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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

CLAUDIA MONTAR FLORES, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

DARENSBERRIES, LLC, a California Limited Liability Company, and DOES 1 through 10, inclusive,

Defendant.

Case No.: 21CV04814
Assigned to: Hon. James F. Rigali, Dept. 2
Complaint Filed: December 6, 2021
Trial Date: Not set

PAGA REPRESENTATIVE ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE THE PAGA SETTLEMENT AND ENTER JUDGMENT

Approval Hearing Date
Date: September 15, 2026
Time: 8:30 a.m.
Dept.: 2

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 15, 2026 at 8:30 a.m. in Department 2 of the Cook Courthouse, Santa Barbara County Superior Court, located at 312-C East Cook Street, Santa Maria, CA 93454, the Honorable James F. Rigali presiding, Plaintiff Claudia Montar Flores ("Plaintiff") will, and hereby does, move for an order under Labor Code section 2699(l)(2) approving the PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement") and PAGA Notice Cover Letter (the "Notice") entered into by Plaintiff and Defendant Darensberries, LLC ("Defendant") to settle the above-captioned Private Attorneys General Act ("PAGA") representative action brought by Plaintiff against Defendant (the "Action"). A true and correct copy of the Settlement Agreement and Notice is attached to the Declaration of Alan Wilcox in Support of Plaintiff's Motion To Approve PAGA Settlement (the "PAGA Counsel Declaration") as **<u>Exhibit 2</u>**.

Pursuant to Labor Code § 2699(l)(2), the Settlement requires the Court's approval. The Settlement provides penalties to "Aggrieved Employees", defined as all current and former non-exempt employees of Defendant who were employed in California at any time from October 1, 2020 through February 14, 2026 (the "Settlement Period"). The Settlement is fair, adequate, and reasonable, and it provides for civil penalties to be distributed to Plaintiff, the Aggrieved Employees, and the California Labor & Workforce Development Agency ("LWDA").

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the PAGA Counsel Declaration, Claudia Montar Flores's Declaration and attached exhibits, as well as the records on file in this action and any argument the Court is presented with at the time of the hearing (the "Motion").

Dated: June 16, 2026

WILSHIRE LAW FIRM

By: ______________________

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Chase M. Stern
Alan Wilcox
Conor J.D. Gomez

Attorneys for Plaintiff ("PAGA Counsel")

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On October 1, 2021, Plaintiff provided notice to the LWDA and Defendant of the violations described above, as required by Labor Code § 2699.3(a)(1). (PAGA Counsel Decl., ¶ 4.) Pursuant to Labor Code § 2699.3 (a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and Defendant whether it intended to investigate the alleged violations, during which time it did not. (*Id.*) On December 6, 2021, Plaintiff filed a representative action for civil penalties under PAGA, including, (1) unpaid wages, including minimum, straight time, and overtime wages (2) meal period violations (3) rest period violations. (4) timely payment of wages during employment and upon termination, (5) failure to maintain accurate records, (6) failure to furnish accurate itemized wage statements, and (6) failure to provide sick leave. (the "Operative Complaint" or "PAGA Action"). (*Id*. at ¶¶ 4, 13.)

On May 1, 2024, and on December 16, 2025, Plaintiff and Defendant engaged in vigorous, arms-length negotiations regarding the resolution of this Action. (PAGA Counsel Decl., ¶ 7.) After all-day mediations presided over by Scott Radovich, Esq., the Parties ultimately agreed to settle Plaintiff's PAGA claim for $350,000.00 (the "Maximum Settlement Amount"), which will provide significant civil penalties to the California Labor & Workforce Development Agency ("LWDA") and other aggrieved employees. (*Id.* at ¶ 8.)

Labor Code § 2699 (l)(2) provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court." Plaintiff submitted the proposed Settlement to the LWDA pursuant to Labor Code § 2699 (l)(2). (*Id.* at ¶ 8, Ex. 3.) The Parties now seek Court approval of the Settlement. For the reasons discussed in detail below, the Court should issue an order approving the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND.

This is a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action brought against Defendant Darensberries, LLC ("Defendant," and together with Plaintiff the "Parties") by Plaintiff, on behalf of the State of California, the Labor and Workforce

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Development Agency ("LWDA"), and current and former non-exempt employees of Defendant who were employed in California at any time from October 1, 2020, through February 14, 2026 (the "Settlement Period"), including Plaintiff (each an "Aggrieved Employee"). (PAGA Counsel Decl., ¶ 2.) Defendant produces berries. (*Id.*)

Plaintiff alleges that Defendant failed to pay for all hours worked. (*Id.* at ¶ 3.) Plaintiff further alleges that Defendant failed to: provide meal periods, authorize and permit rest periods, pay all earned wages twice per month, maintain accurate records of hours worked and meal periods, timely pay final wages, furnish accurate wage statements, and provide sick leave pay. (*Id.*)

On October 1, 2021, Plaintiff provided notice to the LWDA and Defendant of the violations described above, as required by Labor Code § 2699.3 (a)(1). (PAGA Counsel Decl., ¶ 4.) Pursuant to Labor Code § 2699.3 (a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and Defendant whether it intended to investigate the alleged violations, during which time it did not (*Id.*) A true and correct copy of the initial PAGA Notice and evidence of Plaintiff's submission of the initial PAGA Notice to the LWDA are attached to the PAGA Counsel Declaration as **Exhibit 1**. (*Id.*, Ex. 1.)

After Plaintiff filed the Operative Complaint, the Parties engaged in extensive settlement discussions and formal and informal discovery. (PAGA Counsel Decl., ¶ 6.) Defendant produced a sample of employee timekeeping and payroll data as well as documents reflecting Defendant's policies, practices and procedures during the relevant time period. (*Id.*) Plaintiff also propounded multiple sets of formal written discovery, and Defendant provided responses to those sets of discovery. (*Id.*) Ultimately, after all-day mediations presided over by Scott Radovich, Esq., the Parties reached the Settlement. (PAGA Counsel Decl., ¶ 7.) There are approximately 2,200 Aggrieved Employees covered by the Settlement. (*Id.*) Plaintiff submitted the Settlement to the LWDA pursuant to Labor Code § 2699 (l)(2). A true and correct copy of the Plaintiff's submission confirmation of the Settlement Agreement and Notice to the LWDA is attached to the PAGA Counsel Declaration as **Exhibit 3**. (*Id.* at ¶ 8, Ex. 3.)

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III. ARGUMENT.

PAGA permits an aggrieved employee to sue an employer for civil penalties associated with the employer's alleged violations of the Labor Code. (Labor Code § 2699(a).) Under the statute, of the amount paid to settle a claim for PAGA penalties, twenty-five percent (25%) is payable to the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. (Labor Code § 2699 (i)).

A. The Terms of the PAGA Settlement.

Payment Terms

The Settlement provides for Defendant to pay the Maximum Settlement Amount. (Settlement, at ¶ 4.) If the Court approves the terms of the Settlement, the net settlement amount will be approximately $196,522.30 (the "Net Settlement Amount"). The Net Settlement is the Maximum Settlement Amount *minus* the following:

a. Up to $10,000.00 enhancement award to Plaintiff (the "Plaintiff's Individual Release Payment");
b. $116,666.67 to PAGA Counsel for their attorneys' fees (the "Attorneys' Fees");
c. $13,821.03 to PAGA Counsel for attorneys' costs (the "Litigation Costs"); and
d. $12,990.00 to the Apex Class Action Administration (the "Settlement Administrator") for their administration costs (the "Settlement Administration Costs"). A true and correct copy of the Administrator's bid is attached to the PAGA Counsel Declaration as **Exhibit 4**. (PAGA Counsel Decl., ¶ 15.)

Further, 75% of the Net Settlement Amount, or approximately $147,391.73, will go to the LWDA and the remaining 25% of the Net Settlement Amount, or approximately $49,130.58, will be paid to the Aggrieved Employees. The average individual PAGA payment is estimated to be approximately $22.33 ($49,130.58 / 2,200). (PAGA Counsel Decl., ¶ 15.)

Administration

The "Effective Date" will be the date the Court enters a Judgment and Order approving this Settlement. At no time will Defendant have any obligation to fund the Settlement, in whole or in part, until after the Effective Date. (Settlement, ¶ 3.)

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No later than fourteen (14) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name for each Aggrieved Employee, the last-known address for each Aggrieved Employee, each Aggrieved Employee's social security number, and the number of pay periods during the Settlement Period during which each Aggrieved Employee worked as a non-exempt employee in California for Defendant. (Settlement, at ¶ 16.) Within thirty (30) days after the Court's entry of the Approval Order and Judgment, Defendant will pay the Maximum Settlement Amount to the Settlement Administrator. (*Id.* at ¶ 14.)

Checks will remain negotiable for one-hundred eighty (180) calendar days. Any checks returned as non-deliverable on or before the check-cashing deadline will be sent promptly via regular first-class U.S. Mail to the forwarding address affixed thereto. (Settlement, at ¶ 16.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or another search using the name, address, or social security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one-hundred eighty (180) calendar days after issuance will be tendered to the California State Controller's Office, Unclaimed Property Division. (*Id.*) In the event that an Aggrieved Employee's check is undeliverable, uncashed, or otherwise distributed to the California State Controller's Office, Unclaimed Property Division, the terms of this Agreement as incorporated in the Approval Order and Judgment, including the Release of Claims set forth in this Agreement, will nevertheless be binding upon that Aggrieved Employee and the State of California with respect to that Aggrieved Employee. (*Id.*) All payments made to Aggrieved Employees shall, if required by applicable state and/or federal law, be reported on a federal form 1099 that shall be provided to the individual Aggrieved Employees. Aggrieved Employees are responsible for correctly characterizing this compensation for tax purposes and paying any taxes owing on said amounts. (*Id.*)

<u>Releases</u>

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Release of Claims for Aggrieved Employees and the State of California: Upon issuance of the Court's Approval Order and Judgment, Plaintiff, all Aggrieved Employees, and the State of California shall each fully release and forever discharge any and all claims against the Released Parties arising during the Settlement Period for civil penalties under PAGA that were alleged in, could have reasonably been alleged in, or arise from the factual allegations set forth in the Action or the PAGA Notice submitted to the LWDA on October 1, 2021 and any amended PAGA notice thereafter provided ("Released Claims"). The Released Claims include but are not limited to claims for PAGA penalties for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 246, 248.5, 510, 1174, 1174.5, 1194, 1197, 1197.1, and 1198, as well as all applicable Industrial Welfare Commission Wage Orders (codified in the California Code of Regulations), and claims for attorneys' fees, costs, or interest resulting therefrom. (Settlement ¶ 17.)

Releases of Claims by Plaintiff: Upon issuance of the court's approval order and judgment, and effective on the date when Defendant fully funds the Maximum Settlement Amount, Plaintiff and her spouse, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally and fully release and forever discharge Defendant and the Released Parties from all claims, complaints, costs, damages, demands, expenses, and liabilities of any nature and under any legal theory of liability whatsoever, arising from or relating to any transaction or occurrence, including, but not limited to all claims that were, or reasonably could have been, alleged in the Action or Plaintiff's PAGA Notice (collectively "Plaintiff's Released Claims"). Plaintiff's Released Claims do not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Released Claims shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. (Settlement ¶ 18.)

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B. <u>The Terms of the PAGA Settlement Are Fair and Should Be Approved.</u>

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Labor Code § 2699 (l).)

As with any settlement, the Court must be mindful in conducting its inquiry that a "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, *9.) Indeed, "the very essence of a settlement is … 'a yielding of absolutes and an abandoning of highest hopes,'" as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*See Officers for Justice v. Civil Service Com*. (9th Cir. 1982) 688 F.2d 615, 624-25.) As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id*.)

Although the operative PAGA statute does not set forth the criteria by which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement. However, "a PAGA claim asserted on a non-class representative basis…is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of [a class action]." (*See Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL 253217, *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715, *13 ; *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571, *4 (E.D. Cal. July 1, 2010).) A court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process distinct from approval of a class action settlement under Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount(s) that "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective. Indeed, "[t]he remedy sought

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in a PAGA suit consists of civil penalties, not individual or class damages." (*Mendez, supra*, 2010 WL 2650571 at *4.) "Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action." (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, *4. Moreover, while "'[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct," a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages. (*Mendez*, 2010 WL 2650571 at p. *4) As such, the Court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." (*See Ochoa-Hernandez,* 2010 WL 1340777 at p. *4.)

Second, consistent with the fact that unnamed employees have no property interest in a PAGA claim,[1] "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim." (*See Ochoa-Hernandez, supra,* 2010 WL 1340777 at p. *4.) This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the "two-step approval process" required under Federal Rule of Civil Procedure 23(e) and Rule 3.769.[2]

Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of

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[1] As held by the California Supreme Court, "[t]he Labor Code Private Attorneys General Act of 2004 does not create property rights or any other substantive rights" as "[i]t is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.)

[2] Significantly, the "two-step" approval process of Rule 23(e) is required to facilitate "notice" to absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves or object. (*See* Fed. R. Civ. P. 23(e) ("The following procedures apply to a proposed settlement … (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal…. (4) … the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members.… (5) Any class member may object to the proposal if it requires court approval under this subdivision").) Cal. Rule of Court 3.769 contains similar rules for State court class actions.

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release permitted in a PAGA settlement is limited. While "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding…the non-party employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986-87 .) Thus, with the exception of the named Plaintiff, the scope of a release in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint, and claims that were or could have been alleged pursuant to PAGA based on the factual allegations in the complaint. In the case at hand, as the only claims at issue are PAGA claims, those will be the only claims extinguished as a result of this Settlement, with the exception of Plaintiff's much broader, general personal release against Defendant.

California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action settlements (and representative PAGA settlements) involve a court approval process that exists to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) "Despite the fact that 'a representative action under PAGA is not a class action'[(*Kim v. Reins International California, Inc.* (2020) 9 Cal.App.5th 73, 87)], and is instead a 'type of qui tam action' [(*Iskanian v. CLS Transportation Los Angeles, LLC*, (2014) 59 Cal.App.4th 348, 382.)] a standard requiring the trial court to determine independently whether a PAGA settlement is fair and reasonable is appropriate." (*Moniz v. Adecco USA, Inc.*, (2021) 72 Cal.App.5th 56, 76 ("*Moniz*") (disapproved on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664).) The trial court must review and approve a PAGA settlement, and the California Supreme Court has observed that the trial court's approval "ensur[es] that any negotiated resolution is fair to those affected." (*See id.* (citing *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 542-43.) When trial court approval is required for certain settlements in other qui tam actions in this state, the statutory standard is whether the settlement is "fair, adequate, and reasonable under all the circumstances." (*See Moniz*, *supra*, at 76-77.) "Because many of the factors used to evaluate class action settlements bear on a settlement's

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fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Id.*) Thus, when approving a PAGA settlement, the Court can analyze the fairness of a settlement under the same framework as it does for class actions.

In the class action context, there is a presumption of fairness of a class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action settlement, a trial court must develop an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.).

The Settlement satisfies these factors as detailed below.

1. The Settlement Was Reached Through Arms-Length Bargaining.

The Parties reached the Settlement after both all-day mediations presided over by Scott Radovich, Esq. (PAGA Counsel Decl., at ¶ 8.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

2. The Settlement Is Based On Sufficient Investigation and Discovery.

Before the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in formal and informal discovery. Based upon the information obtained, Plaintiff's counsel was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.* at ¶ 9.)

3. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.

Highly capable and experienced counsel conducted the settlement negotiations. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and

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effective advocacy for their clients, and they are experienced in handling complex wage and hour class action litigation and PAGA actions. (PAGA Counsel Decl., ¶¶ 33-44.) PAGA Counsel believes this Settlement represents a fair and reasonable resolution. (*Id.* at ¶ 30.)

4. Assessing the Amount in Controversy and the Risks of Trial.

Plaintiff and her counsel remain confident of the merits of Plaintiff's claims. (PAGA Counsel Decl., at ¶ 10.) With respect to the meal period allegation, Plaintiff alleges that Defendant did not have fully compliant written meal period policies. (*Id.*) Although Plaintiff contends that this allegation is meritorious, there is risk with this underlying claim. (*Id.*) With respect to the rest period allegation, Plaintiff contends that employees, including herself, were not provided with California-compliant rest periods, as employees were often cut short or otherwise interrupted or that employees would be forced to skip rest breaks due to a heavy workload. (*Id.*) Again, despite Plaintiff's contention that this allegation is credible, proving rest period allegations is particularly difficult because rest periods do not have to be recorded and Defendant can argue that the aggrieved employees chose to voluntarily forego their rest periods. (*Id.*) Defendant's potential violations were further evidenced by virtually all meal periods being recorded as having purportedly been exactly 30 minutes in length and second meal periods never being recorded for instances when employees worked between 10 and 12 hours. (*Id.*) Plaintiff also attested to breaks regularly being interrupted by management and to management preventing employees from leaving the premises during breaks. (*Id.*) Plaintiff also asserts that Aggrieved Employees were required to work at outdoor worksites but were not provided with heat recovery periods, but Defendant would have likely argued that such recovery periods were provided and that no records exist which disprove this claim. (*Id.*) Plaintiff also asserts that hours and pay were not recorded and/or were miscalculated, Defendant also maintains that any alleged wage statement violation could not be shown to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Labor Code § 226 (e) for the imposition of penalties. (*Id.* at ¶ 11.) Plaintiff recognized there is a legitimate risk of the Court significantly reducing penalties given the technical nature of the alleged violations. (PAGA

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Counsel Decl., at ¶ 12.)

Without this Settlement, the Parties face preparation for trial, as well as extensive formal discovery efforts and further depositions. (PAGA Counsel Decl., at ¶ 12.) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) The Defendant is no longer in business and has had financial issues, which was the main reason for the lower settlement price. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*) Thus, this factor favors approval.

As described above, the proposed Settlement provides a fair and reasonable monetary recovery for the Aggrieved Employees and the LWDA in the face of the contested claims. Plaintiff estimated Defendant's realistic exposure for the PAGA penalties as follows:

<u>PAGA Penalties for Unpaid Wages, Meal Period Violations and Rest Period Violations</u>

The Settlement Agreement provides for 41,000 pay periods during the Settlement Period which presented issues relating to two general categories: (1) unpaid regular, overtime, and sick pay wages and (2) meal, rest, and recovery period violations. (PAGA Counsel Decl., at ¶ 13.) Plaintiff acknowledges that when evaluating Defendant's potential exposure, it is likely that the Court would impose only the initial $100 violation for all PAGA violations. (*See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 [finding that the "initial" violation rate applies until the employer has been notified that it is violating a Labor Code provision].) Applying the $100.00 per pay period "initial violation" penalty for each category of violations per pay period, Defendant's maximum potential PAGA exposure is $8,200,000.00 (41,000 pay periods × 2 violations per pay period × $100.00 per violation). (*Id.*) However, given the technical nature of proving each of these violations and the trial court's ability to prevent stacking PAGA penalties, PAGA Counsel reduced its estimate by assuming one violation per pay period, yielding a more realistic maximum recovery amount of $4,100,000.00. (*Id.*) PAGA Counsel, then discounted this amount by 70% due to the highly contested nature of the claims, the fact that multiple claims would have involved the fact-finder assessing disputed stories about contested undocumented allegations, many of the potential witnesses were seasonal workers who would have been hard to locate, multiple claims have no documentary support, the defenses asserted by Defendant, and the

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likelihood of success at trial, yielding a more realistic maximum recovery of $1,230,000.00. (*Id.*; *see also Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 [reducing PAGA penalties from $2.8 million to $500,000]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136 [affirming trial court's finding that awarding maximum PAGA penalties would be unjust].) PAGA Counsel then considered Defendant's financial condition and the likelihood of actually recovering any amounts awarded, including any potential for appeals and the fact that Defendant is defunct and has not been operating its business for several years, and further reduced the more realistic maximum recovery by an additional 50%, for a revised estimated more realistic maximum recovery of $615,000.00. (*Id.*)

The Maximum Settlement Amount therefore represents 57% of Plaintiff's reasonably forecasted total recovery ($350,000.00 / $615,000.00 = 57%). (PAGA Counsel Decl., at ¶ 14.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this Action, continued litigation would delay payment to the LWDA and the PAGA Employees as they await trial and, most likely, appellate proceedings. (*Id.* at ¶ 14.) Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the predicate Labor Code violations. (*Id.*) The possibility that the Court finds no liability at the PAGA bench trial is also a risk. (*Id.*) In sum, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear that the Settlement is fair. (*Id.*) Further, because of the proposed Settlement, the Aggrieved Employees will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) Plaintiff also recognizes that proving the amount of wages due to each employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

If the Court approves the terms of the Settlement, the average individual PAGA payment is estimated to be approximately $22.33 per Aggrieved Employee ($49,130.58 ÷ 2,200, assuming

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roughly equal number of pay periods for each) and approximately $1.20 per pay period ($49,130.58 ÷ 41,000). (PAGA Counsel Decl., ¶ 15.)

C. **The Plaintiff's Individual Release Payment Is Reasonable.**

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts also routinely grant approval of PAGA settlement agreements containing additional awards for the class representatives, which are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, **to recognize their willingness to act as a private attorney general**." (*Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94 [citations omitted] (emphasis added).)

The Settlement provides for a Plaintiff's Individual Release Payment to Plaintiff in an amount not to exceed $10,000.00. (Settlement, ¶ 7.) Plaintiff's Individual Release Payment is intended to recognize: (1) the substantial time and effort that Plaintiff has expended on behalf of the State and Aggrieved Employees; (2) the risks faced by Plaintiff as a result of bringing this Action; (3) the fact that Plaintiff put the interests of the State of California and other Aggrieved Employees ahead of her own; and (4) the substantial benefit conferred upon the State and the Aggrieved Employees as a result of Plaintiff's actions. (PAGA Counsel Decl., ¶ 16.) Plaintiff has spent numerous hours performing tasks for this Action, including, but not limited to, the following: consulting with PAGA Counsel in-person and over the telephone; searching for and producing relevant documents; reviewing documents produced by Defendant and settlement documents; keeping informed of the developments in the Action; and participating in decisions concerning the case, including settlement. (*Id*. at ¶ 17.) As a result of her efforts, the LWDA and about 2,200 Aggrieved Employees will receive compensation for civil penalties for underpaid wages and other wage and hour violations. (*Id*.)

Plaintiff put herself at significant risk in pursuing this Action on behalf of the State, as serving as a Plaintiff in a representative action could affect her prospects for future employment.

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(*Id*. at ¶ 18.) Plaintiff also placed herself at substantial risk because, if Defendant was to prevail in this Action, Plaintiff could be liable for Defendant's costs and attorneys' fees. (*Id*.)

In short, this Action would not have been possible without the aid of Plaintiff, who put her own time and effort into this Action, sacrificed the value of her individual claims by entering into a general release of all known and unknown claims, and placed herself at risk for the sake of the State and the aggrieved employees, and Defendant will not oppose Plaintiff's request for the full Plaintiff's Individual Release Payment. (PAGA Counsel Decl., at ¶ 19.) Accordingly, the Plaintiff's Individual Release Payment is reasonable and should be approved by the Court.

D. <u>The Requested PAGA Counsel Attorneys' Fees and Litigation Costs Payments Are Reasonable.</u>

A prevailing party in a PAGA action is entitled to recover their attorneys' fees and costs for their claims. (Cal. Lab. Code § 2699(g) ["Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."].) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.)

Fee awards of roughly one-third of the settlement fund are routinely awarded in California state and federal courts in class and representative PAGA actions. "[F]ee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 ; *see also*, *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel's fee award should have been calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass'n* (Cal. Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL 5561118 [approving attorneys' fees of one-third of settlement fund in representative PAGA settlement]; *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

The PAGA Counsel Attorneys' Fees ($116,666.67), representing one-third (33.33%) of

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the $350,000.00 Maximum Settlement Amount) is justified because PAGA Counsel achieved a significant monetary recovery for the Aggrieved Employees and the LWDA in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rates described above. (Settlement ¶¶ 5, 6) PAGA Counsel expended significant time and resources in litigating this Action, which resulted in a favorable result for the LWDA, Plaintiff, and the Aggrieved Employees. (PAGA Counsel Decl., ¶ 30.) PAGA Counsel elected to bear the contingency risk of this Action for the benefit of the Aggrieved Employees, as well as for the State of California. (PAGA Counsel Decl., ¶¶ 27-29.) The fact that PAGA Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this Action carried substantial risk as to the merits as well as the potential of the Court drastically reducing penalties in the context of a contested trial or summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks in compensating PAGA Counsel. Since undertaking this representation, Plaintiff's counsel has dedicated substantial resources to this Action, including approximately $13,821.03 in costs, without receiving any compensation to date. (PAGA Counsel Decl., ¶ 31.) PAGA Counsel conducted extensive legal research regarding the merits of Plaintiff's claims, their ability to recover penalties under the PAGA, and Defendant's potential defenses. (*Id.* at ¶ 9.) Plaintiff's counsel expended significant additional efforts in litigating and settling this Action. (*Id*. at ¶ 22.)

PAGA Counsel's lodestar is at least $175,842.50 based on over 189.7 hours of work performed thus far. (PAGA Counsel Decl., ¶¶ 21-22.) Accordingly, the PAGA Counsel Attorneys' Fees are reasonable and fair as it is based on an approximate multiplier of 0.66. This disparity is important to note because when plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 [finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is a reasonable and fair valuation of the services rendered to the class by Plaintiff's Counsel."].) Indeed, there is no reason for the Court

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to reduce PAGA Counsel's lodestar with a negative multiplier. (*Roos v. Honeywell Int'l., Inc.* (2015) 241 Cal. App. 4th 1472, 1495 ["a trial court acts appropriately . . .when it accepts in a common-fund case a cap on fees . . . when the application of the cap results in a lower award than would be authorized under the lodestar method."], disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Given the considerable potential for adverse outcomes in this Action, including, but not limited to, Defendant defeating Plaintiff's claims on the merits, and/or facing a drastic reduction to potential PAGA penalties, the contingent risk borne by PAGA Counsel was great. The quality of PAGA Counsel's work, and the efficiency and dedication with which it was performed, should be compensated.

PAGA Counsel's previous experience in litigating similar class and representative actions also supports the reasonableness of the fee request. Plaintiff's counsel brings extensive plaintiff-side wage-and-hour class, collective, and representative action experience. (PAGA Counsel Decl., at ¶¶ 33-44.) They have been found to be adequate counsel in numerous cases alleging wage and hour claims. (*Id*.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. Because it is reasonable to compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, the requested PAGA Counsel Attorneys' Fees is reasonable.

Plaintiff's request for reimbursement of actual litigation costs of $13,821.03 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's Litigation Costs are documented and reasonably incurred. (*See* PAGA Counsel Decl., Ex. 5.)

E. <u>Settlement Administration Costs Are Reasonable.</u>

The Settlement Administration Costs in the amount of $12,990.00 is reasonable, given the tasks to be performed by the Settlement Administrator, including, but not limited to, the following duties: mailing and re-mailing (if necessary) checks to approximately 2,200 Aggrieved Employees and the LWDA; establishing a qualified settlement fund; preparing and submitting to Aggrieved Employees and government entities all appropriate tax filings and

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forms; distributing the Plaintiff's Individual Release Payment, Attorneys' Fees payment, and Litigation Costs payment; keeping the Parties timely apprised of the performance of all obligations under the Agreement; and voiding uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed Property Fund. (Class Counsel Decl., ¶ 32; *see also* Settlement, *generally*.) Plaintiff respectfully requests that the Court approve the requested Administration Expenses Payment.

IV. <u>CONCLUSION.</u>

For the reasons set forth above, Plaintiff requests that the Court grant this Motion and approve the Parties' PAGA Settlement.

Respectfully submitted,

Dated: June 16, 2026

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