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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN BERNARDINO**

ELIZABETH GARCIA, on behalf of the State of  
California and other aggrieved persons,

Plaintiff,

v.

GIANT INLAND EMPIRE RV CENTER, INC.,  
a California corporation; and DOES 1 through  
10, inclusive,

Defendants.

ELECTRONICALLY FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT  
3/7/2025 12:53 PM  
By: Alexis Camacho, DEPUTY

Case No.: CIVSB2209435

**PAGA REPRESENTATIVE ACTION**

*[Assigned for all purposes to: Hon. Jessica  
Morgan, Dept. S-26]*

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION TO APPROVE PAGA  
SETTLEMENT**

**APPROVAL HEARING**

Date: June 23, 2025  
Time: 8:30 a.m.  
Dept.: S-26

Complaint Filed: May 6, 2022  
Trial Date: not set

**NOTICE OF MOTION AND MOTION**

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

**PLEASE TAKE NOTICE** that on June 23, 2025 at 8:30 a.m. in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415, the Honorable Jessica Morgan presiding, Plaintiff Elizabeth Garcia (“Plaintiff”) will, and hereby does, move for an order under Labor Code section 2699(1)(2) approving the PAGA Settlement Agreement (“Settlement”) entered into by Plaintiff and Defendant Giant Inland Empire RV Center, Inc. (“Defendant”).

Pursuant to Labor Code § 2699(1)(2), the settlement of Plaintiff’s PAGA claims requires the Court’s approval. The basis for this motion is that Plaintiff and Defendant reached and fully executed a Settlement of the above-entitled case, Case No. CIVSB2209435, that disposes of the matter entirely and is fair, reasonable, and serves the purposes of the PAGA statute. The Settlement includes all persons who were engaged by Defendant as non-exempt or hourly-paid employees in California at any time from March 1, 2021 to April 29, 2024. The Settlement is fair, adequate, and reasonable, and it provides for civil penalties to be distributed to Plaintiff, other aggrieved employees, and the California Labor & Workforce Development Agency.

This motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Benjamin H. Haber, Declaration of Elizabeth Garcia 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.

Respectfully submitted,

Dated: March 7, 2025

WILSHIRE LAW FIRM

By:   
Benjamin H. Haber  
Daniel J. Kramer

Attorneys for Plaintiff

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION.**

On May 6, 2022, Plaintiff Elizabeth Garcia (“Plaintiff”) filed a Private Attorney General Act (“PAGA”) Complaint against Defendant Giant Inland Empire RV Center, Inc., (“Defendant”) alleging civil penalties under PAGA. On April 29, 2024, Plaintiff and Defendant engaged in vigorous, arms-length negotiations regarding the resolution of this matter. After an all-day mediation presided over by Hon. Daniel Buckley (Ret.), the Parties ultimately agreed to settle Plaintiff’s PAGA claim for \$295,000.00, which will provide significant civil penalties to the California Labor & Workforce Development Agency (“LWDA”) and other allegedly aggrieved employees.

Labor Code § 2699(1)(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 concurrently with this Motion, pursuant to Labor Code § 2699(1)(2). (Declaration of Benjamin H. Haber [“Haber Decl.”], ¶ 8, Ex. 1.) 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.**

Defendant is a leading name in the RV industry in Southern California that sells and services RVs. (*Id.* at ¶ 3.) Plaintiff worked for Defendant from approximately September 2017 to approximately March 2021 as a Parts Driver, Office Clerk, and Porter. (*Id.*)

Plaintiff’s PAGA claim is based on from Defendant’s alleged failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify for necessary business expenditures, and unfair business practices. Defendant denies all allegations of wrongdoing. (Haber Decl., ¶ 4.)

On March 1, 2022, Plaintiff provided notice to the LWDA and Defendant of the alleged violations described above, as required by Labor Code § 2699.3(a)(1). (Haber Decl., ¶ 5.)

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. (*Id.*) However, the LWDA did not do so. (*Id.*)

After Plaintiff filed her complaint, the Parties engaged in extensive settlement discussions. (Haber Decl., ¶ 6.) To facilitate settlement, Defendant provided Plaintiff with a sampling of timekeeping and payroll data for aggrieved employees and documents reflecting Defendant's policies and procedures in effect during the relevant time period. (*Id.*) Thereafter, the Parties engaged in extensive discussions about the factual and legal strengths (and weaknesses) of the claims and defenses. (*Id.*) Ultimately, after an all-day mediation presided over by Hon. Daniel Buckley (Ret.), the Parties agreed to settle the PAGA claim for \$295,000.00, which includes all persons employed by Defendant in California and classified as a non-exempt or hourly-paid employee who worked for Defendant during the PAGA Period. (*Id.* at ¶ 8.) There are approximately 518 allegedly aggrieved employees covered by the settlement. (*Id.*) Plaintiff submitted the Settlement to the LWDA pursuant to Labor Code § 2699(1)(2). A true and correct copy of the PAGA Settlement Agreement ["Settlement"] executed by the Parties, along with the confirmation that the Settlement was submitted to the LWDA is attached to the Declaration of Benjamin H. Haber as **Exhibit 1**. (Haber Decl., ¶ 8; Ex. A.) Additionally, attached as **Exhibit 2** to the Declaration of Benjamin H. Haber is the Settlement Notice that will be sent to the PAGA Employees with payment after the Court enters a Judgement on its Order Approving the PAGA Settlement. (*Id.*; Settlement, ¶ 1.21.)

### **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.**

The Settlement provides for a gross Settlement Amount of \$295,000.00 to be distributed

to persons employed by Defendant in California and classified as a non-exempt or hourly-paid employee who worked for Defendant during the PAGA Period, and releases claims by the Aggrieved Employees during this period as well. (Settlement, ¶¶ 1.4, 5.2.) Of that amount, \$98,333.33 is allocated to Attorneys' Fees, up to \$21,390.49 is allocated to litigation costs, up to \$5,750.00 is allocated to Settlement Administrator Costs, and \$7,500.00 is allocated as a Service Award to Plaintiff. (Settlement, ¶¶ 3, 5.) The Net Settlement Amount after these deductions is \$162,026.18 and will be allocated and disbursed as follows:

**Settlement Administration.** Within fifteen (15) days after the Court approves the Settlement and any other LWDA requirements are satisfied, Defendant will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet, for the purposes of distributing payments to the aggrieved employees. (Settlement, ¶ 4.2.) Within fifteen (15) days of the Effective Date, Defendant shall fully fund the Settlement by transmitting the funds to the Settlement Administrator. (*Id.* at ¶ 4.3.)

Before mailing payments to the aggrieved employees, the Settlement Administrator will update contact information using the National Change of Address database. (*Id.* at ¶ 4.4.1.) The Settlement Administrator will then issue the Notice and payments to the PAGA Employees, issue any required IRS forms, issue the Service Award to Plaintiff, and issue payment to the LWDA and Plaintiff's counsel. (*Id.* at ¶ 4.4.2.) PAGA Employees will have 180 days to cash their checks, after which time a stop-payment will issue and the funds will be paid to the California Controller's Unclaimed Property Fund in the name of the PAGA Employee. (*Id.* at ¶¶ 4.4.1, 4.4.3.)

**B. The Terms of the PAGA Settlement Are Fair and Should Be Approved.**

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 "[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).) Based thereon, 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 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

1 of rendering findings of liability and damages. (*Mendez*, 2010 WL 2650571 at p. \*4) As such,  
2 the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or  
3 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to  
4 recover civil penalties for the government that otherwise may not have been assessed and  
5 collected by overburdened state enforcement agencies.” (*See Ochoa-Hernandez*, 2010 WL  
6 1340777 at p. \*4.)

7 Second, consistent with the fact that unnamed employees have no property interest in a  
8 PAGA claim,<sup>1</sup> “[u]nnamed employees need not be given notice of the PAGA claim, nor do they  
9 have the ability to opt-out of the representative PAGA claim.” (*See Ochoa-Hernandez, supra*,  
10 2010 WL 1340777 at p. \*4.) This renders the approval process of a PAGA settlement distinct  
11 from a class action settlement, as there is no need for the Court to employ the “two-step approval  
12 process” required under Federal Rule of Civil Procedure 23(e) and Rule 3.769.<sup>2</sup>

13 Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of  
14 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is  
15 binding not only on the named employee plaintiff but also on government agencies and any  
16 aggrieved employee not a party to the proceeding...the non-party employees, because they were  
17 not given notice of the action or afforded any opportunity to be heard, would not be bound by  
18 the judgment as to remedies other than civil penalties.” (*Arias v. Superior Court* (2009) 46  
19 Cal.4th 969, 986-87 .) Thus, with the exception of the named Plaintiff, the scope of a release  
20 in a PAGA settlement is necessarily strictly confined to the PAGA penalties alleged in the  
21

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22 <sup>1</sup> As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of  
23 2004 does not create property rights or any other substantive rights” as “[i]t is simply a procedural statute  
24 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.)

25 <sup>2</sup> Significantly, the “two-step” approval process of Rule 23(e) is required to facilitate “notice” to  
26 absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members  
27 to exclude themselves or object. (*See Fed. R. Civ. P. 23(e)* (“The following procedures apply to a proposed  
28 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.

1 complaint, and claims that were or could have been alleged pursuant to PAGA based on the  
2 factual allegations in the Complaint. In the case at hand, as the only claims at issue are PAGA  
3 claims, those will be the only claims extinguished as a result of this Settlement, with the  
4 exception of Plaintiff's much broader, general personal release against Defendant.

5 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*  
6 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action  
7 settlements (and representative PAGA settlements) involve a court approval process that exists  
8 to prevent fraud, collusion, and unfairness to absent individuals. (*Malibu Outrigger Bd. of*  
9 *Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-79.) In the class action context,  
10 there is a presumption of fairness of a class action settlement when: (1) the settlement is reached  
11 as a result of arm's length negotiations; (2) there has been sufficient investigation and discovery;  
12 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.  
13 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) Before approving a class action  
14 settlement, a trial court must develop an understanding "of the amount that is in controversy  
15 and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008)  
16 168 Cal.App.4th 116, 120.).

17 The proposed settlement meets all of these factors.

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

19 The Parties reached the Settlement after an all-day mediation presided over by Hon.  
20 Daniel Buckley (Ret.). (Haber Decl., ¶¶ 7, 8.) The settlement negotiations were at arm's length  
21 and, although conducted in a professional manner, were adversarial. (*Id.* at ¶ 7.) The Parties  
22 went into the mediation willing to explore the potential for a settlement of the dispute, but each  
23 side was also prepared to litigate their position through trial and appeal if a settlement had not  
24 been reached. (*Id.*)

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

26 Before the Settlement, Plaintiff's counsel conducted an investigation into the claims  
27 alleged by Plaintiff, conducted legal research, and engaged in informal discovery. Based upon  
28 the information obtained through informal discovery, Plaintiff's counsel was able to act

1 intelligently and effectively in negotiating the proposed Settlement. (Haber Decl., ¶ 9.)

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

3 Highly capable and experienced counsel conducted the settlement negotiations.  
4 Plaintiff's counsel are respected members of the bar with a strong record of vigorous and  
5 effective advocacy for their clients, and they are experienced in handling complex wage and  
6 hour class action litigation and PAGA actions. (Haber Decl., ¶¶ 27-33.) Although Plaintiff and  
7 counsel were prepared to litigate the claims in this action, they support the proposed Settlement  
8 as being in the best interests of the State of California and the aggrieved employees. (*Id.* at ¶  
9 9.)

10 **4. Assessing the Amount In Controversy and the Risks of Trial.**

11 Plaintiff and her counsel remain confident of the merits of Plaintiff's claims. (Haber  
12 Decl., ¶ 10.) However, Plaintiff does acknowledge that her position includes risk and  
13 uncertainty, as described in more detail below. For instance, Plaintiff's allegation that  
14 Defendant failed to pay Plaintiff and the aggrieved employees all of their owed wages is based  
15 on Defendant's failure to: 1) pay employees for work performed "off-the-clock;" and 2) include  
16 non-discretionary remuneration (i.e., bonuses) in the regular rate of pay for overtime purposes.  
17 (*Id.*) Although present on the face of the records, Defendant contends that any bonuses issued  
18 to employees were entirely discretionary, and therefore, did not need to be included in the  
19 regular rate of pay for purposes of calculating the overtime rate. (*Id.*; *see also* 29 C.F.R. §§  
20 778.208, 778.211 [excluding "discretionary" bonuses from the regular rate]; *see also* DLSE  
21 Manual § 49.1.2.4(3) [bonuses are discretionary, and therefore excludable, if "both the fact that  
22 payment is to be made and the amount of the payment" are discretionary].) With respect to the  
23 meal period allegation, Plaintiff alleges that Defendant did not have fully compliant written  
24 meal period policies and had illegal blanket meal period waivers. (*Id.*) Although Plaintiff  
25 contends that this allegation is meritorious, there is risk with this underlying claim as Defendant  
26 is expected to argue that any non-compliance on the part of employees was isolated, voluntary  
27 and requires individual inquiry. (*Id.*) With respect to the rest period allegation, Plaintiff  
28 contends that employees, including herself, were not provided with California-compliant rest

1 periods, as employees were required to remain on-site during rest periods and were discouraged  
2 by their supervisors from taking rest periods. (*Id.*) Again, despite Plaintiff's contention that  
3 this allegation is credible, proving rest period allegations is particularly difficult because rest  
4 periods do not have to be recorded and Defendant is expected to argue that the aggrieved  
5 employees chose to voluntarily forego their rest periods, and that determination of actual  
6 violations requires individual inquiry. (*Id.*) With respect to the unreimbursed business expenses  
7 allegation, Plaintiff alleges that Defendant required her and the other aggrieved employees to  
8 use their cellphones to communicate with supervisors and other employees and to purchase  
9 uniform items such as company shirt's without being reimbursed. (*Id.*) Defendant disputes this  
10 claim based on the fact that they provided employees with all the necessary tools required for  
11 the performance of their duties and as such, any additional tools purchased by employees were  
12 not truly necessary. (*Id.*) Lastly, with regard to Plaintiff's wage statement claim, Defendant  
13 argues that the wage statements issued to employees meet the requirement of Labor Code §  
14 226(a). (*Id.* at ¶ 11.)

15 Defendant also maintains that any alleged wage statement violation could not be shown  
16 to be "knowing and intentional," and that Plaintiff cannot show that she or any other employee  
17 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Labor  
18 Code § 226(e) for the imposition of penalties. (*Id.*)

19 Additionally, Plaintiff faced a significant risk that even if the Court did award PAGA  
20 penalties, the Court could drastically reduce the penalties based on the discretionary factors  
21 contained in Labor Code § 2699(e)(2) ("In action by an aggrieved employee..., a court may  
22 award a lesser amount than the maximum civil penalty amount specified by this part if, based  
23 on the facts and circumstances of the particular case, to do otherwise would result in an award  
24 that is unjust, arbitrary and oppressive, or confiscatory."). Plaintiff believed there was a  
25 legitimate risk of the Court significantly reducing penalties given the technical nature of the  
26 alleged violations. (Haber Decl., ¶ 12.)

27 Without this settlement, the Parties face preparation for trial, as well as extensive formal  
28 discovery efforts and further depositions. (*Id.*) As a result, the Parties would incur considerably

1 more attorneys' fees and costs through trial. (*Id.*) This settlement avoids those risks and the  
2 accompanying expense. Thus, this factor favors settlement approval. (*Id.*)

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

6 PAGA Penalties for Unpaid Wages, Meal Period Violations, Rest Period Violations, and  
7 Unreimbursed Business Expenses: \$306,240.00

8 Plaintiff's expert determined that there were 15,312, pay periods during the relevant time  
9 period which presented issues with regard to unpaid wages, meal period violations, rest period  
10 violations, and unreimbursed business expenses. (Haber Decl., ¶ 13.) Plaintiff acknowledges  
11 that when evaluating Defendant's potential exposure, it is likely that the Court would impose  
12 only the initial \$100 violation for all PAGA violations. (*See Amaral v. Cintas Corp. No. 2*  
13 (*2008*) 163 Cal.App.4th 1157, 1207 [finding that the "initial" violation rate applies until the  
14 employer has been notified that it is violating a Labor Code provision].) Applying the \$100  
15 "initial violation" penalty for each of these pay periods, Defendant's maximum potential PAGA  
16 exposure is \$1,531,200.00 (based on 15,312 pay periods). (Haber Decl., ¶ 13.) However,  
17 Defendant's contention that the underlying allegations lacked merit led to Plaintiff discounting  
18 this maximum exposure by 80% to account for the risk of not prevailing on the merits and the  
19 Court's discretion in reducing penalties. (*Id.*) (*see also Fleming v. Covidien Inc.* (C.D. Cal.,  
20 Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at \*4 [reducing PAGA penalties from \$2.8  
21 million to \$500,000]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th  
22 1112, 1136 [affirming trial court's finding that awarding maximum PAGA penalties would be  
23 unjust].)

24 Using these estimated figures, Plaintiff predicted that the realistic total potential  
25 recovery for the PAGA Employees and the LWDA would be approximately \$306,240.00.  
26 (Haber Decl., ¶ 13.) The proposed Settlement of \$295,000.00 therefore represents 77.1% of  
27 Plaintiff's reasonably forecasted total recovery. (*Id.* ¶ 14.) "The fact that a proposed settlement  
28 may only amount to a fraction of the potential recovery does not, in and of itself, mean that the

1 proposed settlement is grossly inadequate and should be disapproved.” (*Linney v. Cellular*  
2 *Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations omitted].) In this  
3 case, continued litigation would delay payment to the LWDA and the PAGA Employees as they  
4 await trial and, most likely, appellate proceedings. (Haber Decl., ¶ 14.) Furthermore, while  
5 Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each of the  
6 predicate Labor Code violations. (*Id.*) The possibility that the Court finds no liability at the  
7 PAGA bench trial is also a risk. (*Id.*) In sum, when the risks of litigation, the burdens of proof  
8 necessary to establish liability, and the probability of appeal of a favorable judgment are  
9 balanced against the merits of Plaintiff’s claims, it is clear that the Settlement amount is fair.  
10 (*Id.*) Further, because of the proposed Settlement, the PAGA Employees will receive timely,  
11 guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*) Plaintiff also  
12 recognizes that proving the amount of PAGA penalties due to each employee would be an  
13 expensive, time-consuming, and uncertain proposition. (*Id.*)

14 If the Court approves the terms of the Settlement, each aggrieved employees’ payment  
15 will be approximately \$78.20 and approximately \$121,519.64 will go to the LWDA. (Haber  
16 Decl., ¶ 15.) In reality, some employees will likely receive more, and others may receive less  
17 depending on the length of their employment with Defendant. (*Id.*)

18 **C. The PAGA Representative Service Payment Is Reasonable.**

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

28 The Settlement provides for a Service Payment to Plaintiff in an amount not to exceed

1 \$7,500.00. (Settlement, ¶ 3.2.1.) The requested service award is intended to recognize: (1) the  
2 substantial time and effort that Plaintiff has expended on behalf of the State and Aggrieved  
3 Employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3) the fact that  
4 Plaintiff put the interests of the State of California and other aggrieved employees ahead of her  
5 own; and (4) the substantial benefit conferred upon the State and the aggrieved employees as a  
6 result of Plaintiff's actions. (Haber Decl., ¶ 16.) Plaintiff has spent numerous hours performing  
7 tasks for this case, including, but not limited to, the following: consulting with counsel in-person  
8 and over the telephone; searching for and producing relevant documents; reviewing documents  
9 produced by Defendant and settlement documents; keeping informed of the developments in the  
10 case; and participating in decisions concerning the case, including settlement. (*Id.* at ¶ 17.) As  
11 a result of her efforts, the LWDA and about 518 aggrieved employees will receive compensation  
12 for civil penalties for alleged underpaid wages and other claimed wage and hour violations.  
13 (*Id.*)

14 Plaintiff put herself at significant risk in pursuing this action on behalf of the State, as  
15 serving as a Plaintiff in a representative action could affect her prospects for future employment.  
16 (Haber Decl., ¶ 18.) Plaintiff also placed herself at substantial risk because, if Defendant was  
17 to prevail in this action, Plaintiff could be liable for Defendant's costs and attorneys' fees. (*Id.*)

18 In short, this action would not have been possible without the aid of Plaintiff, who put  
19 her own time and effort into this litigation, sacrificed the value of her individual claims by  
20 entering into a general release of all known and unknown claims, and placed herself at risk for  
21 the sake of the State and the aggrieved employees. (*Id.* at ¶ 19.) Accordingly, the requested  
22 Service Payment is reasonable and should be approved by the Court.

23 **D. The Requested Attorneys' Fees and Costs Are Reasonable.**

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

1 *Obledo* (1983) 33 Cal.3d 348, 352-53.)

2 Fee awards of roughly one-third of the settlement fund are routinely awarded in  
3 California state and federal courts in class and representative PAGA actions. “[F]ee awards in  
4 class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162  
5 Cal.App.4th 43, 66, fn. 11 ; *see also, In re Pacific Enterprises Securities Litig.* (9th Cir. 1995)  
6 47 F.3d 373, 379 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th  
7 Cir. 1997) 129 F.3d 1026, 1027 [holding that class counsel’s fee award should have been  
8 calculated as one-third of the gross settlement fund]; *Chavez v. Saticoy Lemon Ass’n* (Cal.  
9 Super. Ct. Ventura Cty. Aug. 10, 2015) Case No. 56-2015-00468600-CU-OE-VTA, 2015 WL  
10 5561118 [approving attorneys’ fees of one-third of settlement fund in representative PAGA  
11 settlement]; *Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.* (Cal. Super. Ct. Ventura  
12 Cty. Mar. 25, 2016) Case No. 56-2015-00467353-CU-OE-VTA, 2016 WL 1601221 [same].)

13 The fee award requested here (\$98,333.33, representing 33 1/3% of the \$295,000.00  
14 gross settlement amount) is justified because Plaintiff’s counsel achieved a significant monetary  
15 recovery for the aggrieved employees and the LWDA in an uncertain and risky case while  
16 bearing the substantial burdens of representation on a contingency basis, and the fees requested  
17 are in line with the market rates described above. Plaintiff’s counsel expended significant time  
18 and resources in litigating this case, which resulted in a favorable result for the LWDA, Plaintiff,  
19 and the aggrieved employees. Plaintiff’s counsel elected to bear the contingency risk of this  
20 litigation for the benefit of the aggrieved employees, as well as for the State of California (who  
21 elected not to take the case after receiving the PAGA notice). (Haber Decl., ¶¶ 34-38.)

22 Critically, this settlement exceeds other PAGA awards approved by courts. (*See, e.g.,*  
23 *Aguirre v. DSW, Inc.* (C.D. Cal. Nov. 29, 2012) 2012 WL 11875296, \*3 [approving \$10,000  
24 PAGA payment]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575,  
25 \*7 [“GTI agrees to allocate \$10,000 to Plaintiffs’ PAGA claims, and will pay \$7,500 to the  
26 LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with  
27 settlement approval of PAGA awards in other cases. [Citations.] Therefore, the Court will  
28 approve the allocation of the Settlement to Plaintiffs’ PAGA claim.”]; *Boyd v. Bank of America*

1 *Corp.* (C.D. Cal. Nov. 18, 2014) 2014 WL 6473804, \*8 [approving \$18,750 PAGA payment];  
2 *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, \*14 [approving  
3 \$10,000 PAGA payment]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011  
4 WL 672645, \*1 [approving \$10,000 PAGA payment]; *cf. Nordstrom Comm’n Cases* (2010) 186  
5 Cal.App.4th 576, 589 [holding that trial court did abuse its discretion in approving wage and  
6 hour class action settlement that involved PAGA claims even though no settlement money was  
7 allocated to the PAGA claims and paid to the LWDA].) The fact that Plaintiff’s counsel  
8 achieved these results without engaging in a protracted legal battle, in the face of serious defense  
9 challenges and an uncertain legal landscape, confirms the strength of the results achieved.

10 As discussed above, this case carried substantial risk as to the merits as well as the  
11 potential of the Court drastically reducing penalties in the context of a contested trial or  
12 summary judgment proceeding. Accordingly, it is fair and reasonable to account for these risks  
13 in compensating Plaintiff’s counsel. Since undertaking this representation, Plaintiff’s counsel  
14 has dedicated substantial resources to this litigation, including approximately \$21,090.49 in  
15 costs, without receiving any compensation to date. (Haber Decl., ¶¶ 20, 26.) Plaintiff’s counsel  
16 conducted extensive legal research regarding the merits of Plaintiff’s claims, her ability to  
17 recover penalties under the PAGA, and Defendants’ potential defenses. (*Id.* at ¶ 9.) Plaintiff’s  
18 counsel expended significant additional effort in preparing formal settlement documents and  
19 this Motion to Approve PAGA Settlement. (*Id.* at ¶ 21.) Given the considerable potential for  
20 adverse outcomes in this case, including, but not limited to, Defendant defeating Plaintiff’s  
21 claims on the merits, and/or facing a drastic reduction to potential PAGA penalties, the  
22 contingent risk borne by Plaintiff’s counsel was great. The quality of Plaintiff’s counsel’s work,  
23 and the efficiency and dedication with which it was performed, should be compensated.

24 Plaintiff’s counsel’s previous experience in litigating similar class and representative  
25 actions also supports the reasonableness of the fee request. Plaintiff’s counsel brings extensive  
26 plaintiff-side wage-and-hour class, collective, and representative action experience. (Haber  
27 Decl., ¶¶ 27-33.) They have been found to be adequate counsel in numerous cases alleging  
28 wage and hour claims. (*Id.*) Practice in the narrow field of wage-and-hour litigation requires

1 skill and knowledge concerning the rapidly evolving substantive state and federal law, as well  
2 as the procedural law of class and representative action litigation. Because it is reasonable to  
3 compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, a fee  
4 award of 33 1/3% of the gross settlement amount is reasonable.

5 Plaintiff's request for reimbursement of actual litigation costs of \$21,090.49 and an  
6 additional \$300.00 in anticipated future costs for a total of \$21,390.49 is also fair and  
7 reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are  
8 documented and reasonably incurred. (*See* Haber Decl., ¶ 26, Ex. 3 [Expense Summary].)

9 **E. Settlement Administrator Costs Are Reasonable.**

10 The Settlement Administrator Costs in the amount of \$10,000.00 are reasonable, given  
11 the tasks to be performed by the Settlement Administrator, including, but not limited to, the  
12 following duties: mailing and re-mailing (if necessary) checks to approximately 518 PAGA  
13 Employees and the LWDA; establishing a Qualified Settlement Fund; preparing and submitting  
14 to PAGA Employees and government entities all appropriate tax filings and forms; distributing  
15 the PAGA Representative Service Payment and attorneys' fees and costs; keeping the Parties  
16 timely apprised of the performance of all obligations under the Agreement; and voiding  
17 uncashed or undeliverable checks to issue those funds to the California Controller's Unclaimed  
18 Property Fund. (Settlement, ¶ 4.4.3.) Plaintiff respectfully requests that the Court approve the  
19 requested costs.

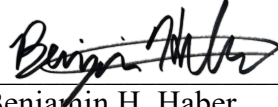
20 **IV. CONCLUSION.**

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

23 Respectfully submitted,

24 Dated: March 7, 2025

WILSHIRE LAW FIRM

25  
26 By: 

Benjamin H. Haber  
Daniel J. Kramer

27 Attorneys for Plaintiff  
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STATE OF CALIFORNIA           )  
COUNTY OF LOS ANGELES         ) ss

On March 7, 2025, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Barbara Pulmanova  
[b.pulmanova@musicckpeeler.com](mailto:b.pulmanova@musicckpeeler.com)  
**MUSICK, PEELER & GARRETT LLP**  
 624 South Grand Avenue, Suite 2000  
 Los Angeles, California 90017  
 Telephone: (213) 629-7600  
 Facsimile: (213) 624-1376

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

Executed on March 7, 2025, at Los Angeles, California.

## 1 PROOF OF SERVICE