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9 Margarita Soto Alvarez on behalf of herself
10 and all similarly aggrieved employees

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

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

Plaintiff,

v.

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

Defendants.

Case No.: 23CV002609

**PLAINTIFF'S NOTICE OF MOTION AND
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); MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 13, 2025

Time: 8:30 a.m.

Dept.: 15

Complaint Filed: August 10, 2023

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 13, 2025, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Thomas W. Wills, judge presiding, in
4 Department 15 of the above-referenced Court located at 1200 Aguajito Road, Monterey,
5 California, Plaintiff Margarita Soto Alvarez (“Plaintiff”) will and hereby moves this Court for
6 the following relief:

7 (A) With respect to the Private Attorneys General Act Settlement Agreement
8 (“Settlement Agreement”), pursuant to the procedures set forth in Labor Code § 2698, et seq.:

9 1. That the Court finds that the Agreement appears to be within the range of
10 reasonableness of a settlement;

11 2. That the Court approve the Gross Settlement Amount of Forty-Six
12 Thousand Dollars and 00/100 Cents (\$46,000.00);

13 3. That the Court approve attorneys’ fees to Plaintiff’s counsel in the
14 amount of Fifteen Thousand Three Hundred Eighteen Dollars and 00/100 Cents (\$15,318.00)
15 (33.3% of the Gross Settlement Payment), and Plaintiff’s counsel’s litigation costs in the
16 amount of Three Thousand Six Hundred Eighty-Five Dollars and 87/100 Cents (\$3,685.87);

17 4. That the Court appoint Phoenix Settlement Administrators as the
18 Settlement Administrator and approve the administration costs in the amount of Two
19 Thousand Five Hundred Dollars and 00/100 Cents (\$2,750.00); and

20 5. That the Court approve the PAGA Fund¹ in the amount of Twenty-Four
21 Thousand Two Hundred Forty-Six Dollars and 13/100 Cents (\$24,246.13) to be paid as
22 follows: Eighteen Thousand One Hundred Eighty-Four Dollars and 60/100 Cents (\$18,184.60)
23 (75% to the Labor and Workforce Development Agency); and Six Thousand Sixty-One
24 Dollars and 53/100 Cents (\$6,061.53) (25% to the PAGA Members); and

25 (B) With respect to the alleged class claims, an order dismissing the claims pursuant to
26 California Rules of Court, Rule 3.770(a).

27
28 ¹ “PAGA Fund” shall mean the Gross Settlement Payment less Plaintiff’s Counsel’s fees and costs, and the settlement administration costs.

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

4
5 Dated: May 20, 2025

FITZPATRICK & SWANSTON

6
7 By: /s/ B. James Fitzpatrick
8 B. James Fitzpatrick
9 Alison L. Baker
10 Attorneys for Plaintiff,
11 MARGARITA SOTO ALVAREZ
12 on behalf of herself and all similarly
13 aggrieved employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*
4 (“PAGA”), Plaintiff hereby moves the Court for an order approving the non-reversionary
5 PAGA settlement as set forth in the concurrently filed Private Attorneys General Act
6 Settlement Agreement (the “Settlement Agreement” or “Settlement”). The Settlement
7 concerns a PAGA group comprised of 111 individuals who were formerly and currently
8 employed by Defendant Jalisciense-Grullo Corp. (“Defendant”).

9 Plaintiff alleges that Defendant failed to pay for all hours worked, failed to pay
10 overtime wages, failed to provide complaint meal and rest periods, failed to reimburse for
11 work-related expenses, and failed to issue accurate wage statements, resulting in violations of
12 the PAGA based on Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5,
13 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699,
14 2800, 2802, 2698,.

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

27 As demonstrated below, the proposed settlement warrants the Court’s approval. The
28 settlement was reached after the exchange of documents and information pertaining to the

1 alleged aggrieved employees' claims, including documents reflecting their hours scheduled
2 and worked and corresponding payments issued to them by Defendant. Further, the
3 Settlement was reached after arms' length negotiations at mediation with a well-respected
4 mediator who has extensive experience with complex wage and hour claims, Elizabeth
5 Leitzinger of Fenton & Keller.

6 Pursuant to the terms of the proposed PAGA Settlement Agreement, Defendant will
7 pay the total amount of Forty-Six Thousand Dollars and No Cents (\$46,000.00) (the "Gross
8 Settlement Payment"). (Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶¶ 4, 18.)
9 This amount encompasses a settlement of PAGA claims asserted in this lawsuit, attorneys'
10 fees to Plaintiff's counsel in the amount of \$15,318.00 (33.3% of the Gross Settlement
11 Payment), Plaintiff's counsel's litigation costs associated with the PAGA claim in the amount
12 of \$3,685.87², and settlement administration costs in the amount of \$2,750.00. ("Fitzpatrick
13 Decl.") ¶¶ 4, 18-20.)

14 Based on the amounts above, the PAGA Fund will be at least \$24,246.13. (Fitzpatrick
15 Decl. ¶¶ 5, 21.) Pursuant to the PAGA, this amount includes approximately \$18,184.60 to be
16 distributed to the California Labor and Workforce Development Agency ("LWDA"), and
17 approximately \$6,061.53 to be distributed to the "PAGA Settlement Members," "all
18 individuals who are or previously were employed by Defendant in California as hourly, non-
19 exempt employees, at any time during the PAGA Period." (Id.; Settlement Agreement at ¶ 9.)
20 The proposed settlement, moreover, does not release any substantive claims of PAGA
21 Settlement Members, merely their rights to bring PAGA claims predicated on the same
22 violations of the Labor Code raised in this Action that accrued during the PAGA Period.
23 (Settlement Agreement at ¶ 14, 47.)

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

27 _____
28 ² 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.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Summary of the Litigation and Settlement

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. (Fitzpatrick Decl. ¶ 7.)

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. (Fitzpatrick Decl. ¶ 8.)

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. (Fitzpatrick Decl. ¶ 9.)

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. (Fitzpatrick Decl. ¶ 10.) In addition, Defendant produced the business’ balance sheets, profit and loss statements since 2023, and the corporation’s tax returns since 2020. (*Id.*)

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. (Fitzpatrick Decl. ¶ 11.) Plaintiff was unaware of the arbitration agreement at the time she filed her complaint and disputed the enforceability of the arbitration

1 agreement. (*Id.*)

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

11 After a thorough review of documents and Defendant's financial position at mediation,
12 the Parties agreed to seek Court approval to dismiss the class claims and approve a PAGA
13 settlement. The essential terms of the Parties' agreements reached at mediation were
14 memorialized in a Memorandum of Understanding. (Fitzpatrick Decl. ¶ 13.)

15 Thereafter, the Parties entered into the Settlement Agreement, a true and correct copy
16 of which is attached as Exhibit A to the Declaration of B. James Fitzpatrick. Ms. Leitzinger
17 also assisted the Parties in reaching an agreement to settle Plaintiff's individual claims, which
18 has since been memorialized in a separate Confidential Settlement Agreement and Release of
19 Claims (the "Confidential Individual Settlement"). (Fitzpatrick Decl. ¶ 14.)

20 **III. REQUESTED DISMISSAL OF THE CLASS CLAIMS PURSUANT TO** 21 **CALIFORNIA RULES OF COURT, RULE 3.770(a)**

22 In light of Defendant's financial position and inability to fund a class action settlement
23 or judgment and to avoid the risk, inconvenience, and expense of class litigation (with an
24 alleged arbitration agreement and where numerosity was contested), pursuant to California
25 Rules of Court, Rule 3.770(c), the Parties request that the Court dismiss Plaintiff's class claims
26 under the First, Second, Third, Fourth, Fifth, Sixth, and Eighth Causes of Action as alleged in
27 the FAC without prejudice. (¶15.)

28 **IV. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

The material terms of the Settlement are described below and set forth in detail in the

1 Settlement Agreement (*See* Fitzpatrick Decl., Exhibit A).

2 **A. The PAGA Settlement Members**

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

8 Based upon Defendant’s records, there are 111 PAGA Settlement Members.
9 Defendant also represents that the total number of pay periods worked by PAGA Settlement
10 Members during the PAGA Period is approximately 6,265 (“PAGA Pay Periods”).
11 (Fitzpatrick Decl. ¶ 16; Settlement Agreement ¶ 27.)

12 **B. The Gross Settlement Amount**

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

18 **C. Attorneys’ Fees and Reimbursement for Litigation Costs**

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

25 **D. Settlement Administration Costs**

26 The Settlement Agreement provides for the payment of fees and expenses reasonably
27 incurred by the Settlement Administrator. (Fitzpatrick Decl. ¶ 20; Settlement Agreement ¶
28 31.) The Parties have agreed to utilize Phoenix Settlement Administrators to administer the

1 Settlement, with the administration costs estimated not to exceed \$2,750.00. (*Id.*; Fitzpatrick
2 Decl. ¶ 20; Declaration of Phoenix Settlement Administrators.) Phoenix Settlement
3 Administrators is a well-recognized class action settlement administrator, and submitted the
4 lowest bid of the two potential settlement administrators solicited by Plaintiff's Counsel. The
5 Administration costs include the costs for translating and mailing the Notice in English and
6 Spanish. (Fitzpatrick Decl. ¶ 20.) Any portion of the settlement administration costs not
7 approved by the Court shall be added to the PAGA Fund. (Settlement Agreement ¶ 32.)

8 **E. The PAGA Fund**

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

16 Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or
17 approximately \$18,184.60, will be distributed to the LWDA for PAGA penalties. (Fitzpatrick
18 Decl. ¶ 22.) The remaining twenty-five percent (25%) of the PAGA Fund, or approximately
19 \$6,061.53 will be distributed to the PAGA Settlement Members. (*Ibid.*)

20 The portion of the PAGA Fund distributed to the PAGA Settlement Members will be
21 distributed on a pro rata basis, based on the number of pay periods each PAGA Settlement
22 Member worked for Defendant during the PAGA Period divided by the aggregate total
23 number of pay periods worked by all PAGA Settlement Members. (Settlement Agreement ¶¶
24 39; Fitzpatrick Decl. ¶ 23.)

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

28 Based thereon, on a raw average, each PAGA Settlement Member may potentially

1 recover approximately \$54.61 [$\$6,061.53 \div 111$ PAGA Members], or approximately \$0.97
2 [$\$6,061.53 \div 6265$ pay periods] per pay period, from the portion of the PAGA Fund
3 attributable to the PAGA Settlement Members. (Fitzpatrick Decl. ¶ 25.) The amount any
4 particular PAGA Settlement Member will be entitled to recover will fluctuate depending on
5 the number of pay periods he or she worked as a non-exempt employee in California during
6 the PAGA Period. This is fair, as it directly allocates greater penalties to individual PAGA
7 Settlement Members who have allegedly suffered greater harm.

8 **F. Uncashed Checks.**

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

16 **G. Scope of the Released Claims**

17 In exchange for the payments described above, Plaintiff and the PAGA Settlement
18 Members will release the Released Parties from the following limited release:

19 any and all claims, whether known or unknown, to recover civil
20 penalties pursuant to PAGA for any alleged violations by
21 Defendant of California Labor Code §§ 201, 201.3, 202, 203, 204,
22 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510,
23 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802,
24 2698, 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
Non-PAGA Individual Claims.

25 (Settlement Agreement at ¶¶ 14, 47.)

26 The Settlement does not release Defendant from violations of any predicate statutes
27 other than PAGA and will not affect a waiver of individual claims by PAGA Settlement
28 Members against Defendant for any of the underlying Labor Code claims. The release is

1 expressly limited to claims for civil penalties under the PAGA pertaining to the Labor Code
2 violations raised in this lawsuit that accrued during the PAGA Period, thereby excluding all
3 non-PAGA claims. (*Id.*)

4 **V. THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

5 **A. PAGA Overview**

6 Prior to the enactment of PAGA, many of the penalties provided against employers for
7 violations of certain Labor Code provisions were solely within the province of the California
8 Department of Labor to seek, enforce, and assess. (*Arias v. Superior Court, supra*, 46 Cal. 4th
9 969, 980.) However, due to the lack of financing to California's agencies and the potential
10 number of Labor Code violations by California employers, the California Legislature found
11 that it was in the public interest to allow aggrieved employees to act as private attorneys
12 general and to enforce and recover penalties on behalf of other similarly situated aggrieved
13 employees for Labor Code violations committed by their employers. (*Id.*) As such, PAGA
14 was enacted to allow such enforcement and recovery by private individuals who have been
15 aggrieved by their employers.

16 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
17 employee must first provide written notice to the LWDA and the employer of the particular
18 Labor Code violation(s) alleged to have been violated by the employer. (See Cal. Labor Code
19 § 2699.3(a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to
20 investigate the alleged violations or the time for the LWDA to investigate the violations
21 passes, the aggrieved employee is allowed to proceed in a civil action against the employer on
22 behalf of all other similarly aggrieved employees. (See Cal. Labor Code § 2699.3(a)(2)(A).)

23 In 2009, the California Supreme Court considered the issue of whether an aggrieved
24 employee who brings a PAGA claim needs to meet class certification requirements. (*Arias*, 46
25 Cal. 4th 969, 976.) After a substantial review of the legislative history of PAGA, the
26 California Supreme Court held that an aggrieved employee's representative action brought on
27 behalf of other similarly aggrieved employees against an employer for PAGA violations do
28 not need to meet the requirements for class certification. (*Id.* at 975, 980-88.) As held by the

1 California Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or agent
2 of California's labor law enforcement agencies. (*Id.* at 986.) Because an employee's PAGA
3 action functions as a substitute for an action brought by the government itself, a judgment in
4 the PAGA action binds all those who would be bound by a judgment in an action brought by
5 the government. (*Id.*)

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

11 **B. The Settlement Effectuates the Objectives of PAGA**

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

21 Here, the Settlement vindicates the rights of PAGA Group Members who have
22 experienced alleged violations of the Labor Code. *O'Connor v. Uber Technologies, Inc.* (N.D.
23 Cal. 2016) 201 F.Supp.3d 1110, 1134 ("If the settlement for the Rule 23 class is robust, the
24 purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the class
25 members as employees and substantial monetary relief, a settlement not only vindicates the
26 rights of the class members as employees but may have a deterrent effect upon the defendant
27 employer and other employers, an objective of PAGA"). The Settlement is also consistent with
28 the State's public policy favoring resolution of disputes. "California law favors the settlement

1 of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves
2 resources, and minimizes court congestion. [] The parties are best positioned to understand
3 their interests and resolve a dispute in a mutually beneficial manner without court intervention
4 into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46,
5 62-63 (citing *Neary v. Regents of Univ. of Cal.*, (1992) 3 Cal. 4th 273, 277- 278.

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

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

22 By contrast, court approval of PAGA settlements is governed by Labor Code §
23 2699(1), which provides, in relevant part: “The court shall review and approve any penalties
24 sought as part of a proposed settlement agreement pursuant to this part.” The Parties are not
25 obligated to “satisfy class action requirements,” including the standards for class action
26 settlement approval. *Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court’s holding that
27 “plaintiff need not satisfy class action requirements” to assert a PAGA claim).

28 Notably, unlike the class action settlement approval process, there is also no statutory

1 mechanism for this Court to conduct a two-step settlement approval review. (Cal. Labor Code
2 § 2699(1).) In addition, “[u]nnamed employees need not be given notice of the PAGA claim,
3 nor do they have the ability to opt-out of the representative PAGA claim” or “contest a
4 settlement, if any, reached between the parties.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*
5 (N.D. Cal. 2010) 2010 WL 1340777 *13.

6 **D. The Scope of the Release is Appropriately Limited**

7 The limited scope of the release supports approval of this PAGA settlement. If
8 approved, the Settlement would release the Released Parties from claims to recover civil
9 penalties under PAGA that accrued during the PAGA Period and are predicated on the
10 underlying violations of the Labor Code or Wage Order that were alleged, or could have been
11 alleged, in Plaintiff’s complaint or notice letter to the LWDA in this action. (Settlement
12 Agreement ¶¶ 14, 47.) The Settlement would not impact any other aggrieved employees’
13 ability to pursue PAGA claims predicated on other allegations aside from those raised in this
14 lawsuit or any Labor Code claims not predicated on the PAGA.

15 Because an aggrieved employee’s PAGA action is a substitute for an action brought by
16 the government, “judgment in [a PAGA] action is binding not only on the named employee
17 plaintiff but also on government agencies and any aggrieved employee not a party to the
18 proceeding.” (*Arias*, 46 Cal. 4th 969, 986.) However, “the nonparty employees, because they
19 were not given notice of the action or afforded any opportunity to be heard, would not be
20 bound by the judgment as to remedies other than civil penalties.” (*Id.* at 987; see also, Labor
21 Code § 2699(g)(l) (non-party aggrieved employees retain all rights “to pursue or recover other
22 remedies available under state or federal law, either separately or concurrently with an action
23 taken under this part”).)

24 Here, as described above, the PAGA Settlement Members will be subject to only a
25 limited release strictly confined to the civil penalties under the PAGA based on the facts and
26 Labor Code violations alleged in this action. (Settlement Agreement ¶¶ 14, 47.) The release is
27 therefore appropriately tailored, and the settlement should be approved.

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

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

9 **1. Defendant's Ability to Pay a Large Judgment.**

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

13 Here, Defendant produced its tax returns and cited its payroll and employee payroll tax
14 liabilities, and loans against its business assets. Defendant produced the business' balance
15 sheets, profit and loss statements since 2023, and the corporation's tax returns since 2020. In
16 light of the size of the PAGA Members and the number of pay periods, there is a significant risk
17 that this Defendant would be unable to pay a large settlement or a large judgment, if one were
18 to be required or had occurred. (Fitzpatrick Decl. ¶¶ 11-12, ¶¶ 27-29.) Defendant argued that
19 if Plaintiff litigated this case through trial and was successful, Defendant would be pushed to
20 insolvency. (*Id.*) Accordingly, even if Plaintiff succeeded, a judgment may not have been
21 collectable. (*Id.*) Thus, the settlement is fair, reasonable, and adequate, given the inherent risks
22 of litigation, including the substantial risks and the costs of pursuing such litigation. The
23 settlement is the result of extensive arm's-length negotiations between the Parties and their
24 counsel and was facilitated by an experienced and neutral mediator. (Fitzpatrick Decl. ¶¶ 12-14,
25 27-29.)

26 **2. Plaintiff's Claims are Contested**

27 Plaintiff asserts that her representative PAGA claims are based on the allegations that
28 Defendant failed to pay for all hours worked, failed to pay premium overtime wages, failed to
provide off-duty meal and rest periods, failed to reimburse employees for work-related

1 expenses; and failed to provide accurate itemized wage statements. Defendant argued that
2 Plaintiff's claims were unreliable and based on estimates of the times she worked.
3 (Fitzpatrick Decl. ¶ 29.)

4 **a. Unpaid Wages**

5 Plaintiff alleges that Defendant failed to pay for all hours worked. (Fitzpatrick Decl. ¶
6 30.) According to Plaintiff, Defendant did not compensate the employees for all time worked
7 before and after their shifts. Plaintiff maintains that Defendant's off-the-clock practices results
8 in unpaid wages, and are inconsistent with California law and regulatory scheme. Defendant
9 argued that Plaintiff would have to rely on individual testimony regarding estimates of time
10 worked, which is inherently unreliable. (Fitzpatrick Decl. ¶ 30.)

11 **b. Unlawful Meal and Rest Periods**

12 Plaintiff also alleges that Defendant failed to provide timely and compliant meal and
13 rest periods. (Fitzpatrick Decl. ¶ 31.) Although employees frequently worked through breaks,
14 Defendant recorded the compliant break times on their timesheets. *See Id.* The sampling of
15 payroll records produced by Defendant shows that employees did not receive meal/rest period
16 premium pay . Defendant argued that employees did take 30 minute lunch breaks and that they
17 were offered rest periods. (Fitzpatrick Decl. ¶ 31.)

18 Defendant disputed the existence of a common policy that required employees to miss
19 and/or interrupt their breaks to perform work-related tasks. (Fitzpatrick Decl. ¶ 32.)
20 Defendant argued that Defendant's only obligation was to make breaks available to employees
21 – not to police them. *See Brinker Rest. Corp. v. Superior Ct.* (2012) 53 Cal. 4th 1004, 1040
22 (“On the other hand, the employer is not obligated to police meal breaks and ensure no work
23 thereafter is performed”).

24 **c. Failure to Reimburse Business Expenditures**

25 Plaintiff further alleged that Defendant regularly and consistently violated Labor Code
26 section 2802 by failing to reimburse employees for expenses incurred in the performance of
27 their duties, including expenses associated with the use of personal phones for mandatory
28 work-related phone calls. (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”). Defendant denied Plaintiff’s allegations. According to Defendant, employees were not required to use a personal cell phone to communicate during 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, Defendant failed to provide the employees with complete and accurate itemized wage statements. Plaintiff argued that she was paid cash for many of her hours, and not provided an itemized wage statement for that time. Defendant argued that Plaintiff’s cash claim was unique to Plaintiff, and that she had requested to be paid half her wages in cash. (Fitzpatrick Decl. ¶ 34.)

3. The Potential Value of the PAGA Claims

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

Assuming a \$100.00 civil penalty per pay period (total 6,265 estimated pay periods), Defendant’s *maximum* exposure for civil penalties under PAGA was estimated to be \$626,500.00 [\$100 x. 6,265 pay periods]. Fitzpatrick Decl. ¶ 36.)

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,

1 based on Plaintiff's Counsel's investigation and analysis, the maximum exposure did not
2 comport with the reasonable exposure that Defendant faced. Specifically, Defendant argued
3 that it did not permit employees to work off-the-clock, that it maintained compliance with all
4 its meal and rest period obligations, and that any missed rest and meal period was solely the
5 result of employees' voluntary choice, and that it did not require its employees to use its
6 personal cell phones, and for the wage statements that were allegedly inaccurate, Defendant
7 asserts the employees suffered no actual damage or harm as a result. (Fitzpatrick Decl. ¶ 36.)

8 Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of
9 PAGA penalties where “if, based on the facts and circumstances of the particular case, to do
10 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
11 Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.* (2018)
12 30 Cal. App. 5th 504, 517, while the plaintiff prevailed on his PAGA claim upon trial, the
13 trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good
14 faith attempt at complying with the law. Upon review, the Court of Appeal found such a
15 reduction to be proper. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at *17 (noting that even
16 if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court may
17 reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and
18 oppressive, or confiscatory.”)

19 Here, Plaintiff’s Counsel is aware that Defendant could make a compelling argument
20 that the award of PAGA penalties would be confiscatory. Indeed, total PAGA exposure vastly
21 exceeds the value of alleged unpaid wages, and Defendant provided documentary evidence of
22 its precarious financial position and argued that a full penalty award would cripple
23 Defendant’s business and result in bankruptcy. (Fitzpatrick Decl. ¶¶ 10-12, 37.) Defendant
24 may also point to the recent enactment of comprehensive amendments to PAGA with the July
25 1, 2024, signing of Senate Bill 92 and Assembly Bill 2288, which provide employers with new
26 opportunities to substantially reduce or even eliminate PAGA penalties. While these reforms
27 do not apply to cases such as this one where the civil action was filed or the PAGA notice was
28 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 foregoing, and in consideration of the 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 one-fifth (or 0.2) of all pay periods resulting in a *realistic, risk-adjusted* exposure of \$125,300.00 (\$626,00.00 maximum exposure x 0.2). (Fitzpatrick Decl. ¶ 38.)

Here, the proposed settlement of \$46,000.00 amounts to approximately 37% of the *realistic, risk-adjusted* exposure (\$46,000.00 ÷ \$125,300.00), or 7% of the *maximum* exposure (\$46,000.00 ÷ \$626,500.00). (*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

1 settlement value. The proposed settlement sum in this case vastly exceeds the percentage of
2 overall settlement value of other PAGA settlements and should be approved by the Court.

3 **F. The Attorneys' Fees are Reasonable**

4 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Labor Code §
5 2699(g).) Similar to awarding fees in a class action, California state and federal courts have
6 recognized that an appropriate method for determining award of attorneys' fees for
7 representative actions is to use a percentage of the total value of benefits to class members by
8 the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano*
9 *v. Priest* (1977) 20 Cal. 3d 25, 34 ("Serrano III"); *Boeing Co. v. Van Gemert* (1980) 444 U.S.
10 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose
11 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
12 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
13 entire burden alone." (*Vincent*, 557 F. 2d 759/769.)

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

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

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

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

24 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or
25 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
26 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a
27 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
28 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203

1 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
2 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
3 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court
4 opinion was affirmed in full by the California Supreme Court in its decision guiding lower
5 courts on assessing fees.

6 With respect to Plaintiff’s Counsel’s lodestar, Plaintiff’s Counsel will have expended
7 approximately 74 hours (65.5 attorney hours + 8.5 paralegal hours) hours litigating this case,
8 which includes anticipated time spent after approval responding to correspondence and phone
9 calls from PAGA Settlement Members, the Settlement Administrator, and defense counsel.
10 (Fitzpatrick Decl. ¶ 39, Ex. B.) The courts are quite liberal in the evidence required to prove
11 an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may
12 suffice: “Testimony of an attorney as to the number of hours worked on a particular case is
13 sufficient evidence to support an award of attorney fees, even in the absence of detailed time
14 records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

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

22 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
23 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
24 (2000). The court may consider other factors when determining a reasonable hourly rate, e.g.,
25 the attorney’s skill and experience, the nature of the work performed, the relevant area of
26 expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*,
27 61 Cal. App. 4th 629, 632-33 (1998).

28 Plaintiff’s counsel’s skill and experience justify the requested rates. Plaintiff’s counsel

1 has significant experience in the area of employment and wage and hour actions. Specifically,
2 Plaintiff's counsel's practice focuses on representing employees in employment matters,
3 particularly wage and hour cases. (Fitzpatrick Decl. ¶¶ 40.) As such, based on the hours and
4 reduced hourly rate of \$595.00, Plaintiff's Counsel's lodestar amount through the finalization
5 of this settlement – without a multiplier – will be approximately \$39,972.50. (Fitzpatrick Decl.
6 ¶¶ 39-43.)

7 Once the court establishes the lodestar amount, it may enhance the lodestar number by
8 applying a multiplier in order to adjust the fees awarded to an amount appropriate to the
9 circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors
10 include the difficulty of the questions involved and the skill in presenting them, the contingent
11 nature of the fee award, the extent to which the litigation precluded other employment, and the
12 percentage-of-the-fund the attorney would have received on the fair market. *Id.*; *Lealao*, 82
13 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other
14 factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139
15 (2001).

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

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

26 Here, based upon Plaintiff's Counsel's lodestar of \$39,972.50, Plaintiff's lodestar
27 actually exceeds the fees requested, such that a negative multiplier is implicated. *Wershba v.*
28 *Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) (noting that courts using the lodestar

1 method to calculate attorney fees awards in class actions typically apply multipliers in the
2 range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov.
3 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and
4 hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210
5 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

6 As such, the requested fee award is fair and reasonable and should be awarded in its
7 entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of
8 expense to ensure the successful litigation of this action. For these reasons, Plaintiff's
9 Counsel's request for attorneys' fees in the amount of \$15,318.00 should be approved as fair,
10 reasonable, and adequate.

11 **G. The Costs are Reasonable**

12 Additionally, Plaintiff's counsel's request for reimbursement of litigation costs in the
13 amount of \$3,685.87³⁴ is also reasonable. As set forth in Plaintiff's counsel's declaration,
14 Plaintiff's counsel incurred costs that were directly incurred in the prosecution of this action,
15 including complex and filing fees, and the mediation before an experienced neutral mediator
16 with expertise in wage and hour litigation. (Fitzpatrick Decl. ¶ 47, Ex. C.) As such, the
17 requested costs should be awarded as fair and reasonable.

18 **H. The Settlement Administrator's Fees Should be Approved**

19 The Parties have agreed to an estimated payment of \$2,750.00 to the Settlement
20 Administrator, Phoenix Settlement Administrators, to send notices and administer this
21 settlement, which shall be paid out of the Gross Settlement Amount. (Settlement Agreement ¶
22 33-35.) Phoenix Settlement Administrators is a well-recognized class action settlement
23 administrator, and submitted the lowest bid of the two potential settlement administrators
24 solicited by Plaintiff's Counsel. The bid includes preparing the Notice in English and Spanish.
25 (Fitzpatrick Decl. ¶¶ 20, 48.) The Parties believe that the administration fee is reasonable and

26 ^{3 3} Plaintiff's Counsel incurred total costs of \$5,240.37, of which \$1,625.00 is allocated to Plaintiff's individual
27 claims and \$3,685.37 to the PAGA claims. The \$3,685.37 includes the cost of filing the instant motion.

28 ^{4 4} 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 should be approved, as it results in an anticipated cost of approximately \$24.77 per class
2 member, which is commensurate with similar settlements. Id.

3 **I. Notice to the LWDA Has Been Provided**

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

6 **VI. CONCLUSION**

7 Based on the above, Plaintiff and Defendant mutually request that this Court grant
8 approval to the PAGA settlement in this matter and dismiss the class claims pursuant to
9 California Rules of Court, Rule 3.770(a). The terms of the PAGA settlement completely
10 comply with the requirements of the Labor Code, and are fair, reasonable and adequate.

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

14 Dated: January 8, 2025

FITZPATRICK & SWANSTON

16 By: /s/ B. James Fitzpatrick

17 B. James Fitzpatrick
18 Alison L. Baker
19 Attorneys for Plaintiff,
20 MARGARITA SOTO ALVAREZ
21 on behalf of herself and all similarly
22 aggrieved employees
23
24
25
26
27
28

1 PROOF OF SERVICE

2 I am employed in the County of Monterey, State of California. I am over the age of 18
3 and not a party to the within action; my business address is FITZPATRICK & SWANSTON,
4 555 S. Main Street, Salinas, California 93901.

5 On the date written below, I served the foregoing document(s), described as
6 **PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT**
7 **TO THE PRIVATE ATTORNEYS GENERAL ACT AND DISMISS CLASS CLAIMS**
8 **PURSUANT TO CALIFORNIA RULES OF COURT, RULE 3.770(a);**
9 on the interested parties in this action as indicated below and by the following means:

10 Doug M. Larsen (SBN: 142852)
11 Michael W. Green (SBN: 339933)
12 FISHMAN, LARSEN & CALLISTER
13 7112 North Fresno Street, Suite 450,
14 Fresno, CA 93720
15 Telephone: (559) 256-5000
16 Facsimile: (559) 256-5005
17 green@flclaw.net
18 larsen@flclaw.net

19 Sharon White, White@flclaw.net

20 Attorneys for Defendant,
21 JALISCIENSE-GRULLO CORP.

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

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct, and that this declaration was executed on May 21, 2025, at
Salinas, California.

/s/Josie Favila

Josie Favila