B. James Fitzpatrick (SBN: 129056)
Alison L. Baker (SBN: 193601)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Attorneys for Plaintiff,
Jose Barcenas Alvarado

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JOSE BARTENAS ALVARADO, Plaintiff, v. GREENLIGHT DRYWALL, INC.; and DOES 1 through 50, inclusive, Defendants.	Case No. 23CV001526 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: December 5, 2025 Time: 8:30 a.m. Dept.: 14 Complaint Filed: May 11, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 5, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Carrie M. Panetta, judge presiding, in Department 14 of the above-referenced Court located at 1200 Aguajito Road, Monterey, California, Plaintiff Jose Barcenas Alvarado ("Plaintiff") will and hereby moves this Court for the following relief pursuant to the procedures set forth in Labor Code § 2698, et seq.:

1. That the Court finds that the Private Attorneys General Act Settlement Agreement ("Settlement Agreement") appears to be within the range of reasonableness of a settlement;

2. That the Court approve the Gross Settlement Amount of Twenty-Seven Thousand Five Hundred Dollars and 00/100 Cents ($27,500.00);

3. That the Court approve attorneys' fees to Plaintiff's counsel in the amount of Nine Thousand One Hundred Sixty-Five Dollars and 75/100 Cents ($9,165.75) (33.33% of the Gross Settlement Payment), and Plaintiff's counsel's litigation costs in the amount of Three Thousand Seven-Hundred Ninety-Five and 34/100 Cents ($3,795.34);

4. That the Court appoint Phoenix Class Action Administration Solution as the Settlement Administrator and approve the administration costs in the amount of Two Thousand Five Hundred Dollars and 00/100 Cents (2,500.00); and

5. That the Court approve the PAGA Fund[1] in the amount of Twelve Thousand Thirty-Eight Dollars and 91/100 Cents ($12,038.91) to be paid as follows: Nine Thousand Twenty-Nine Dollars and 18/100 Cents ($9,029.18) (75% to the Labor and Workforce Development Agency); and Three Thousand Nine Dollars and 73/100 Cents ($3,009.73) (25% to the PAGA Members).

This Motion will be based on this Notice, the Memorandum of Points and Authorities, the Declarations of B. James Fitzpatrick, Plaintiff, and Phoenix Settlement Administrators, the records and file herein, and on such other evidence as may be presented at the hearing of the

[1] "PAGA Fund" shall mean the Gross Settlement Payment less Plaintiff's Counsel's fees and costs, and the settlement administration costs.

motion.

Dated: May 20, 2025

FITZPATRICK & SWANSTON

By: /s/ B. James Fitzpatrick
B. James Fitzpatrick
Attorneys for Plaintiff,
Jose Barcenas Alvarado

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

State Cases

Federal Cases

Rules of Court

Statutes, Codes & Regulations

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA"), Plaintiff hereby moves the Court for an order approving the non-reversionary PAGA settlement as set forth in the concurrently filed Private Attorneys General Act Settlement Agreement (the "Settlement Agreement" or "Settlement"). The Settlement concerns a PAGA group comprised of 167 individuals who were formerly and currently employed by Defendant Greenlight Drywall, Inc. ("Defendant").

Plaintiff alleges that Defendant failed to pay overtime wages, failed to provide complaint meal and rest periods, failed to reimburse for work-related expenses, and failed to issue accurate wage statements, resulting in violations of the PAGA based on Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1175, 1194, 1197, 1197.1, 1198, 1199, 2698, 2699, 2800, 2802, and 2698.

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as called for under the PAGA on behalf of the State of California and other similarly situated aggrieved employees, without seeking class certification or meeting the requirements of class certification (i.e., numerosity, typicality, commonality, and adequacy). As such, while the PAGA settlement reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor Code § 2699(s)(2), all that is required is an approval by this Court of any settlement of the PAGA claims by the Parties. The Parties have reached such a PAGA settlement, and now seek this Court's approval of their settlement, which provides for the payment of civil PAGA penalties.

As demonstrated below, the proposed settlement warrants the Court's approval. The settlement was reached after the exchange of documents and information pertaining to the alleged aggrieved employees' claims, including documents reflecting their hours scheduled and worked, and corresponding payments issued to them by Defendant. Further, the Settlement was reached after arms-length negotiations following mediation with a well-respected mediator, Honorable Timothy Volkmann (Ret.), who has extensive experience with complex wage and hour claims.

Pursuant to the terms of the proposed PAGA Settlement Agreement, Defendant will pay the total amount of Twenty-Seven Thousand Five Hundred Dollars and 00/100 Cents ($27,500.00) (the "Gross Settlement Payment"). (Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶¶ 4, 18.) This amount encompasses a settlement of PAGA claims asserted in this lawsuit, attorneys' fees to Plaintiff's counsel in the amount of $9,165.75 (33.33% of the Gross Settlement Payment), Plaintiff's counsel's litigation costs associated with the PAGA claim in the amount of $3,795.34, and settlement administration costs in the amount of $2,500.00. ("Fitzpatrick Decl.") ¶¶ 4, 18-20.) In light of the Confidential Individual Settlement resolving his individual wage and hour and FEHA claims, Plaintiff does not request a service award as the PAGA representative. (Fitzpatrick Decl. ¶ 21.)

Based on the amounts above, the PAGA Fund will be at least $12,038.91. (Fitzpatrick Decl. ¶¶ 5, 21.) Pursuant to the PAGA, this amount includes $9,029.18 to be distributed to the California Labor and Workforce Development Agency ("LWDA"), and $3,009.73 to be distributed to the "PAGA Settlement Members," "all individuals who are or previously were employed by Defendant in California, who are or were classified as hourly, non-exempt employees, at any time during the PAGA Period." (Fitzpatrick Decl. ¶ 22; Settlement Agreement at ¶ 9.) The proposed settlement, moreover, does not release any substantive claims of PAGA Settlement Members, merely their rights to bring PAGA claims predicated on the same violations of the Labor Code raised in this Action that accrued during the PAGA Period. (Settlement Agreement at ¶ 14, 47.)

In light of the above, the proposed settlement constitutes an adequate, fair, and reasonable settlement on behalf of the State of California and PAGA Settlement Members and accomplishes the goals of PAGA. ("Fitzpatrick Decl.") ¶¶ 2, 6.)

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of the Litigation and Settlement

Defendant Greenlight Drywall, Inc. ("Defendant") is a California Corporation engaged in the profession of drywall that provides services for residential and commercial projects, such as new construction, remodels, and repairs. Defendant's practice is located at 8518 Church Street #5, Gilroy, CA 95020. (Fitzpatrick Decl. ¶ 7.)

On September 28, 2022, Plaintiff served a Notice of Violations pursuant to the California Private Attorneys General Act ("PAGA") on the Labor & Workforce Development Agency ("LWDA") and Defendant. (Fitzpatrick Decl. ¶ 8.)

On May 11, 2023, Plaintiff filed his Complaint alleging individual Labor Code claims and a representative claim pursuant to the Private Attorney General Act, Labor Code 2698, et seq. (the "PAGA"). (Fitzpatrick Decl. ¶ 9.)

On November 29, 2023, Plaintiff filed a First Amended Complaint ("FAC"). With the FAC, Plaintiff added individual claims under the Fair Employment and Housing Act ("FEHA"), and named Joe Faria as an additional named defendant. (Fitzpatrick Decl. ¶ 10.)

On August 12, 2024, Plaintiff filed a Second Amended Complaint ("SAC") to: (1) correct Plaintiff's legal name; (2) correct Mr. Faria's legal name; and (3) clarify the scope of Plaintiff's individual claims under FEHA. The Parties have entered into a separate confidential settlement agreement relating to Plaintiff's individual claims. (Fitzpatrick Decl. ¶ 11.)

On July 7, 2025, the Parties participated in a private mediation conducted by the Honorable Timothy Volkman (Ret.), a neutral with extensive experience in employment and wage-and-hour matters. (Fitzpatrick Decl. ¶ 12.)

During the mediation, the Parties engaged in meaningful and good-faith negotiations, exchanging information and evaluating the strengths and risks associated with their respective positions. Thereafter, the Parties entered the proposed representative action settlement now presented to the Court for approval, a true and correct copy of which is attached as Exhibit A to the Declaration of B. James Fitzpatrick. (Fitzpatrick Decl. ¶ 13.) After reaching the agreement in principle to resolve the representative claim, Plaintiff's individual FEHA claims were resolved in a separate confidential settlement agreement. If the Court so requests, the Parties agree to provide information regarding Plaintiff's confidential individual settlement for the Court's review. (Fitzpatrick Decl. ¶ 14.)

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

The material terms of the Settlement are described below and set forth in detail in the Settlement Agreement (*See* Fitzpatrick Decl., Exhibit A).

A. The PAGA Settlement Members

The "PAGA Settlement Members" affected by this Settlement include "all individuals who are or previously were employed by Defendant in California, who are or were classified as hourly, non-exempt employees, at any time during the PAGA Period." (Fitzpatrick Decl. ¶ 16; Settlement Agreement ¶ 9.) The PAGA Period commences on September 28, 2021 through July 7, 2025 (subject to the escalator provision set forth in Paragraph 28 of the Settlement Agreement). (*Id.* ¶ 28.)

Based upon Defendant's records, there are 167 PAGA Settlement Members. Defendant also represents that the total number of pay periods worked by PAGA Settlement Members during the PAGA Period is approximately 4376 ("PAGA Pay Periods"). (Fitzpatrick Decl. ¶ 17; Settlement Agreement ¶ 28.)

B. The Gross Settlement Amount

The Settlement Agreement requires Defendant to pay the Gross Settlement Payment of Twenty-Seven Thousand Five Hundred Dollars and 00/100 Cents ($27,500.00). (Fitzpatrick Decl. ¶ 18; Settlement Agreement ¶¶ 5, 27.) The terms of the Settlement Agreement provide for an award of attorneys' fees and reimbursement of litigation costs to Plaintiff's counsel, and settlement administration costs. (Fitzpatrick Decl. ¶ 18; Settlement Agreement. ¶¶ 29-31.)

C. Attorneys' Fees and Reimbursement for Litigation Costs

As part of the Settlement Agreement, Defendant does not object to Plaintiff's counsel's request for attorneys' fees of $9,165.75 (33.33% of the Gross Settlement Payment), plus reimbursement of litigation costs in the amount of $3,795.34, subject to the Court approving this Settlement. (Fitzpatrick Decl. ¶ 19; Settlement Agreement ¶ 29.) Any portion of the attorneys' fees and costs not approved by the Court will be added to the PAGA Fund. (Settlement Agreement ¶ 31.)

D. Settlement Administration Costs

The Settlement Agreement provides for the payment of fees and expenses reasonably incurred by the Settlement Administrator. (Fitzpatrick Decl. ¶ 20; Settlement Agreement ¶ 32.) The Parties have agreed to utilize Phoenix Class Action Administration Solutions ("Phoenix Settlement Administrators") to administer the Settlement, with the administration costs estimated not to exceed $2,500.00. (*Id*.; Fitzpatrick Decl. ¶ 20; Declaration of Jodey Lawrence.) Phoenix Settlement Administrators is a well-recognized class action settlement administrator, and submitted the lowest bid of the potential settlement administrators solicited by Plaintiff's Counsel. The Administration costs include the costs for translating and mailing the Notice in English and Spanish. Any portion of the settlement administration costs not approved by the Court shall be added to the PAGA Fund. (Settlement Agreement ¶ 33.)

E. The PAGA Fund

The PAGA Fund is the balance of the Gross Settlement Payment remaining after the deduction of the Court-approved: (i) attorneys' fees ($9,165.75); (ii) litigation costs ($3,795.34); and (iii) Settlement Administration Costs ($2,500.00). Counsel estimates that the PAGA Fund will be at least $12,038.91. (Settlement Agreement ¶¶ 10 and 35; Fitzpatrick Decl. ¶ 21.) In light of the Confidential Individual Settlement resolving his individual wage and hour and FEHA claims, Plaintiff does not request a service award as the PAGA representative. (Fitzpatrick Decl. ¶ 21.)

Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or $9,029.18, will be distributed to the LWDA for PAGA penalties. (Fitzpatrick Decl. ¶ 22.) The remaining twenty-five percent (25%) of the PAGA Fund, or $3,009.73 will be distributed to the PAGA Settlement Members. (Settlement Agreement ¶ 36.)

The portion of the PAGA Fund distributed to the PAGA Settlement Members will be distributed on a pro rata basis, based on the number of pay periods each PAGA Settlement Member worked for Defendant during the PAGA Period divided by the aggregate total number of pay periods worked by all PAGA Settlement Members. (Settlement Agreement ¶¶ 39; Fitzpatrick Decl. ¶ 23.)

Defendant has represented that there are approximately 167 PAGA Settlement Members who collectively worked a total of approximately 4,376 pay periods during the PAGA Period. (Settlement Agreement ¶ 28; Fitzpatrick Decl. ¶ 24.)

Based thereon, on a raw average, each PAGA Settlement Member may potentially recover approximately $18.02 ($3,009.76 ÷ 167 PAGA Members), or approximately $0.69 ($3,009.76 ÷ 4376 pay periods) per pay period, from the portion of the PAGA Fund attributable to the PAGA Settlement Members. (Fitzpatrick Decl. ¶ 25.) The amount any particular PAGA Settlement Member will be entitled to recover will fluctuate depending on the number of pay periods he or she worked as a non-exempt employee in California during the PAGA Period. This is fair, as it directly allocates greater penalties to individual PAGA Settlement Members who have allegedly suffered greater harm.

F. Uncashed Checks.

Funds from any checks that have not been cashed within 180 days of issuance do not revert and shall be paid to the designated cy pres recipient: Watsonville Law Center. (Settlement Agreement ¶ 45). Neither counsel nor their respective firms have any relationship with the proposed *cy pres* recipient that would create an actual or potential conflict of interest. The Parties further agree that the proposed *cy pres* recipient, satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the organization helps further the purposes of the underlying action and promote justice for all Californians. (Fitzpatrick Decl. ¶ 26.)

G. Scope of the Released Claims

In exchange for the payments described above, Plaintiff, the LWDA, the State of California and the PAGA Settlement Members will release the Released Parties from the following limited release:

> any and all claims, whether known or unknown, to recover civil penalties pursuant to PAGA for any alleged violations by Defendants of California Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 210, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1175, 1194, 1197, 1197.1, 1198, 1199, 2698, 2699, 2800, 2802, and any category of violations identified

> in Labor Code § 2699.5, and the related applicable IWC Wage Order provision for the PAGA Period, and any other violations that were alleged or could have been alleged in Plaintiff's letter to the LWDA or any complaint filed in this Action, with the exception of Plaintiff's Individual Claims.

(Settlement Agreement at ¶¶ 14, 47.)

The Settlement does not release Defendant from violations of any predicate statutes other than PAGA and will not affect a waiver of individual claims by PAGA Settlement Members against Defendant for any of the underlying Labor Code claims. The release is expressly limited to claims for civil penalties under the PAGA pertaining to the Labor Code violations raised in this lawsuit that accrued during the PAGA Period, thereby excluding all non-PAGA claims. (*Id.*)

IV. THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED

A. PAGA Overview

Prior to the enactment of PAGA, many of the penalties provided against employers for violations of certain Labor Code provisions were solely within the province of the California Department of Labor to seek, enforce, and assess. (*Arias v. Superior Court, supra*, 46 Cal. 4th 969, 980.) However, due to the lack of financing to California's agencies and the potential number of Labor Code violations by California employers, the California Legislature found that it was in the public interest to allow aggrieved employees to act as private attorneys general and to enforce and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code violations committed by their employers. (*Id.*) As such, PAGA was enacted to allow such enforcement and recovery by private individuals who have been aggrieved by their employers.

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violation(s) alleged to have been violated by the employer. (See Cal. Labor Code § 2699.3(a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations or the time for the LWDA to investigate the violations passes, the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of all other similarly aggrieved employees. (See Cal. Labor Code § 2699.3(a)(2)(A).)

In 2009, the California Supreme Court considered the issue of whether an aggrieved employee who brings a PAGA claim needs to meet class certification requirements. (*Arias*, 46 Cal. 4th 969, 976.) After a substantial review of the legislative history of PAGA, the California Supreme Court held that an aggrieved employee's representative action brought on behalf of other similarly aggrieved employees against an employer for PAGA violations do not need to meet the requirements for class certification. (*Id.* at 975, 980-88.) As held by the California Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. (*Id.* at 986.) Because an employee's PAGA action functions as a substitute for an action brought by the government itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an action brought by the government. (*Id.*)

Finally, in a settlement of a PAGA action brought by an aggrieved employee, the Superior Court must "review and approve any settlement of any civil action filed pursuant to" PAGA. (Cal. Lab. Code § 2699, subd. (s)(2).) As the Parties to this current PAGA action have reached such an agreement, the Parties now seek this Court's approval as to the settlement of the penalties amount.

B. The Settlement Effectuates the Objectives of PAGA

With respect to evaluating the reasonableness of the settlement of the PAGA claim, the Court's focus is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." See *Moniz v. Adecco USA, Inc*. (2021) 72 Cal. App. 5th 56, 77; see also *Kang v. Wells Fargo Bank, N.A.*, (N.D.Cal., 2021) WL 5826230, at *15 (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals").

Here, the Settlement vindicates the rights of PAGA Members who have experienced alleged violations of the Labor Code. *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134 ("If the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the PAGA Members as employees and substantial monetary relief, a settlement not only vindicates the rights of the employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA"). The Settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in Neary[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal.*, (1992) 3 Cal. 4th 273, 277- 278.

C. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the Court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.25 et seq., § 13.64 (4th ed. 2002 & Supp. 2004) ("Newberg"). The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." Manual for Complex Litigation (Federal Judicial Center, 4th ed. 2004) § 21.632. To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel.…" *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.

By contrast, court approval of PAGA settlements is governed by Labor Code § 2699(s)(2), which provides, in relevant part: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part." The Parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim).

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. (Cal. Labor Code § 2699(s)(2).) In addition, "[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" or "contest a settlement, if any, reached between the parties." *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. 2010) 2010 WL 1340777 *13.

D. The Scope of the Release is Appropriately Limited

The limited scope of the release supports approval of this PAGA settlement. If approved, the Settlement would release the Released Parties from claims to recover civil penalties under PAGA that accrued during the PAGA Period and are predicated on the underlying violations of the Labor Code or Wage Order that were alleged, or could have been alleged, in Plaintiff's complaint or notice letter to the LWDA in this action. (Settlement Agreement ¶¶ 14, 46.) The Settlement would not impact any other aggrieved employees' ability to pursue PAGA claims predicated on other allegations aside from those raised in this lawsuit or any Labor Code claims not predicated on the PAGA.

Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "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." (*Arias*, 46 Cal. 4th 969, 986.) However, "the nonparty 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." (*Id.* at 987; see also, Labor Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part”).)

Here, as described above, the PAGA Settlement Members will be subject to only a limited release strictly confined to the civil penalties under the PAGA based on the facts and Labor Code violations alleged in this action. (Settlement Agreement ¶¶ 14, 46.) The release is therefore appropriately tailored, and the settlement should be approved.

E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Although Plaintiff is reasonably confident that he would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff’s theory, in addition to the still-evolving law under PAGA. (Fitzpatrick Decl. ¶¶ 27-29.) Here, in light of the size of the PAGA Group and the number of pay periods and claims, there is a significant risk that Defendant would be unable to pay a large settlement or a large judgment, if one were to be required or have occurred. (Fitzpatrick Decl. ¶¶ 11-12, 27-29.)

1. Defendant’s Ability to Pay a Large Judgment.

As a preliminary matter, Courts are to consider the amount of money that a defendant has available. A defendant’s ability to pay a judgment larger than that provided by the proposed settlement is a relevant consideration for the court.

Here, in light of the size of the PAGA Members and the number of pay periods, there is a significant risk that this Defendant would be unable to pay a large settlement or a large judgment, if one were to be required or had occurred. (Fitzpatrick Decl. ¶¶ 11-12, 27-29.) Defendant argued that if Plaintiff litigated this case through trial and was successful, Defendant would be pushed to insolvency. (*Id.*) Accordingly, even if Plaintiff succeeded, a judgment may not have been collectable. (*Id.*) Thus, the settlement is fair, reasonable, and adequate, given the inherent risks of litigation, including the substantial risks and the costs of pursuing such litigation. The settlement is the result of extensive arm’s-length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator. (Fitzpatrick Decl. ¶¶ 12-14, 27-29.)

2. Plaintiff's Claims are Contested

Plaintiff asserts that his representative PAGA claims are based on the allegations that Defendant failed to pay premium overtime wages, failed to provide off-duty meal and rest periods, failed to reimburse employees for work-related expenses; and failed to provide accurate itemized wage statements. Defendant argued that Plaintiff's claims were unreliable and based on estimates of the times he worked. (Fitzpatrick Decl. ¶ 29.)

a. Unpaid Wages

Plaintiff alleges that Defendant failed to pay for all hours worked. (Fitzpatrick Decl. ¶ 30.) According to Plaintiff, Defendant regularly required employees to perform work "off the clock," including time spent traveling between the Gilroy office and various job sites in Monterey, Marina, Santa Cruz, Fremont, and San Jose, without compensation. Plaintiff also maintains that Defendant failed to pay overtime premium wages for hours worked in excess of eight per day or forty per week, and on certain days, employees were only paid for five hours despite having worked full eight-hour shifts. Plaintiff maintains that Defendant's results in unpaid overtime premium wages, and are inconsistent with California law and regulatory scheme. (Fitzpatrick Decl. ¶ 30.)

b. Unlawful Meal and Rest Periods

Plaintiff also alleges that Defendant failed to provide timely and compliant meal and rest periods. (Fitzpatrick Decl. ¶ 31.) Plaintiff alleges that he and the other aggrieved employees regularly worked through meal and rest breaks or received interrupted or shortened breaks due to work demands at construction job sites. Plaintiff and other employees were occasionally permitted to take a lunch, but it was not always 30 minutes and was rarely duty-free. Defendant's records also show that employees were not paid premium wages for missed, late, or interrupted meal and rest periods. Defendant contends that it made compliant breaks available and was not obligated to ensure that no work occurred during those times. (Fitzpatrick Decl. ¶ 31.)

Defendant disputed the existence of a common policy that required employees to miss and/or interrupt their breaks to perform work-related tasks. (Fitzpatrick Decl. ¶ 32.)

Defendant argued that Defendant's only obligation was to make breaks available to employees – not to police them. See *Brinker Rest. Corp. v. Superior Ct*. (2012) 53 Cal. 4th 1004, 1040 ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed").

c. Failure to Reimburse Business Expenditures

Plaintiff further alleged that Defendant regularly and consistently violated Labor Code section 2802 by failing to reimburse employees for expenses incurred in the performance of their duties, including expenses associated with the use of personal phones for mandatory work-related phone calls or messages. (Fitzpatrick Decl. ¶ 33; see *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal. App. 4th 1137, 1144 ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802"). Specifically, Plaintiff and other employees were required to use their personal cell phones to receive daily work assignments, coordinate job site locations, and communicate with supervisors. Defendant denied Plaintiff's allegations. According to Defendant, employees were not required to use a personal cell phone to communicate before, during, or after the workday. Thus, according to Defendant, the decision to use a cell phone for business purposes is personal and not required by company policy. (Fitzpatrick Decl. ¶ 33.)

d. Wage Statements

With respect to Plaintiff's wage statement claim, as a further consequence of Defendant's failure to record the actual hours worked by Plaintiff and the employees, failure to provide premiums for meal and rest periods, and failure to reimburse for work-related expenses, Defendant failed to provide the employees with complete and accurate itemized wage statements. (Fitzpatrick Decl. ¶ 34.)

3. The Potential Value of the PAGA Claims

Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, Plaintiff's Counsel acknowledges a legitimate controversy exists as to each allegation. In other words, based on Plaintiff's Counsel's investigation and analysis, the maximum exposure did not comport with the reasonable exposure that Defendant faced. Specifically, Defendant argued that it paid all overtime premium wages, that it maintained compliance with all its meal and rest period obligations, and that any missed rest and meal period was solely the result of employees' voluntary choice, and that it did not require its employees to use its personal cell phones, and for the wage statements that were allegedly inaccurate, Defendant asserts the employees suffered no actual damage or harm as a result. Here, Plaintiff’s Counsel is aware that Defendant could make a compelling argument that the award of PAGA penalties would be confiscatory. Indeed, total PAGA exposure vastly exceeds the value of alleged unpaid wages, and a full penalty award could cripple Defendant’s business and result in bankruptcy. Due to the discretionary nature of PAGA penalties, PAGA civil penalties are difficult to evaluate. (Fitzpatrick Decl. ¶¶ 10-12, 35.)

Pursuant to Labor Code § 2699(e)(2), the Court can decline to award the full amount of PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. Upon review, the Court of Appeal found such a reduction to be proper. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to $1 billion, such award “could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”)

Defendant may also point to the recent enactment of comprehensive amendments to PAGA with the July 1, 2024, signing of Senate Bill 92 and Assembly Bill 2288, which provide employers with new opportunities to substantially reduce or even eliminate PAGA penalties. While these reforms do not apply to cases such as this one where the civil action was filed or the PAGA notice was submitted to the LWDA prior to June 19, 2024 (Lab. Code, § 2699(v)(2)), Plaintiff acknowledges that this recent overhaul of PAGA may be considered by the Court when exercising its discretion to determine appropriate PAGA penalties in this action.

The Court's assessment of the proposed Settlement must take into account that any penalties awarded may be subject to substantial reduction. When this is considered, in conjunction with the history of PAGA case law and settlements, the recent PAGA reform, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Settlement for a reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendant's likely arguments that higher penalties would have been confiscatory. It also sufficiently deters Defendant from engaging in similar conduct in the future, which is one of the primary goals of PAGA.

Based on the data provided by Defendant *prior* to mediation, Plaintiff's Counsel estimated 30 aggrieved employees who worked a total of 5,910 pay periods. (Fitzpatrick Decl. ¶ 36.) Assuming a $100.00 civil penalty per pay period (total 5,910 estimated pay periods), Defendant's ***maximum*** exposure for civil penalties under PAGA was estimated to be $591,000.00 ($100 x 5,910 pay periods). (Fitzpatrick Decl. ¶ 36.)

Considering due process concerns related to penalizing Defendant disproportionately to the amount of damages at issue, and the discretionary nature of awarding penalties, it is reasonable to assume for resolution purposes, that a violation occurred in approximately three-tenths (or 0.30) of all pay periods resulting in a ***realistic, risk-adjusted*** exposure of $177,300.00 ($591,00.00 maximum exposure x 0.30). (*Id*.)

When applying the correct pay period data—reflecting 4,376 total pay periods rather than the estimate used at mediation—Defendant's *maximum* exposure under PAGA is $437,600, based on a $100.00 penalty per pay period ($100 x 4,376 pay periods). Applying the same risk-adjustment factor of three-tenths (or 0.30), the *realistic*, *risk-adjusted* exposure would be $131,280.00. (Fitzpatrick Decl. ¶ 37.)

At mediation, Plaintiff's Counsel estimated 5,910 pay periods. Under those assumptions, the proposed settlement of $27,500.00 represented approximately 15% of the realistic, risk-adjusted exposure ($27,500 [GSA] ÷ $177,300.00) and 0.05% of the maximum exposure ($27,500 [GSA]÷ $591,000.00). Using the correct number of pay periods, which is

4,376, the proposed settlement of $27,500.00 now represents approximately 21% of the realistic, *risk-adjusted* exposure ($27,500.00 [GSA] ÷ $131,280.00) and 0.06% of the maximum exposure ($27,500.00 [GSA] ÷ $437,600), further supporting the fairness and adequacy of the settlement. (*Id*. ¶ 38.)

In either case, this percentage exceeds other PAGA settlements approved by courts. (see, e.g., *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133, *9 (approving total PAGA allocation that was 0.49% of $408,420.32 gross settlement; *Moore v. PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, *8 (approving total PAGA allocation that was 0.5% of $10,000,000 gross settlement); *Lusby v. Gamestop Inc.* (N.D. Cal. 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of $750,000 gross settlement).)

A PAGA allocation need not represent any particular percentage of the overall settlement value in order to secure court approval. As demonstrated by the cases cited above, the courts routinely approve PAGA settlements representing only a tiny fraction of the overall settlement value. The proposed settlement sum in this case vastly exceeds the percentage of overall settlement value of other PAGA settlements and should be approved by the Court.

F. The Attorneys' Fees are Reasonable

PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Labor Code § 2699(k)(1).) Similar to awarding fees in a class action, California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees for representative actions is to use a percentage of the total value of benefits to the members by the settlement. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("Serrano III"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, 557 F. 2d 759769.)

The California Supreme Court has also held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. See *Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.")

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in Laffitte was supported by a lodestar cross-check that employed a multiplier of 2.13. Id. at 487. The court in *Laffitte* explained that when cross-checking a percentage fee request against the lodestar method, the court should examine the imputed multiplier in the lodestar calculation and, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at 505.

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to "cross-check" the amount of fees calculated by way of percentage. The *Laffitte* court emphasized, however, that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.,* 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

The Supreme Court in Laffitte stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." *Id*. (emphasis added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); Report of the Third Circuit Task Force, Court Awarded Attorney Fees, 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc*., 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge.").

Courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte,* 231 Cal. App. 4th at 881-82. The intermediate court opinion was affirmed in full by the California Supreme Court in its decision guiding lower courts on assessing fees.

With respect to Plaintiff's Counsel's lodestar, Plaintiff's Counsel will have expended approximately 49.2 hours (43 attorney hours + 6.2 paralegal hours) litigating this case, which includes anticipated time spent after approval responding to correspondence and phone calls from PAGA Settlement Members, the Settlement Administrator, and defense counsel. (Fitzpatrick Decl. ¶ 39, Ex. B.) The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). The fee award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel seeks compensation involve only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, e.g., the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Plaintiff's counsel's skill and experience justify the requested rates. Plaintiff's counsel has significant experience in the area of employment and wage and hour actions. Specifically, Plaintiff's counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. (Fitzpatrick Decl. ¶¶ 40.) As such, based on the hours and reduced hourly rate of $595.00, Plaintiff's Counsel's lodestar amount through the finalization of this settlement – without a multiplier – will be approximately $25,585.00. (Fitzpatrick Decl. ¶¶ 39-43.)

Once the court establishes the lodestar amount, it may enhance the lodestar number by applying a multiplier in order to adjust the fees awarded to an amount appropriate to the circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. Id.; *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

Lealao contains several factors justifying an enhancement based on the percentage-of-the-benefit, namely, no objections, commendable conduct by counsel, and significant recoveries, all of which were previously detailed above. (*Lealao*, 82 Cal. App. 4th at 51-53.) The extreme effort undertaken by counsel, as shown by their hours and the significantly high amount of each claim being paid out, shows commendable conduct.

It is also critical to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal. App. 4th at p. 52 (the promptness of settlement "cannot be used to justify the refusal to apply a multiplier").) According to *Lealao*, courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not punished, for achieving this goal in a timely fashion. (Id.)

Here, based upon Plaintiff's Counsel's lodestar of $25,585.00, Plaintiff's lodestar actually exceeds the fees requested, such that a negative multiplier is implicated. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable and should be awarded in its entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action. For these reasons, Plaintiff's Counsel's request for attorneys' fees in the amount of $9,165.75 should be approved as fair, reasonable, and adequate.

G. The Costs are Reasonable

Plaintiff's counsel has incurred $7,106.72 in litigation costs to date and anticipates an additional $74.25 for costs related to this motion and the final accounting declaration, for a total of $7,180.97. Nonetheless, consistent with the prior cost determinations issued by the Monterey County Superior Court in other actions involving both individual and PAGA components, Plaintiff's counsel seeks reimbursement of litigation costs in the amount of $3,795.34, limited to the filing fee, complex case fee, and one-half of the mediation fee. (Fitzpatrick Decl. ¶ 47, Ex. C.) As such, the requested costs should be awarded as fair and reasonable.

H. The Settlement Administrator's Fees Should be Approved

The Settlement Agreement allocates $2,500.00 for settlement administration costs. The Parties were able to secure a competitive bid from Phoenix Class Action Administration Solution not to exceed $2,500.00 to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. (Settlement Agreement ¶ 32-34.) Phoenix Settlement Administrators is a well-recognized class action settlement administrator, and submitted the lowest bid of the two potential settlement administrators solicited by Plaintiff's Counsel. The bid includes preparing the Notice in English and Spanish. (Fitzpatrick Decl. ¶¶ 20, 48.) The Parties believe that the administration fee is reasonable and should be approved, as it results in an anticipated cost of approximately $14.97 per employee, which is commensurate with similar settlements. (Fitzpatrick Decl. ¶¶ 20, 48).

I. Notice to the LWDA Has Been Provided

Plaintiff uploaded the instant motion, the Settlement Agreement, and Proposed Order to the LWDA's website. (Fitzpatrick Decl. ¶ 49, Ex. D.)

V. CONCLUSION

Based on the above, Plaintiff and Defendant mutually request that this Court grant approval of the PAGA settlement in this matter. The terms of the PAGA settlement completely comply with the requirements of the Labor Code, and are fair, reasonable and adequate.

As such, in accordance with PAGA and the relevant case law, including the seminal case of *Arias v. Superior Court* (2009) 46 Cal. 4th 969, the Parties respectfully request that this Court grant approval to the joint stipulation regarding the settlement.

Dated: January 8, 2025 FITZPATRICK & SWANSTON

By: *__/s/ B. James Fitzpatrick__*
B. James Fitzpatrick
Attorneys for Plaintiff,
Jose Barcenas Alvarado

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as **PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT** on the interested parties in this action as indicated below and by the following means:

David S. Henshaw (SBN: 271226)
HENSHAW LAW OFFICE
155 E. Campbell Avenue, Suite 131
Campbell, CA 95008
Telephone: (408) 599-1350
david@henshawlaw.com

xx________________ **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served, addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 10, 2025, at Salinas, California.

/s/ Josie Favila
____
Josie Favila