties Fund) × (pay periods worked by individual Aggrieved Employee during the Settlement Period ÷ total
12 pay period Aggrieved Employees during the Settlement Period). (*Id.* at ¶ 13(b).) This is a fair and equitable
13 means of allocating the penalties. Aggrieved Employees who worked for a longer duration during the
14 Settlement Period will receive proportionally larger payments than those employees who worked for shorter
15 durations.

16 **3. The Settled PAGA Claims**

17 Upon entry of the Order and Judgment, the LWDA and Plaintiff, on behalf of themselves and the
18 Aggrieved Employees to the fullest extent allowed by law, will be deemed to have fully, finally, and forever
19 released, relinquished, and discharged each and all of the Released Parties from any and all claims against
20 Defendant and the Released Parties for PAGA civil penalties under the California Labor Code, Wage Orders,
21 regulations, and/or other provisions of law alleged or which could have been alleged to have been violated in
22 the Action with respect to Aggrieved Employees based on the allegations pleaded in the Action during the
23 Settlement Period. The exact release is found at paragraphs 15 and 16 of the Settlement Agreement.

24 Additionally, Plaintiff Yaneth Guzman has agreed to a broader general release of all claims of any kind
25 against Defendant. (Yaeckel Decl ¶3, Ex. 1, ¶ 15.)
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1 **III. ARGUMENT**

2 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful, and**
3 **Fulfill PAGA’s Underlying Purpose To Benefit the Public**

4 The California legislature enacted PAGA to “augment the limited enforcement capability of the
5 [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” *Iskanian*,
6 59 Cal. 4th at 383. This statute authorizes an employee to bring an action for “civil penalties on behalf of the
7 state against his or her employer for Labor Code violations committed against the employee and fellow
8 employees” *Id.* at 360. The goal of a PAGA enforcement action is to impose civil penalties for Labor Code
9 violations “significant enough to deter violations.” *Id.* at 379.

10 Fundamentally, “a PAGA action is a statutory action in which the penalties available are measured by
11 the number of Labor Code violations committed by the employer.” *Sakkab v. Luxottica Retail N. Am., Inc.*, 803
12 F.3d 425, 435 (9th Cir. 2015). Under the general provisions of the PAGA scheme, 75% of the civil penalties
13 recovered goes to the state while the remaining amount is given to the aggrieved employees. Lab. Code §
14 2699(i). Although PAGA penalties are mandatory and must be awarded by a court if a violation is found, the
15 court “may award a lesser amount than the maximum civil penalty amount specified by this part if, based on
16 the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
17 arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2); *see also Amaral v. Cintas Corp. No.*
18 *2*, 163 Cal. App. 4th 1157, 1213 (2008).

19 Moreover, the PAGA statute distinguishes and preserves the right of employees to separately (or
20 concurrently) pursue their own causes of action against their employers and to recover other available federal
21 and state remedies. Cal. Lab. Code § 2699(g)(1); *see Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123
22 (9th Cir. 2014) (explaining the differences between the finality in class action judgments and the limited res
23 judicata effect of PAGA judgments). “Unlike a class action seeking damages or injunctive relief for injured
24 employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government
25 that otherwise may not have been assessed and collected by overburdened state enforcement agencies.”
26 *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222, 1233 (C.D. Cal. 2011).

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

4 **B. Nature of the Alleged Violations**

5 Plaintiff alleges that Defendant failed to: (1) provide Aggrieved Employees with legally compliant meal
6 and rest periods; (2) pay Aggrieved Employees minimum wages for all time spent under its control; (3) pay
7 Aggrieved Employees overtime wages for all time spent under its control; (4) provide Aggrieved Employees
8 with accurate, itemized wage statements/maintain payroll records; (5) reimburse Aggrieved Employees for their
9 necessary business expenses; and (6) pay Aggrieved Employees wages upon separation/termination.

10 **1. Meal and Rest Period Violations**

11 Plaintiff alleges that Defendant systematically failed to provide legally compliant meal periods to non-
12 exempt employees during the Settlement Period, through understaffing, not providing proper break coverage,
13 and requiring certain employees to work through their meal periods while off-the-clock. Defendant allegedly
14 knew, or should have known, that as a result of its policies, Plaintiff and other Aggrieved Employees were
15 required to perform some of their assigned duties during meal periods and that Defendant did not pay meal
16 period premium wages when meal periods were interrupted, taken late, or not taken. (Yaeckel Decl. ¶12).

17 Furthermore, this alleged systematic failure extended to rest periods as well, requiring employees to
18 work during rest periods and pressuring employees to either skip, or cut short, rest periods based on work
19 volume and coverage issues. *Id.* This is a violation of California law, which requires employers to provide non-
20 exempt employees with a 10 minute rest period for every four hours worked, or “major fraction thereof.” 8 Cal.
21 Code Regs. § 11130 (11).

22 **2. Minimum Wage Violations**

23 Plaintiff alleges that Defendant failed to pay minimum wages to employees for all time spent
24 under Defendant’s control. This allegation is based on the following alleged facts: Defendant failed
25 to maintain accurate Time Records to the detriment of the employees. More specifically, although
26 Defendants would receive “to-the-minute” start and end times, Defendants would thereafter alter -
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1 deduct time from - the Time Record, prior to payment of compensation to the employees. (Yaeckel
2 Decl. ¶13).

3 **3. Overtime Violations**

4 Plaintiff alleges that Defendant failed to pay Plaintiff and all other Aggrieved Employees all
5 compensation, including overtime compensation, due in violation of, among other statutes, Labor
6 Code section 510. These violations occurred due to Defendants' illegal policies, referenced above,
7 whereby employees experienced monetary under-compensation. The systematic failure to provide
8 proper overtime compensation is a violation of California law. Additionally, Defendants also failed
9 to provide the actual Overtime Rate of Pay by ignoring certain compensation when calculating the
10 Regular Rate of Pay including, but not limited to, various forms of bonus and/or incentive pay, and
11 the value of employee benefits and employee discounts, in violation of Labor Code section 510.
12 (Yaeckel Decl. ¶14).

13 **4. Wage Statement Violations**

14 Plaintiff alleges that Defendants failed to provide Plaintiff and all other Aggrieved
15 Employees with accurate itemized wage statements in violation of, among other statutes, Labor Code
16 section 226. These violations include, but are not limited to, Defendants' failure to accurately identify
17 all applicable regular and overtime (including double-time) rates of pay in violation of section
18 226(a)(9), and providing inaccurate representations of both "gross" and "net wages." Defendants also
19 failed to accurately list "all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate," in violation of 226(a)(9). Defendants
21 also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code
22 section 226(a)(2). For example, Defendants had notice of employees working outside of their
23 scheduled and/or reported hours, as well as within Meal and Rest Periods, but did not provide
24 compensation. (Yaeckel Decl. ¶15).

25 **5. Business Expense Reimbursement Violations**

26 California Labor Code section 2802 provides that an employer must reimburse employees
27 for all necessary expenditures and losses incurred by the employee in the performance of his or her
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1 job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of
2 doing business and operating expenses on to their employees. Plaintiff alleges that Defendant failed
3 to reimburse their employees for all necessary business expenditures incurred in direct consequence
4 of the discharge of their duties. These expenditures are the result of, *inter alia*, Defendants' standard
5 policies which requires its employees to incur mileage and to use their own cell phones for work-
6 related purposes, without reimbursement. (Yaeckel Decl. ¶16).

7
8 **6. Pay Wages Upon Separation/Termination Violations**

9 Plaintiff alleges that Defendants failed to provide Plaintiff and other Aggrieved Employees
10 with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code
11 sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants'
12 willful failure to provide accurate and complete compensation to aggrieved employees under Labor
13 Code sections 226. 7, 510, 512, 1197, and 2802, as set forth above. (Yaeckel Decl. ¶17).

14 **C. The Number of Alleged Individual Violations, Including Both the Length of**
15 **the Relevant Employment Period and the Number of Employees Allegedly**
16 **Employed During that Period**

17 Based on information and evidence produced by Defendant during discovery and again in the verified
18 agreement, Plaintiffs estimate that the settlement covers 114 individuals and a total of approximately 4,100 pay
19 periods during the Settlement Period. Plaintiffs allege that each and every pay period had at least one form of
20 Labor Code violation. This information is summarized in the table below:

Principal Pay Period Data	
Number of Aggrieved Employees	Approximately 114
Number of Former Aggrieved Employees	Approximately 30
Length of PAGA Period	May 8, 2023 through February 1, 2025
Total Number of Pay Periods At Issue	Approximately 4,100

1 **D. Total Amount of Penalties for Which Defendant Is Potentially Liable If Plaintiff's**
2 **Allegations Were All Proven As to All Alleged Labor Code Violations**

3 Statutory penalties are calculated according to Labor Code 2699(f)(2): If, at the time of the alleged
4 violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
5 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
6 employee per pay period for each subsequent violation (the “subsequent violation penalty”).

7 However, a growing number of courts have found that the “subsequent” penalty under PAGA applies
8 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
9 *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil
10 penalties” because the defendant was not given notice by the Labor Commissioner when the “subsequent”
11 violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D.
12 Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner
13 notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the
14 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of
15 \$200 for subsequent violations will not be calculated to determine the amount in controversy”); *Chen v.*
16 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
17 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing a
18 violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine Components*
19 *Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts
20 have held that employers are not subject to heightened penalties for subsequent violations unless and until a
21 court or commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
22 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

23 Given the above authorities, Plaintiff conservatively estimated Defendant’s exposure by assessing \$100
24 penalties for all pay periods worked during the Settlement Period. Accordingly, the total amount of penalties
25 for which Defendant is potentially liable if Plaintiffs’ allegations were all proven as to all alleged Labor Code
26 violations is as follows:

27 **Meal Period and Rest Period Violations:** Plaintiff alleges that all pay periods had either meal period
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1 or rest period violations. Defendant's exposure for PAGA penalties would therefore be $\$410,000 = 4,100$ Pay
2 Periods x \$100 penalties.

3 **Minimum Wage Violations:** Plaintiff alleges that all pay periods had minimum wage violations.
4 Defendant's exposure for PAGA penalties would therefore be $\$410,000 = 4,100$ Pay Periods x \$100 penalties.

5 **Overtime Violations:** Plaintiff alleges that all pay periods had overtime violations. Defendant's
6 exposure for PAGA penalties would therefore be $\$410,000 = 4,100$ Pay Periods x \$100 penalties.

7 **Wage Statement Violations:** Plaintiff alleges that Defendant issued Aggrieved Employees
8 non-compliant wage statements during every pay period. Defendant's exposure for PAGA penalties
9 would therefore be $\$410,000 = 4,100$ Pay Periods x \$100 penalties.

10 **Business Expense Reimbursement Violations:** Plaintiff alleged that Aggrieved Employees had
11 unreimbursed business expenses for Defendants' standard policies which required its employees to incur
12 mileage and to use their own cell phones for work-related purposes without reimbursement. Defendant's
13 maximum potential exposure for PAGA penalties would be $\$410,000 = 4,100$ Pay Periods x \$100 penalties.

14 **Pay Wages Upon Separation/Termination Violations:** Plaintiff alleges that Defendant is
15 liable for penalties in connection with its failure to pay all wages upon separation/termination.
16 Defendant's exposure for PAGA penalties would therefore be $\$3,000 = 30$ Former Aggrieved
17 Employees x \$100 penalties.

18 In summary, the total amount of penalties for which Defendant is potentially liable if Plaintiff's
19 allegations were all proven at trial is approximately \$2.053 million. (Yaeckel Decl. ¶18).

20
21 **E. The Extent To Which The Alleged Violations Would Likely Be Found To Be**
22 **True At Trial, Considering The Weight Of Evidence, The Clarity Of Applicable**
23 **Law And The Strength Of Any Factual Or Legal Defenses Likely To Be**
24 **Asserted By The Defendant**

25 Although Plaintiff maintains her strong belief in the underlying merits of her claims, Plaintiff's
26 Counsel acknowledge that wage and hour cases on behalf of low wage workers can difficult to prove at trial,
27 and that success at trial is far from certain. For settlement purposes, therefore, Plaintiff determined a more
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1 realistic range³ of recovery by discounting Defendant's maximum potential exposure by the risks and
2 uncertainties of continued litigation, and by the strengths of Defendant's many defenses to the merits of
3 Plaintiff's claims. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408, 112
4 Cal. Rptr. 3d 324, 331 (2010) ("an informed evaluation cannot be made without an understanding of the
5 amount that is in controversy and the **realistic range** of outcomes of the litigation.") (emphasis added.)

6 **Defenses to Manageability:** Defendant would have argued that any trial of this case would not be
7 manageable because any number of mini-trials would be required to make a liability determination on the
8 numerous claims at issue. *See Williams v. Super. Ct.*, 3 Cal. 5th 531, 559 (2017) (discussing a PAGA
9 representative plaintiff's need to "render a trial of the action manageable"); *Amiri v. Cox Commc'ns Cal., LLC*,
10 272 F. Supp. 3d 1187, 1194 (C.D. Cal. 2017) (striking PAGA representative claims as "unmanageable"
11 because "liability determinations [as to allegedly aggrieved employees] will required individualized inquiries");
12 *Ortiz v. CVS Caremark Corp.*, 2014 WL 1117614, at *3-5 (N.D. Cal. Mar. 19, 2014) (striking PAGA claims
13 as unmanageable because a "multitude of individualized assessments would be necessary").

14 **Meal and Rest Period Claim Defenses:** Defendant would have argued at trial that it has no
15 obligation to "guarantee" or "ensure" that meal periods are taken by all employees at all times. *Brinker*
16 *Restaurant Corporation v. Super. Ct.*, 53 Cal. 4th 1004, 1040 (2012) (employers are "not obligated to police
17 meal breaks and ensure no work thereafter is performed"). Rather, an employer satisfies (as Defendant would
18 argue) its obligation to provide meal periods if "it relieves its employees of all duty, relinquishes control over
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20 ³ Federal district courts also recognize that there is an inherent "range of reasonableness" in
21 determining whether to approve a settlement "which recognizes the uncertainties of law and fact in
22 any particular case and the concomitant risks and costs necessarily inherent in taking any litigation
23 to completion." *Id.* at 188, *quoting Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). *See In re*
24 *Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); *see also Nat'l Rural Telecomm.*
25 *Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed
26 settlement may be acceptable even though it amounts to only a fraction of the potential recovery");
27 *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) ("settlement
28 amount's ratio to the maximum potential recovery need not be the sole, or even dominant,
consideration when assessing settlement's fairness"); *In re IKON Office Solutions, Inc. Sec. Litig.*,
194 F.R.D. 166, 184 (E.D. Pa. 2000) ("the fact that a proposed settlement constitutes a relatively
small percentage of the most optimistic estimate does not, in itself, weigh against the settlement;
rather the percentage should be considered in light of strength of the claims"); *Officers for Justice*
v. Civil Serv. Comm., 688 F. 2d 615, 628 (C.A. Cal. 1982) (it is "the complete package, taken as a
whole rather than the individual component parts, that must be examined for overall fairness").

1 their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does
2 not impede or discourage them from doing so.” *Id.* Defendant argued that there is no “basis in the wage order
3 or statute” for the notion “that an employer must ensure that no work is done – i.e., prohibit work” during a
4 meal period. *Id.* at 1038; *see also Murphy*, 40 Cal. 4th at 1104 (finding a violation occurs only if the employee
5 is “forced to forgo his or her meal period”).

6 Defendant would have argued at trial that “to assert a meal break claim, the employee must show that
7 he was **forced to forego** his meal breaks as opposed to merely showing that he did not take them.” *Nguyen v.*
8 *Baxter Healthcare Corp.*, No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *5 (C.D. Cal. Nov. 28, 2011)
9 (emphasis in original); *see also Brinker*, 53 Cal. 4th at 1034; *Dailey v. Sears, Roebuck & Co.*, 214 Cal. App.
10 4th 974, 1000-02 (2013); *Gonzalez v. Officemax N. Am.*, No. CV 07-04839 JVS MLGX, 2012 WL 5473764,
11 at *5 (C.D. Cal. Nov. 5, 2012). Thus, Defendant would have argued that courts reject certifying meal break
12 claims where no common policy denies breaks on a class-wide basis. *See, e.g., Purnell v. Sunrise Senior Living*
13 *Mgmt., Inc.*, No. SA CV10-00897 JAK, 2012 WL 1951487, at *8 (C.D. Cal. Feb. 27, 2012); *Washington v.*
14 *Joe’s Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification because “an individualized
15 inquiry will be required to determine whether any employee failed to take a meal break because he/she was too
16 busy”); *Salazar v. Avis Budget Grp., Inc.*, 251 F.R.D. 529, 533 (S.D. Cal. 2008); *Ordonez v. Radio Shack, Inc.*,
17 No. CV 10-7060-CAS JCGX, 2013 WL 210223, at *8 (C.D. Cal. Jan. 17, 2013); *Gonzalez*, 2012 WL 5473764,
18 at *5 (holding that “[why] any particular employee missed any particular break requires, ineluctably,
19 individualized fact finding”).

20 Defendant would have also argued at trial that absent a shift-by-shift, break-by-break, employee-by-
21 employee inquiry, Defendant would have argued that there was simply no way to know (1) whether a break
22 was taken; and (2) if not, why not. Defendant also would have argued that even if employees recorded every
23 rest break ever taken, their time records would still be insufficient to prove liability. For each instance where
24 an employee did not take a 10-minute rest period by the end of the fourth hour of work, the trier of fact would
25 still have to determine why that particular employee had less than their full allotment of rest time. Defendant
26 accordingly would have argued that rest break claims are inherently individualized in nature because employers
27 only need to “authorize and permit” breaks; they need not ensure that rest breaks are taken. *Brinker*, 53 Cal.
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1 4th at 1004. To succeed, “[a]n employee must show that the employer prevented the employee from taking
2 breaks; mere proof of knowledge that the employee was forgoing breaks is insufficient.” *Reece v. Unitrin Auto*
3 *& Home Ins. Co.*, No. 5:11-CV-03960 EJD, 2013 WL 245452, at *5 (N.D. Cal. Jan. 22, 2013) (rejecting claim
4 that the work structure made taking rest breaks impossible, because plaintiff failed to show that the employer
5 prevented such breaks); *Drenckhahn v. Costco Wholesale Corp.*, No. 2:08-CV-01408-JHN, 2011 WL
6 3754659, at *3 (C.D. Cal. Aug. 24, 2011) (“although employers must provide employees with meal and rest
7 breaks under Cal. Lab. Code § 512(a), they need not guarantee that employees take breaks”).

8 Defendant would have also argued that *Augustus* did not specifically address the requirement that
9 employees remain at the worksite during their rest period; rather, *Augustus* addressed whether employers could
10 satisfy their obligation to relieve employees from duties and control during rest periods while still having to
11 remain on-call.

12 **Minimum Wage and Overtime Claim Defenses:** Defendant would have argued at trial that its labor
13 policies prohibit off-the-clock work, that employees were properly compensated for all time worked, and any
14 time worked off-the-clock would not be reflected in the time records, making it practically impossible to
15 determine whether any Aggrieved Employee worked off-the-clock without engaging in thousands of
16 individualized inquiries that would make trial on a representative basis unmanageable. *See Brinker*, 53 Cal. 4th
17 at 1051-52 (holding that in the absence of a uniform, companywide policy, proof of liability is individual);
18 *Amey v. Cinemark USA Inc.*, No. 13-CV-05669-WHO, 2015 WL 2251504, at *12 (N.D. Cal. May 13, 2015)
19 (denying certification of off-the-clock claim because plaintiffs’ work requirements depended on the manager);
20 *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695, at *12 (N.D. Cal. Nov. 12, 2014)
21 (denying certification based on policy requiring employees to finish closing duties within 30 minutes, because
22 the court would still be left with numerous individual issues); *Pryor v. Aerotek Scientific, LLC*, 278 F.R.D. 516,
23 532-33 (C.D. Cal. 2011) (denying certification of off-the-clock claim).

24 Defendant would have argued that for Plaintiff to establish that Defendant failed to pay Aggrieved
25 Employees for all hours worked, Plaintiff would have had to prove that Defendant was aware that they were
26 working hours for which they were not compensated. For example, in *Forrester v. Roth’s I.G.A. Foodliner,*
27 *Inc.*, 646 F.2d 413 (9th Cir. 1981), the Ninth Circuit held that “where an employer has no knowledge that an
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1 employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents
2 the employer from acquiring knowledge of the overtime work, the employer's failure to pay for the overtime
3 hours is not a violation [of overtime requirements]." *Id.* at 414.

4 **Wage Statement Claim Defenses:** Defendant would have argued at trial that wage statement claims
5 are nothing but technical violations for which Aggrieved Employees suffer no injury. Before Section 226(e)
6 was amended, the dispositive issue was whether "suffering injury" was satisfied by the deprivation of a legal
7 right (i.e., an employer's provision of non-compliant wage statements), or by consequential damages caused
8 by the non-compliant wage statements. Employers had frequently prevailed in arguing for the latter
9 interpretation. Even after the enactment of section 226(e), some courts have held that this amendment merely
10 clarifies existing law and have held that plaintiffs must demonstrate actual injury. *See Loud v. Eden Med. Ctr.*,
11 2013 U.S. Dist. LEXIS 122873, **36-53 (N.D. Cal. Aug. 28, 2013) (granting summary judgment on wage
12 statement claim because plaintiff could not show injury due to defects and that incorrect wage information is
13 not willful).

14 Here, this claim is largely derivative of the failure to pay compensation and meal and rest
15 period claims. As the employer raised good faith defenses to each claim, it would be difficult to
16 prove any violations are knowing and intentional.

17 **Business Expense Claim Defenses:** Defendants would have argued at trial that an employer
18 owes no duty to reimburse employees for using their cell phone for work-related purposes if the
19 employer did not mandate that the employee use their personal cell phone. Defendant would claim
20 that the expenses were not "necessary" under Cal. Lab. Code § 2802. The California Supreme Court
21 emphasized that reimbursement under § 2802 applies only to expenses that are "necessary" to
22 perform job duties. *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 568 (2007)("In
23 calculating the reimbursement amount due under section 2802, the employer may consider not only
24 actual expenses that the employee incurred, but also whether each of those expenses was 'necessary,'
25 which in turn depends on the reasonableness of the employee's choices.").

26 **Pay Wages Upon Separation/Termination Claim Defenses:** Defendant would have argued
27 at trial that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an
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1 element that Plaintiff acknowledges would have been difficult to prove. *See* Cal. Code Regs. tit. 8,
2 § 13520 (“[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs
3 when an employer intentionally fails to pay wages to an employee when those wages were due.”).
4 The California Supreme Court ruled that employers are shielded from penalties when they
5 “reasonably and in good faith” believe that they complied with wage laws. *Naranjo v. Spectrum*
6 *Security Services, Inc.*, 15 Cal. 5th 1056, 1065 (2024). Here, the employer raised good faith defenses
7 to each claim, which would make it difficult to prove any violations are willful.

8 **F. The Total Amount of Penalties for Which The Defendant Would Likely Be**
9 **Found Liable At Trial**

10 The PAGA gives the Court wide latitude to reduce the amount of civil penalties “based on the facts
11 and circumstances of a particular case” when “to do otherwise would result in an award that is unjust, arbitrary
12 and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA penalties, courts have
13 considered issues including whether the employees suffered actual injury from the violations, whether the
14 defendant was aware of the violations, and the employer’s willingness to fix the violation. *Carrington v.*
15 *Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.21% of the
16 maximum); *see also* *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien*
17 *Inc.*, No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

18 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties
19 in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or 0.21% of the**
20 **maximum**—and stated that this reduction was warranted because imposing the maximum penalty would be
21 “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with meal period
22 obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517. The
23 Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529.

24 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
25 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also* *Aguirre v. Genesis*
26 *Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035, at *3 (C.D. Cal. Dec. 30, 2013) (reducing the
27 original penalty of \$1.8 million by 72% to \$500,000 noting among other reasons that the maximum penalty
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1 would be punitive without evidence that the employer intentionally violated the wage order); *see also*, e.g.,
2 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
3 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder v.*
4 *Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing trial
5 court decision denying any civil penalties where violations had been proven, remanding for the trial court to
6 exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No.
7 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for
8 violation of California Labor Code § 226 as redundant with recovery on a class basis pursuant to California
9 Labor Code § 226, directly); *Fleming v. Covidien Inc.*, No. EDCV 10-01487 RGK (OPx), 2011 WL 7563047,
10 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000.00); *Aguirre v.*
11 *Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
12 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000.00, after rejecting numerous other
13 PAGA claims).

14 As discussed above, Plaintiff estimated Defendant's *potential* exposure for PAGA civil penalties at
15 approximately \$2.053 million. However, Plaintiff estimated that their odds of prevailing at trial on all of the
16 alleged Labor Code violations at 15%. Discounting by the risks of continued litigation, therefore, Plaintiff
17 would have recovered only approximately \$307,950 in penalties. (Yaeckel Decl. ¶19).

18 And even if Plaintiff had recovered maximum PAGA penalties at trial, the Court could have exercised
19 its discretion to reduce the penalties because Defendant's policies facially comply with the Labor Code. If the
20 Court had reduced the maximum penalties by the same percentage affirmed in *Carrington*, Plaintiffs would
21 have recovered only approximately \$4,311.30 in PAGA penalties (i.e., $0.21\% \times \$2,053,000 = \$4,311.30$).
22 Accordingly, considering the issues, defenses, and the risk, a \$100,000 settlement for a limited release of
23 PAGA penalties is a fair and just result and furthers PAGA's objectives. Courts throughout the county routinely
24 approve settlements that provide a similar discounted range of the maximum potential recovery. *See, e.g., In*
25 *re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable
26 settlement amount can be 1.6% to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472
27 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages
28

1 were approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of
2 damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014)
3 (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial
4 approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re*
5 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008).

6 **G. The Court Should Award the Requested Attorneys’ Fees in the Amount of One-**
7 **Third of the Gross Settlement Fund**

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

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

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

27 Those benefiting from the recovery of the fund, in this case some depositors and eventually the
28 People of the State of California, must bear their share of the cost of litigation. Fees for

1 taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced
2 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.

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

5 Likewise, through the successful efforts of Plaintiff and his attorneys, a common fund was created in
6 the amount of \$100,000 for the benefit of the employees and the State of California. Thus, these beneficiaries
7 must bear their share of the costs and attorneys' fees, to be deducted from the gross settlement fund under the
8 common fund theory. *Id.* Such fees are deducted as a percentage of the settlement amount. *See, e.g., Boeing*
9 *Co. v. Van Gernert*, 444 U.S. 472, 478-482 (1980); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904
10 F.2d 1301, 1311 (9th Cir. 1990); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
11 1997); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003).

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

22 As a California appellate court very recently confirmed, "fee awards in class actions average around
23 one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro*
24 *v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal.
25 App. 4th 43, 66, fn. 11 (2008)). Consistent with that observation, California state and federal courts routinely
26 award attorneys' fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*,
27 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range
28

1 of, awards in other class action lawsuits”); *Chavez*, 162 Cal. App. 4th at 66 n.11 (“Empirical studies show that,
2 regardless whether the percentage method or the lodestar method is used, fee awards in class actions average
3 around one-third of the recovery.”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An*
4 *Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies
5 of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent
6 with market rates). Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a
7 fee award representing one-third of the fund. *Laffitte*, 231 Cal. App. 4th at 506.

8 A fee award in the amount of one-third of the common fund is also reasonable because it best reflects
9 the market rate for contingency fees. See *Lealao v. Beneficial Cal. Inc.*, 82 Cal. App. 4th 19, 47 (2000)
10 (“attorneys providing the essential enforcement services must be provided incentives roughly comparable to
11 those negotiated in the private bargaining that takes place in the legal marketplace. . . .”). Fees representing one-
12 third of the recovery reflect the rate negotiated in “typical contingency fee agreements [which] provide that class
13 counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.” *Fernandez v. Victoria*
14 *Secret Stores, LLC*, No. CV 06-04149 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008)
15 (citing an academic study collecting contingency fee agreements and finding that a fee award constituting 34%
16 of the fund is reasonable on that basis). Because the negotiated fee structure mimics the marketplace, it is
17 reasonable and should be approved.

18 A one-third common fund⁴ attorneys’ fee award is also consistent with what courts have awarded in
19 other representative action cases. The following list shows PAGA actions where attorneys’ fees were awarded
20

21 ⁴ Court have also approved fees in amounts greater than one-third of the common fund. See *Charles*
22 *v. JPMorgan Chase Bank*, No. CGC-14-538933 (San Francisco County Superior Court June 18,
23 2019) (awarding plaintiffs \$2.88 million in attorneys’ fees on PAGA penalties totaling \$2.7 million);
24 *Boseman v. VXi Global Solutions, LLC*, No. BC602442 (Los Angeles County Superior Court Jan.
25 3, 2019) (awarding plaintiff \$750,000 in attorneys’ fees and costs on general PAGA penalties
26 totaling \$585,000); *Salas v. Hallmark Aviation Services LP*, No. BC586585 (Los Angeles County
27 Superior Court February 17, 2017) (awarding plaintiff \$600,000 in attorneys’ fees on PAGA
28 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).

on a common fund basis:

- *Jones v. J.C. Penney Corporation*, Los Angeles Superior Court. Case No. BC451823 (approving fee award from PAGA-only settlement of \$1.375M against a common fund of \$3.2M (42%));
- *Garcia v. Macv's*. San Bernardino County Superior Court, Case No. CIVDS1516007 (33.33% fee awarded on \$12,500,000 settlement if a PAGA only case);
- *Garcia v. Pep Boys*, Orange County Superior Court, Case No. 30-2014-00720574-CU-OE-CJC (33.33% fee awarded on a \$1,030,000 settlement of a PAGA only case);
- *Brewer v. Connell Chevrolet*, Orange County Superior Court, Case No. 30-2016-00852123-CU-OC-CXC (33.33% fee awarded on a PAGA only case);
- *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137 (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).

An award of fees from the gross settlement amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of plaintiff's counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal. 5th at 503. In affirming the use of the common fund doctrine in California, the California Supreme Court summarized the benefits of the percentage method of recovery stating: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts." *Id.*

For all of these reasons, a common fund fee award in the amount of \$33,333.33 is fair and reasonable.

H. A Lodestar Cross-Check Confirms that the Requested Attorneys' Fees Are Fair and Reasonable

The trial court may use an abbreviated lodestar "cross-check" for common fund awards if the court considers it useful. *Laffitte II*, 1 Cal. 5th at 504-05. However, under *Laffitte II*, this is not meant to displace the

1 percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court expressly instructed that “the
2 lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the
3 fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the
4 fee award.” *Laffitte II*, 1 Cal. 5th at 505. Critically, the Court in *Laffitte II* emphasized that only where the
5 “multiplier calculated by means of a lodestar cross-check is **extraordinarily high or low**” should the court
6 “consider whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable
7 range.” *Id.* (emphasis added). Accordingly, when the cross-check multiplier is within a normal range, the
8 lodestar-cross check does not provide a basis for a court to reduce the fee award. Furthermore, in conducting
9 a lodestar cross-check, the court is not “required to closely scrutinize each claimed attorney-hour.” *Laffitte II*,
10 1 Cal. 5th at 505. An evaluation may be done by reviewing “counsel declarations summarizing overall time
11 spent.” *Id.*

12 In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by
13 multiplying the time reasonably spent by plaintiffs’ counsel on the case by a reasonable hourly rate. *In re*
14 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009). To determine whether the requested rate is
15 reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region. *PLCM Group*
16 *v. Drexler*, 22 Cal. 4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal
17 services even though party used in-house counsel). Here, Plaintiff’s Counsel’s hourly rates are comparable to,
18 or less than, those charged by other class action plaintiffs’ counsel and the firms defending class actions, and
19 have been approved by numerous federal and state courts. (Yaeckel Decl. ¶¶35-39; Perez Decl. ¶¶ 11-14).

20 Likewise, the total attorney hours expended on this action are reasonable and in line with comparable
21 cases. In determining the reasonableness of the hours expended, “the court should defer to the winning lawyer’s
22 professional judgment as to how much time he was required to spend on the case; after all, he won, and might
23 not have, had he been more of a slacker.” *Kerkeles v. City of San Jose*, 243 Cal. App. 4th 88, 104 (2015)
24 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)). Plaintiff’s Counsel billed a total
25 of approximately 70.9 hours to date. (Yaeckel Decl. ¶¶31-32; Perez Decl. ¶11).

26 Multiplying the total hours billed by Plaintiffs’ Counsel to the litigation by their reasonable hourly rates
27 yields a lodestar of \$41,687.25. (Yaeckel Decl. ¶¶31, 34). Here, no lodestar multiplier is necessary as counsel
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1 have billed more than is being requested in this motion. (*Id.* at ¶34). Applying a **negative** multiplier of 0.80
2 to that lodestar approximately yields the requested fees. When plaintiffs seek an amount in fees that is less than
3 what they actually billed, the requested fee amount is generally considered reasonable. *See, e.g., Chun-Hoon*
4 *v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 854 (N.D. Cal. 2010) (finding that, if the court is asked to apply
5 a negative multiplier, it “suggests the negotiated fee award is a reasonable and fair valuation of the services
6 rendered to the class by Plaintiff’s Counsel.”).

7 Plaintiff’s Counsel would otherwise be entitled to a **positive** multiplier based on factors most
8 commonly cited by courts, including: (1) the results obtained; (2) the contingent nature of the fee award; and
9 (3) the skill displayed by counsel. *See Serrano III*, 20 Cal. 3d at 49; *Thayer v. Wells Fargo Bank*, 92 Cal. App.
10 4th 819, 835 (2001) (recognizing “results obtained” as a factor). Additionally, under California law, a 1.5
11 multiplier would be awarded **for the contingent risk factor alone**, and without the presence of other
12 factors. *See Ctr. for Biological Diversity v. Cty. of San Bernardino*, 185 Cal. App. 4th 866, 900
13 (2010) (affirming a 1.5 risk multiplier in a non-complex statutory case and expressly rejecting the application
14 of other multiplier factors). *See also Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1174
15 (2008) (affirming a 1.65 contingent risk multiplier in a wage and hour class action, explaining that “counsel
16 risked never receiving any compensation *at all*” (emphasis in original)); *Pellegrino v. Robert Half Int’l*, 182
17 Cal. App. 4th 278, 292 (2010) (affirming a 1.75 multiplier due, in part, to “Plaintiff’s Counsel not being paid
18 for their work in the event that [defendant] prevailed on [an] affirmative defense.”).

19 The lodestar cross-check thus confirms that Plaintiffs’ fee request is fair and reasonable and should be
20 approved.

21 **I. The Requested Recovery In Litigation Expenses Is Reasonable**

22 Plaintiff’s Counsel are entitled to reimbursement of their discretionary litigation costs. Cal. Lab. Code
23 § 2699(g)(1). Out-of-pocket discretionary expenses are compensable if they would normally be billed to a fee-
24 paying client. *See Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991), *overruled in part on*
25 *other grounds in Olson v. Automobile Club of Southern Calif.*, 42 Cal. 4th 1142 (2008). Such discretionary
26 costs may be claimed as part of an attorneys’ fees motion when seeking statutory fees under the Labor Code.
27 *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1218 n.27 (2008) (awarding costs that are
28

1 necessarily incurred).

2 As detailed in their declarations (Yaeckel Decl. ¶¶40-43, Ex. 3; Perez Decl. ¶ 15), Plaintiff's Counsel
3 advanced \$2,097.03 in out-of-pocket costs to the State for, among other things, filing fees, courier fees,
4 mediation fees. Because these reasonable costs were necessarily incurred during the case's pendency, these
5 costs are reasonable and should be awarded. *See also* Cal. Civ. Pro. Code § 1033.5(c)(4) ("[i]tems not
6 mentioned in this section and items assessed upon application may be allowed or denied in the court's
7 discretion."); *Hsu v. Semiconductor Sys., Inc.*, 126 Cal. App. 4th 1330, 1341 (2005) ("[W]hile it is reasonable
8 to interpret a general contractual cost provision by reference to an established statutory definition of costs, we
9 do not discern any legislative intent to prevent sophisticated parties from freely choosing a broader standard
10 authorizing recovery of reasonable litigation charges and expenses.").

11 **J. The Court Should Approve the Negotiated Service Awards**

12 Paragraph 15 of the PAGA Settlement Agreement provides that Defendant will pay Plaintiff the sum
13 of \$10,000 for her service on behalf of the LWDA and Aggrieved Employees, and for a general release of all
14 claims arising out of her employment. This release covers not only the settled PAGA claims but any and all
15 claims arising out of Plaintiff's employment.

16 Plaintiff has provided a declaration detailing her efforts and assistance with the prosecution
17 of this matter. (Guzman Decl. ¶¶3-7).

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

27 Employers commonly screen employee candidates to determine whether they have ever filed suit, and
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1 employee candidates who might be branded “litigious” are likely to be screened out of the process. In fact, an
2 entire industry has developed for providing employers with background information on employee candidates.
3 By bringing this action against an employer, Plaintiff has assumed considerable reputational risk that may
4 impact their ability to find employment in the future. *La Fleur v. Medical Management Intern, Inc.*, No. 13-
5 00398-VAP, 2014 WL 2967475, *8 (C.D. Cal. June 25, 2014) (awarding \$15,000 to each named plaintiff in
6 part for attesting to their fear that the lawsuit will harm their future job prospects in the industry).

7 Second, the separate settlement payment is reasonable because Plaintiff “remained fully involved and
8 expended considerable time and energy during the course of the litigation.” *See In re Toys ‘R’ Us-Del FACTA*
9 *Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted his time and effort toward assisting his attorneys
10 with the prosecution of the claims, and assisted counsel with finalizing the settlement. (Guzman Decl. ¶¶3-7).

11 The separate payment is also appropriate because Plaintiff otherwise “will not gain any benefit beyond
12 that he would receive as an ordinary [Aggrieved Employee].” *In re Toys “R” Us FACTA Litig.*, 295 F.R.D.
13 at 472; *Van Vranken*, 901 F. Supp. at 299 (holding that a substantial award is appropriate where a
14 [representative’s] claim made up “only a fraction of the common fund.”). Here, absent the separate payment,
15 Plaintiff will recover no more than other Aggrieved Employees, despite undergoing personal sacrifice in
16 bringing this suit on behalf of the State of California and Aggrieved Employees. (Yaeckel Decl. ¶44).

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

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

7 **K. The Settlement Will Be Administered By The Third Party Administrator CAC**
8 **Services Group, LLC**

9 Because the Settlement Agreement requires payments not only to Plaintiff, Plaintiff’s Counsel, and the
10 LWDA, but also to approximately 114 current and former non-exempt employees in proportion to the number
11 of pay periods each Aggrieved Employee worked during the Settlement Period, considerable time and effort
12 will be required to administer the settlement if it is approved by this Court. Among other things, each
13 Aggrieved Employee’s share of the PAGA Fund must be calculated; appropriate tax forms must be issued to
14 all parties who receive payments under the Settlement Agreement; payments must be transmitted to Plaintiff,
15 Plaintiff’s Counsel, the LWDA, and each Aggrieved Employee; and any checks not cashed by Aggrieved
16 Employees shall be tendered to the State Controller’s Office Unclaimed Property Division in the name of the
17 Aggrieved Employees.

18 In contemplation of these expenses, the parties have engaged CAC to act as a third-party settlement
19 administrator. (Yaeckel Decl. ¶¶47-48). CAC has extensive experience administering PAGA and class
20 settlements. (Declaration of Jeffrey Johnson ¶¶3-5). Counsel for both Parties have used CAC in connection
21 with previous PAGA and class action settlements, and have found CAC to be a competent settlement
22 administrator. Moreover, the parties got multiple bids for administration and CAC was the lowest quoted bid.
23 Based on their experience with prior settlement agreements, the parties’ counsel believe that the allocation of
24 approximately \$3,137.70 is competitive rate that reasonably approximates the work required to administer the
25 settlement.

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1 **L. Uncashed Checks Will Be Distributed To The State Controller's Office**
2 **Unclaimed Property Division**

3 Aggrieved Employees shall have one-hundred eighty (180) days from the date of issuance of the check
4 to negotiate the check. (Settlement Agreement ¶ 22). The funds from any checks returned as undeliverable,
5 and any checks not negotiated within 180 days, shall be tendered to the State Controller's Office Unclaimed
6 Property Division in the name of the Aggrieved Employees. (*Id.*)

7 **M. The LWDA Was Provided Notice Of This Settlement**

8 On May 30, 2025, notice of this settlement and motion hearing were provided to the LWDA.

9 **IV. CONCLUSION**

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

13
14 Dated: May 30, 2025

Respectfully submitted,

15 By: Eric Yaeckel
16 Eric K. Yaeckel
17 Ryan T. Kuhn
18 **SULLIVAN & YAECKEL LAW GROUP, APC**
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