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8 Attorneys for Plaintiff,

9 Margarita Soto Alvarez on behalf of herself

10 and all similarly aggrieved employees

11
12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF MONTEREY**

14 MARGARITA SOTO ALVAREZ, on
15 behalf of herself and all similarly aggrieved
16 employees,

17 Plaintiff,

18 v.

19 JALISCIENSE-GRULLO CORP.; and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No.: 23CV002609

**DECLARATION OF B. JAMES
FITZPATRICK IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT AND
DISMISS CLASS CLAIMS PURSUANT TO
CALIFORNIA RULES OF COURT, RULE
3.770(a)**

Date: June 13, 2025

Time: 8:30 a.m.

Dept.: 15

Complaint Filed: August 10, 2023

1 I, B. James Fitzpatrick, hereby declare and state as follows:

2 1. I am an attorney duly admitted to practice in the State of California and am the
3 owner of the law firm of Fitzpatrick & Swanston, counsel of record for Margarita Soto
4 Alvarez ("Plaintiff"). I have personal knowledge of the facts set forth below and if called to
5 testify I could and would do so competently.

6 2. I support this settlement as fair, reasonable, and adequate, and in the best interest
7 of the PAGA Members as a whole. A true and correct copy of the proposed PAGA Settlement
8 Agreement is attached hereto as **Exhibit A** ("Settlement Agreement").

9 3. Plaintiff's Counsel's application for an award of attorneys' fees in the amount of
10 \$15,318.00 and reimbursement of litigation costs in the amount of \$3,685.87¹ is reasonable
11 and fair. These amounts are well within what is reasonable and customary in both wage and
12 hour settlements and representative action settlements in general and is based on the skill
13 displayed by Counsel, the effort and resources invested in this case by Counsel, the factual and
14 legal complexities of this case, the importance of the interests which are the subject of this
15 litigation, the risks undertaken by Counsel, and the degree of success achieved by Counsel.

16 4. Pursuant to the terms of the proposed PAGA Settlement Agreement, Defendant
17 will pay the total amount of Forty-Six Thousand Dollars and No Cents (\$46,000.00) (the
18 "Gross Settlement Payment"). This amount encompasses a settlement of PAGA claims
19 asserted in this lawsuit, attorneys' fees to Plaintiff's counsel in the amount of \$15,318.00
20 (33.3% of the Gross Settlement Payment), Plaintiff's counsel's litigation costs in the amount
21 of \$3,685.87, and settlement administration costs in the amount of \$2,750.00.

22 5. Based on the amounts above, the PAGA Fund will be at least \$24,246.13.
23 Pursuant to the PAGA, this amount includes approximately \$18,184.60 to be distributed to the
24 California Labor and Workforce Development Agency ("LWDA"), and approximately
25 \$6,061.53 to be distributed to the "PAGA Settlement Members," "all individuals who are or
26 previously were employed by Defendant in California as hourly, non-exempt employees, at
27

28 ¹ Plaintiff's Counsel incurred total costs of \$5,240.37, of which \$1,625.00 is allocated to Plaintiff's individual
claims and \$3,685.37 to the PAGA claims. The \$3,685.37 includes the cost of filing the instant motion.

any time during the PAGA Period.” (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.)

6. 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.

I. SUMMARY OF THE LITIGATION AND SETTLEMENT

7. Defendant owned and operated a Mexican restaurant, Jalisciense-Grullo Corp. dba Tacos Jalisciense, located at 800 East Alisal Street in Salinas, California. Plaintiff was employed by Defendant from approximately 2006, through approximately March 11, 2022, when she resigned. The Alisal Street restaurant location closed in late 2022. Defendant remained in business at other locations.

8. On October 14, 2022, Plaintiff submitted a Notice of Labor Law Violations to the Labor and Workforce Development Agency and Defendant asserting claims for civil penalties pursuant to PAGA predicated on violations of Labor Code §§ 201, 201.3, 202, 203, 204, 208, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 233, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802. Plaintiff also requested a copy of her personnel file from Defendant. Defendant did not respond to the LWDA notice or the records request.

9. On August 10, 2023, Plaintiff filed a class and PAGA complaint (the “Complaint”) alleging wage and hour violations. Plaintiff’s principal complaints were that she was not paid for all time worked and that she was paid partially in cash without a complaint wage statement.

10. The Parties exchanged written discovery, and prior to mediation, the Defendant produced timecards, punch-times, and earning statements for an approximately 20% sampling of employees, complete time and pay records for the Plaintiff and her personnel file, and an arbitration agreement signed by Plaintiff, and arbitration agreements for many employees. In addition, Defendant produced the business’ balance sheets, profit and loss statements since

2023, and the corporation's tax returns since 2020.

11. Before mediation, Defendant raised solvency as an issue and claimed it was unable to fund a class action judgment, and that Plaintiff (and many other employees) had signed an arbitration agreement. Plaintiff was unaware of the arbitration agreement at the time she filed her complaint and disputed the enforceability of the arbitration agreement.

12. On August 10, 2024, the Parties participated in a mediation with Elizabeth Leitzinger, Esq. of Fenton & Keller, regarding claims presented by Plaintiff. At mediation, the Parties engaged in good faith negotiations, and Plaintiff challenged the enforceability of the Arbitration Agreements. Defendant produced its tax returns and cited its payroll and employee payroll tax liabilities, and loans against its business assets. The Defendant also argued based on other employees' payroll records, that Plaintiff was the only employee who was paid cash, and that it was at her request. After a thorough review of documents and Defendant's financial position, Mediator Leitzinger recommended that Plaintiff dismiss the class action for lack of numerosity.

13. After a thorough review of documents and Defendant's financial position at mediation, the Parties agreed to seek Court approval to dismiss the class claims and approve a PAGA Settlement. The essential terms of the Parties' agreements reached at Mediation were memorialized in a Memorandum of Understanding.

14. Thereafter, the Parties entered into the Settlement Agreement, a true and correct copy of which is attached hereto as **Exhibit A**. Ms. Leitzinger also assisted the Parties in reaching an agreement to settle Plaintiff's individual claims, which has since been memorialized in a separate Confidential Settlement Agreement and Release of Claims.²

II. REQUESTED DISMISSAL OF THE CLASS CLAIMS PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.770(a)

15. In light of Defendant's financial position and inability to fund a class action settlement or judgment and to avoid the risk, inconvenience, and expense of class litigation (with an alleged arbitration agreement and where numerosity was contested), pursuant to

² I will provide the Court with a copy of the Confidential Settlement Agreement and Release ("Confidential Individual Settlement") of at the Court's request.

1 California Rules of Court, Rule 3.770(c), the Parties request that the Court dismiss Plaintiff's
2 class claims under the First, Second, Third, Fourth, Fifth, Sixth, and Eighth Causes of Action
3 as alleged in the Complaint without prejudice.

4 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

5 16. **The PAGA Settlement Members.** The "PAGA Settlement Members" affected
6 by this Settlement include "all individuals who are or previously were employed by Defendant
7 in California as hourly, non-exempt employees, at any time during the PAGA Period."
8 (Settlement Agreement ¶ 9.) The PAGA Period commences on October 14, 2021, through
9 August 19, 2024. (*Id.* ¶ 8.)

10 17. Based upon Defendant's records, there are 111 PAGA Settlement Members.
11 Defendant also represents that the total number of pay periods worked by PAGA Settlement
12 Members during the PAGA Period is approximately 6,265 ("PAGA Pay Periods"). (*Id.* ¶ 27.)

13 18. **The Gross Settlement Amount.** The Settlement Agreement requires Defendant
14 to pay the Gross Settlement Payment of Forty-Six Thousand Dollars and No Cents
15 (\$46,000.00). (Settlement Agreement ¶¶ 5, 26.) The terms of the Settlement Agreement
16 provide for an award of attorneys' fees and reimbursement of litigation costs to Plaintiff's
17 counsel, and settlement administration costs. (*Id.* ¶¶ 28 and 31.)

18 19. **Attorneys' Fees and Reimbursement for Litigation Costs.** As part of the
19 Settlement Agreement, Defendant does not object to Plaintiff's counsel's request for attorneys'
20 fees of \$15,318.00 (33.3% of the Gross Settlement Payment), plus reimbursement of litigation
21 costs in the amount of \$3,685.87, subject to the Court approving this Settlement. (Settlement
22 Agreement ¶ 28.) Any portion of the attorneys' fees and costs not approved by the Court will
23 be added to the PAGA Fund. (*Id.* ¶ 30.)

24 20. **Settlement Administration Costs.** The Settlement Agreement provides for the
25 payment of fees and expenses reasonably incurred by the Settlement Administrator.
26 (Settlement Agreement ¶ 31.) The Parties have agreed to utilize Phoenix Settlement
27 Administrators to administer the Settlement, with the administration costs estimated not to
28 exceed \$2,750.00. Phoenix Settlement Administrators is a well-recognized class action

1 settlement administrator, and submitted the lowest bid of the two potential settlement
2 administrators solicited by Plaintiff's Counsel. Administration costs include the costs for
3 translating and mailing the Notice in English and Spanish. Any portion of the settlement
4 administration costs not approved by the Court shall be added to the PAGA Fund. (Settlement
5 Agreement ¶ 32.)

6 21. **The PAGA Fund.** The PAGA Fund is the balance of the Gross Settlement
7 Payment remaining after the deduction of the Court-approved: (i) attorneys' fees (\$15,318.00);
8 (ii) litigation costs (\$3,685.87); and (iii) Settlement Administration Costs (\$2,750.00).
9 Counsel estimates that the PAGA Fund will be at least \$24,246.13. (Settlement Agreement ¶¶
10 10 and 34.) In light of the Confidential Individual Settlement resolving her individual wage
11 and hour claims, Plaintiff does not request a service award as the PAGA representative.

12 22. Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or
13 approximately \$18,184.60, will be distributed to the LWDA for PAGA penalties. The
14 remaining twenty-five percent (25%) of the PAGA Fund, or approximately \$6,061.53 will be
15 distributed to the PAGA Settlement Members.

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

21 24. Defendant has represented that there are approximately 111 PAGA Settlement
22 Members who collectively worked a total of approximately 6,265 pay periods during the
23 PAGA Period. (Settlement Agreement ¶ 27.)

24 25. Based thereon, on a raw average, each PAGA Settlement Member may
25 potentially recover approximately \$54.61 [$\$6,061.53 \div 111$ PAGA Members], or
26 approximately \$0.97 [$\$6,061.53 \div 6265$ pay periods] per pay period, from the portion of the
27 PAGA Fund attributable to the PAGA Settlement Members. The amount any particular
28 PAGA Settlement Member will be entitled to recover will fluctuate depending on the number

1 of pay periods he or she worked as a non-exempt employee in California during the PAGA
2 Period. This is fair, as it directly allocates greater penalties to individual PAGA Settlement
3 Members who have allegedly suffered greater harm.

4 26. **Uncashed Checks.** Funds from any checks that have not been cashed within
5 180 days of issuance do not revert and shall be paid to the designated *cy pres* recipient:
6 Watsonville Law Center. (Settlement Agreement ¶ 45). Neither counsel nor their respective
7 firms have any relationship with the proposed *cy pres* recipient that would create an actual or
8 potential conflict of interest. The Parties further agree that the proposed *cy pres* recipient,
9 satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the
10 organization helps further the purposes of the underlying action and promote justice for all
11 Californians.

12 **IV. THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

13 27. **The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**
14 **Litigation.** Although Plaintiff is reasonably confident that she would prevail at trial,
15 proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in
16 addition to the still-evolving law under PAGA. Here, in light of the size of the PAGA Group
17 and the number of pay periods and claims, there is a significant risk that Defendant would be
18 unable to pay a large settlement or a large judgment, if one were to be required or have
19 occurred.

20 28. **Defendant's Ability to Pay a Large Judgment.** As a preliminary matter,
21 Courts are to consider the amount of money that a defendant has available. A defendant's
22 ability to pay a judgment larger than that provided by the proposed settlement is a relevant
23 consideration for the Court. Here, Defendant produced its tax returns and cited its payroll and
24 employee payroll tax liabilities, and loans against its business assets. Defendant produced the
25 business' balance sheets, profit and loss statements since 2023, and the corporation's tax
26 returns since 2020. In light of the size of the PAGA Members and the number of pay periods,
27 there is a significant risk that this Defendant would be unable to pay a large settlement or a
28 large judgment, if one were to be required or had occurred. Defendant argued that if Plaintiff

1 litigated this case through trial and was successful, Defendant would be pushed to insolvency.
2 Accordingly, even if Plaintiff succeeded, a judgment may not have been collectable. Thus, the
3 settlement is fair, reasonable, and adequate, given the inherent risks of litigation, including the
4 substantial risks and the costs of pursuing such litigation. The settlement is the result of
5 extensive arm's-length negotiations between the Parties and their counsel, and was facilitated
6 by an experienced and neutral mediator.

7 29. **Plaintiff's Claims are Contested.** Plaintiff asserts that her representative
8 PAGA claims are based on the allegations that Defendant failed to pay for all hours worked,
9 failed to pay premium overtime wages, failed to provide off-duty meal and rest periods, failed
10 to reimburse employees for work-related expenses; and failed to provide accurate itemized
11 wage statements. Defendant argued that Plaintiff's claims were unreliable and based on
12 estimates of the times she worked.

13 30. **Unpaid Wages.** Plaintiff alleges that Defendant failed to pay for all hours
14 worked. According to Plaintiff, Defendant did not compensate the employees for all time
15 worked before and after their shifts. Plaintiff maintains that Defendant's off-the-clock
16 practices results in unpaid wages and are inconsistent with California law and regulatory
17 scheme. Defendant argued that Plaintiff would have to rely on individual testimony regarding
18 estimates of time worked, which is inherently unreliable.

19 31. **Unlawful Meal and Rest Periods.** Plaintiff also alleges that Defendant failed to
20 provide timely and compliant meal and rest periods. Although employees frequently worked
21 through breaks, Defendant recorded the compliant break times on their timesheets. The
22 sampling of payroll records produced by Defendant shows that employees did not receive
23 meal/rest period premium pay. Defendant argued that employees did take 30 minute lunch
24 breaks and that they were offered rest periods.

25 32. Defendant disputed the existence of a common policy that required employees to
26 miss and/or interrupt their breaks to perform work-related tasks. Defendant argued that
27 Defendant's only obligation was to make breaks available to employees – not to police them.

28 33. **Failure to Reimburse Business Expenditures.** Plaintiff further alleged that

1 Defendant regularly and consistently violated Labor Code section 2802 by failing to reimburse
2 employees for expenses incurred in the performance of their duties, including expenses
3 associated with the use of personal phones for mandatory work-related phone calls. Defendant
4 denied Plaintiff's allegations. According to Defendant, employees were not required to use a
5 personal cell phone to communicate during the workday. Thus, according to Defendant, the
6 decision to use a cell phone for business purposes is personal and not required by company
7 policy.

8 **34. Wage Statements.** With respect to Plaintiff's wage statement claim, as a further
9 consequence of Defendant's failure to record the actual hours worked by Plaintiff and the
10 employees, Defendant failed to provide the employees with complete and accurate itemized
11 wage statements. Plaintiff argued that she was paid cash for many of her hours, and not
12 provided an itemized wage statement for that time. Defendant argued that Plaintiff's cash
13 claim was unique to Plaintiff, and that she had requested to be paid half her wages in cash.

14 **35. The Potential Value of the PAGA Claims.** Due to the discretionary nature of
15 PAGA penalties, PAGA civil penalties are difficult to evaluate. Based on the data provided by
16 Defendant prior to mediation, Plaintiff's Counsel estimated 118 aggrieved employees each
17 worked ~96 pay periods between October 14, 2022, through August 19, 2024 (mediation
18 date), totaling 11,328 pay periods. However, during the mediation, Defendant produced
19 additional documents and information, and with the assistance of Mediator Leitzinger's
20 analysis, Defendant demonstrated that due to staff turnover, there were only 111 employees
21 who worked a total of 6,265 workweeks during the PAGA period.

22 **36.** Assuming a \$100.00 civil penalty per pay period (total 6,265 estimated pay
23 periods), Defendant's *maximum* exposure for civil penalties under PAGA was estimated to be
24 \$626,500.00 [\$100 x. 6,265 pay periods]. Although Plaintiff's Counsel believes there is merit
25 to Plaintiff's allegations, Plaintiff's Counsel acknowledges a legitimate controversy exists as to
26 each allegation. In other words, based on Plaintiff's Counsel's investigation and analysis, the
27 maximum exposure did not comport with the reasonable exposure that Defendant faced.
28 Specifically, Defendant argued that it did not permit employees to work off-the-clock, that it

1 maintained compliance with all its meal and rest period obligations, and that any missed rest
2 and meal period was solely the result of employees' voluntary choice, and that it did not
3 require its employees to use its personal cell phones, and—for the wage statements that were
4 allegedly inaccurate—Defendant asserts the employees suffered no actual damage or harm as a
5 result.

6 37. Plaintiff's Counsel is aware that Defendant could make a compelling argument
7 that the award of PAGA penalties would be confiscatory. Indeed, total PAGA exposure vastly
8 exceeds the value of alleged unpaid wages, and Defendant provided documentary evidence of
9 its precarious financial position and argued that a full penalty award would cripple
10 Defendant's business and result in bankruptcy.

11 38. Based on the foregoing, and in consideration of the due process concerns related
12 to penalizing Defendant disproportionately to the amount of damages at issue, and the
13 discretionary nature of awarding penalties, it is reasonable to assume for resolution purposes,
14 that a violation occurred in approximately one-fifth (or 0.2) of all pay periods resulting in a
15 *realistic, risk-adjusted* exposure of \$125,300.00 (\$626,00.00 maximum exposure x 0.2).
16 Here, the proposed settlement of \$46,000.00 amounts to approximately 37% of the realistic,
17 risk-adjusted exposure (\$46,000.00/\$125,300.00), or 7% of the maximum exposure
18 (\$46,000.00/\$626,500.00).

19 39. **The Attorneys' Fees are Reasonable.** With respect to Plaintiff's Counsel's
20 lodestar, Plaintiff's Counsel will have expended approximately 74 hours (65.5 attorney hours
21 + 8.5 paralegal hours) litigating this case, which includes anticipated time spent after approval
22 responding to correspondence and phone calls from PAGA Settlement Members, the
23 Settlement Administrator, and defense counsel. (Attached hereto as **Exhibit B** is a true and
24 correct copy of a detailed summary of tasks and hours spent by this firm in litigating this case.)

25 40. Plaintiff's counsel's skill and experience justify the requested rates. Plaintiff's
26 counsel has significant experience in the area of employment and wage and hour actions.
27 Specifically, Plaintiff's counsel's practice focuses on representing employees in employment
28 matters, particularly wage and hour cases. As such, based on the hours and applicable rate,

1 Plaintiff's Counsel's lodestar amount through the finalization of this settlement – without a
2 multiplier – will be approximately \$39,972.50.

3 41. **Experience.** I am familiar with all aspects of this case and all tasks undertaken
4 by the various members of this firm in litigating this case. As a result of my firm's diligence
5 in pursuing the factual and legal issues presented by this case, we were able to realistically
6 assess the claims, prepare damages, and exposure. All work performed by our office is done
7 on a contingency basis. Our firm has received no compensation for the time invested or
8 expenses incurred in litigating this case. We have prosecuted this litigation up to this point,
9 taking the risk that we ultimately would not receive any compensation for our work.

10 42. The hourly rate for attorneys in this firm is \$800.00, and the hourly rate for
11 paralegals is \$185.00. Since at least 2020, I have been approved at hourly rates of \$750.00
12 and \$800.00 per hour by various Courts, in several matters, including, in the matters entitled:
13 *Jose Antonio Ortiz Arrellano v. Rocha Brothers Farms, LLC*, Santa Cruz County Superior
14 Court, Case No. 21CV01286; *Sione Fuapau v. LHOIST North America of Arizona, Inc.*,
15 United States District Court, Northern District of California, Case No. 20-CV-04404-VKD;
16 *Sandra Lopez v. Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-
17 00542312-CU-OE-VTA; *Christina Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa
18 Clara Superior Court, Case No. 18CV329544; *Javier Mendoza v. National Vision, Inc.*, United
19 States District Court, Northern District of California, Case No. 19-CV-01485-SVK; *Valarie*
20 *Murray v. Granite Wellness Centers*, Nevada County Superior Court, Case No. CU20-084680;
21 *Nicolas Serafica v. HGST, Inc.*, Santa Clara County Superior Court Case No. 21CV386574;
22 and *Curtis White v. Cortech West Staffing, LLC*, San Joaquin County Superior Cort, Case No.
23 STK-CV-UOE-2023-0000029.

24 43. In this motion, I request an attorney hourly rate of \$595.00. Accordingly, the
25 total lodestar for attorney hours will be approximately \$39,972.50 (\$595.00 x 65.5 attorney
26 hours).

27 44. Having represented both employees and employers during my practice, I am
28

1 familiar with the contingent fee market throughout Northern California, where I primarily
2 practice law, and in other areas of the state in which my firm regularly litigates. Considering
3 our experience and my knowledge of the market, I believe that the hourly rates charged by my
4 firm, and previously approved by this Court, are fair and reasonable and less than those
5 charged by my colleagues in other areas of California and the national market for prosecuting
6 representative actions.

7 45. I received my bachelor's degree from the University of California, Santa Barbara
8 and my Juris Doctor degree from the University of Santa Clara School of Law. I have
9 practiced law since 1987. The primary emphasis of my practice is employment litigation. I
10 have represented both employers and employees. Over 15 years ago, my office commenced
11 handling plaintiff representative action wage and hour cases. Since then, my office has
12 handled hundreds of wage and hour cases to conclusion and has been counsel and/or co-
13 counsel in over 100 class and representative actions. My firm currently has wage and hour
14 cases in Alameda County Superior Court, Monterey County Superior Court, Nevada County
15 Superior Court, Santa Clara Superior Court, San Benito Superior Court, San Bernardino
16 County Superior Court, San Joaquin County Superior Court Santa Cruz Superior Court,
17 Ventura County Superior Court, and the United States District Courts for the Eastern and
18 Northern District of California.

19 46. My firm risked not only a great deal of time, but also significant expense to
20 ensure the successful litigation of this action on behalf of all employees. In addition to the
21 supporting documentation and legal authority presented in Plaintiff's moving papers, the
22 attorneys' fees proposed are not just fair and reasonable; they are necessary in order to
23 incentivize attorneys to take on the risk of time and expense associated with representative
24 actions. Indeed, many times counsel expend enormous amounts of work and out of pocket
25 costs in the interest of aggrieved employees and/or the State of California, only to end up
26 without any recovery whatsoever. For example, my firm expended significant time and
27 expenses in a wage/hour class and PAGA action, only to have the District Court grant
28

summary judgment in its entirety against plaintiff. See *Guynn-Neupane*, 2021 WL 4481661 (N.D. Cal. Sep. 30, 2021). There are actual risks that Plaintiff requests this Court take into account when considering the requested attorneys' fees.

47. **The Costs are Reasonable.** Additionally, Plaintiff's counsel's request for reimbursement of litigation costs in the amount of \$3,685.87 is also reasonable. Plaintiff's counsel incurred costs that were directly incurred in the prosecution of this action, including complex and filing fees, and the mediation³ before an experienced neutral mediator with expertise in wage and hour litigation. As such, the requested costs should be awarded as fair and reasonable. (Attached hereto as **Exhibit C** is a true and correct copy of my firm's total costs.)

48. **The Settlement Administrator's Fees Should be Approved.** The Parties have agreed to an estimated payment of \$2,750.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. (Settlement Agreement ¶ 33-35.) Phoenix Settlement Administrators is a well-recognized class and representative 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. The Parties believe that the administration fee is reasonable and should be approved, as it results in an anticipated cost of approximately \$24.77 per class member, which is commensurate with similar settlements.

49. **Notice to the LWDA Has Been Provided.** Plaintiff uploaded the instant motion, the Settlement Agreement, and Proposed Order to the LWDA's website. (Attached hereto as **Exhibit D** is a true and correct copy of the LWDA submission confirmation.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called as a witness I could and would competently testify to each of the matters stated herein, and I state that these matters are based upon my own

³ The cost of mediation was evenly divided, with 50% allocated to Plaintiff's individual claims and 50% to the PAGA claims. Plaintiff is seeking reimbursement only for the portion attributable to the PAGA claims.

1 personal knowledge acquired through first-hand observation, except where stated otherwise.

2 This declaration was executed by me on May 21, 2025, in Salinas, California.

3
4 /s/ B. James Fitzpatrick

5 _____
B. James Fitzpatrick

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 **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT AND DISMISS CLASS CLAIMS**

on the interested parties in this action as indicated below and by the following means:

Doug M. Larsen (SBN: 142852)
Michael W. Green (SBN: 339933)
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Attorneys for Defendant,
JALISCIENSE-GRULLO CORP.

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 May 21, 2025, at Salinas, California.

/s/ Josie Favila

Josie Favila