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individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KOURTNEY LEE EVANS, individually and on
behalf of all others similarly situated

Plaintiff,

v.

TREASURY WINE ESTATES AMERICAS
COMPANY.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 23CV026770

*Assigned for all purposes to
Hon. Evelio Grillo
Dept. 21*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Date: July 22, 2025
Time: 2:30 p.m.
Dept: 21

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kourtney Lee Evans ("Plaintiff") seeks approval of a settlement of claims under
4 the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA") against
5 Defendant Treasury Wine Estates Americas Company ("Defendant") in the amount of \$252,500.00.
6 Plaintiff alleges, on behalf of approximately 500 aggrieved employees who worked for Defendant,
7 that Defendant failed to pay at least minimum wages for all hours worked, failed to pay overtime
8 compensation, failed to provide meal periods or compensation in lieu thereof, failed to provide rest
9 breaks or compensation in lieu thereof, failed to reimburse for necessary business expenses, failed
10 to provide or pay sick pay, failed to provide accurate wage statements, failed to pay all wages due
11 upon separation of employment, and violated of Business and Professions Code §§ 17200, *et seq.*

12 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
13 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
14 Settlement is attached to the Declaration of Julia M. Toscano ("Toscano Decl.") as **Exhibit 1**, and
15 the proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit A**. Plaintiff
16 now seeks this Court's approval of the Settlement terms.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 On January 31, 2023, Plaintiff's counsel sent a letter to the California Labor & Workforce
19 Development Agency ("LWDA") via online submission and to Defendant via certified mail
20 regarding Defendant's alleged violations. *See* Toscano Decl., ¶ 3, Exhibit 2. The LWDA did not
21 respond to this notice within 65 days, indicating it did not intend to investigate, thus allowing
22 Plaintiff to file the instant lawsuit pursuant to Labor Code Section 2699.3(a)(2)(A). *See* Toscano
23 Decl., ¶ 4.

24 On January 31, 2023 Plaintiff filed her Complaint as a class action lawsuit, alleging that,
25 Defendant failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal
26 periods or compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide
27 compensation in lieu thereof, (5) provide reimbursement of business expenses (6) provide accurate
28 itemized wage statements, (7) pay all wages timely during employment, (8) pay all wages timely

1 upon separation of employment and, (9) abide by the requirements of California Business and
2 Professions Code Section 17200 *et seq.* Toscano Decl. at ¶ 5. On April 10, 2023, Plaintiff filed her
3 First Amended Complaint adding a claim for Enforcement of the Private Attorneys General Act
4 (“PAGA”). *Id.*

5 Due to the presence of arbitration agreements that Plaintiff and class members allegedly
6 signed, Plaintiff dismissed her individual and class claims and proceeded on a PAGA-only basis.
7 Toscano Decl., ¶ 6.

8 The Parties agreed to attend private mediation. Toscano Decl., ¶ 7. In preparation for
9 mediation, Defendant informally produced data and documents, including policy documents, a
10 sample of time and payroll records, and a list of aggrieved employees with dates of employment.
11 *Id.* Plaintiff’s Counsel engaged an expert to quantify Defendant’s potential exposure using the time
12 and payroll records, and then assessed the risks associated with each of the claims. *Id.*

13 The parties attended mediation on October 29, 2024, with Hon. Brian C. Walsh, a respected
14 class and PAGA action mediator. Toscano Decl., ¶ 8. After a full day of negotiating, the Parties
15 agreed to a settlement amount and executed a Memorandum of Understanding the material terms
16 of the agreement. *Id.*

17 Plaintiff provided notice of the Settlement to the LWDA on June 27, 2025. Toscano Decl.,
18 ¶ 9, Exhibit 3. Plaintiff also served a copy of this Motion on the LWDA on June 27, 2025.

19 **III. PAGA REQUIREMENTS**

20 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th
21 969 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014),
22 plaintiffs can seek appropriate civil penalties as called for under PAGA on behalf of the State of
23 California and other similarly aggrieved employees without seeking class certification or meeting
24 the requirements of class certification (i.e. numerosity, typicality, commonality and adequacy). As
25 such, the class action two-step preliminary and final approval process is not required.

26 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by
27 the State and by private individuals who have been aggrieved by their employers. The statute calls
28 for 75% of any penalties recovered to be paid to California's LWDA and the remaining 25% to the

1 aggrieved employees (Cal. Lab. Code § 2699(i) (2016)).

2 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee
3 must first provide written notice to the LWDA and the employer of the particular Labor Code
4 violations the aggrieved employee alleges the employer has violated. *See* Cal. Labor Code §
5 2699.3(a)(1)(A) (2016). Once the LWDA notifies the aggrieved employee that it does not intend to
6 investigate the alleged violations, or if the LWDA does not respond within a certain time period,
7 the aggrieved employee is then allowed to proceed in a civil action against the employer on behalf
8 of the LWDA and all other similarly aggrieved employees. *See* Cal. Labor Code § 2699.3(a)(2)(A)
9 (2016).

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

20 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court
21 need only "review and approve" the settlement. Cal. Lab. Code § 2699(1)(2) (2016). The Parties
22 to this current PAGA action have reached such an agreement and now seek this Court's approval of
23 the proposed settlement.

24 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

25 The Parties have agreed that Defendant will pay a total settlement amount of \$252,500.00
26 (the "Gross Settlement Amount"). *See* Settlement Agreement, § 3.1. From this amount, up to one-
27 third (1/3) of the Gross Settlement Amount, or \$84,166.67.00, is allocated to attorneys' fees and up
28 to \$25,000.00 to actual litigation costs. *Id.* at § 3.2.1. To date, Plaintiff's counsel has spent

1 \$16,039.60 in actual litigation costs and incurred \$108,767.50 in attorneys' fees. *See* Toscano
2 Decl., ¶¶ 28-29, Exhibit 4. The Settlement allocates up to \$5,500.00 for payment to Phoenix Class
3 Action Solutions' costs associated with administration of the Settlement. Settlement Agreement, §
4 3.2.2.

5 After deducting the above amounts for attorneys' fees and costs, Settlement
6 Administrator's costs, and Plaintiff's individual settlement award, the remaining fund will
7 constitute the "PAGA Penalties" in which 75% will be paid to the LWDA (the "LWDA PAGA
8 Payment") and 25% will be paid to the Aggrieved Employees as their "Individual PAGA
9 Payments." Settlement Agreement, ¶ § 3.2.3, 3.2.3.1. The Aggrieved Employees are persons
10 employed by Defendant in California as a non-exempt employee at any time during the PAGA
11 Period. *Id.* at ¶ 1.4. The PAGA Period means the period from January 31, 2022 through the date
12 of court approval. *Id.* at ¶ § 1.20.

13 The Individual PAGA Payments will be calculated pro rata based on the number of pay
14 periods working during the PAGA Period. Settlement Agreement, § 1.12, 3.2.3.1. The
15 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the
16 Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay
17 Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result
18 by each Aggrieved Employee's respective PAGA Period Pay Periods. Aggrieved Employees
19 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. *Id.*
20 at § 3.2.3.1. The Individual PAGA Payments shall be paid to the Aggrieved Employees by way of
21 a single check which will be valid for 180 days. *Id.* at § 4.4.1. All funds not claimed within 180
22 days of mailing of payment shall be sent to the California State Controller's Office Unclaimed
23 Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA
24 Employee. *Id.* at § 4.4.3. The Individual PAGA Payments will be characterized as penalties for tax
25 purposes and reported on IRS Form 1099. *Id.* at § 3.2.1, 3.2.3.2.

26 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved
27 Employees' addresses provided by Defendant using the National Change of Address database.
28 Settlement Agreement, § 4.4.1. For any returned payments without a forwarding address, the

1 Settlement Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive a
2 letter along with their Individual PAGA Payment explaining the reason for the payment, the content
3 of which will be submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is attached
4 to the Settlement Agreement as Exhibit A.

5 In exchange for the settlement payment, the State of California and the Aggrieved
6 Employees will release the “Released Parties” meaning “Defendant and all of its present and former
7 parent companies, subsidiaries, affiliates and joint ventures, and all of their officers, directors,
8 employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns,
9 and any other persons acting by through, under or in concert with any of them” from “all claims
10 under the California Private Attorneys General Act of 2004 (“PAGA”) alleged in the PAGA Notice and
11 Operative Complaint that were or could have been reasonably alleged based on the alleged facts and
12 claims arising during the PAGA Period. This includes, but is not limited to PAGA claims for (1) failure
13 to provide legally compliant meal periods or pay legally mandated premiums in lieu thereof; (2) failure
14 to provide legally compliant rest periods or pay legally mandated premiums in lieu thereof; (3) failure
15 to pay overtime wages and double time wages; (4) failure to furnish accurate itemized wage statements
16 by failing to set forth all hours worked and corresponding rates of pay; (5) failure to pay all wages owed
17 at time of termination of employment; (6) failure to timely pay wages; (7) failure to pay sick pay; (8)
18 failure to reimburse necessary business expenses; (9) failure to maintain timekeeping and payroll
19 records; and (10) failure to pay minimum wages as well as all claims arising under the listed Labor
20 Code statutes and Industrial Welfare Commission Wage Orders based on the primary rights of those
21 statutes, irrespective of the theory of recovery alleged. (See California Labor Code sections 201-204,
22 210, 218.5, 226, 226(a) 226.7, 246, 510, 512, 551, 552, 558, 1174, 1194, 1197, 1197.1, 1198, 2800,
23 2802, and the applicable IWC Wage Order(s)), as well as all claims arising under the listed Labor Code
24 statutes based on the primary rights of those statutes, irrespective of the theory of recovery alleged, §
25 1.26, 1.25.

26 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

27 **A. Standard for Approval**

28 PAGA settlements must be “fair, reasonable, and adequate in view of PAGA’s purposes to

1 remediate present labor law violations, deter future ones, and to maximize enforcement of state
2 labor laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that
3 the plaintiff “has adequately represented the state’s interests, and hence the public interest.” *Id.* at
4 89. The LWDA must be notified of the settlement and be given an opportunity to object. The
5 court may look to parallel class action guidelines to determine what is “fair, adequate and
6 reasonable.” *Kullar v. Foot Locker Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the
7 court has “broad discretion in making this determination.” *In re Microsoft I-V Cases*, 135
8 Cal.App.4th 706, 723 (2006). Relevant factors may include “the strength of the plaintiffs’ case,
9 the risk, expense, complexity and likely duration of further litigation, ... the amount offered in
10 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
11 views of counsel, the presence of a governmental participant” *Dunk v. Ford Motor Co.*, 48
12 Cal.App.4th 1794, 1801 (1996).

13 **B. The Settlement Meets the Standard for Approval**

14 Here, the \$252,500.00 Gross Settlement Amount is reasonable for a group of
15 approximately 500 employees. A penalty of \$252,500.00 is large enough to punish Defendant for
16 alleged past violations and deter future violations. The settlement amount is equivalent to a penalty
17 of about \$505.00 per employee. At the same time, the penalty amount is not so large as to be unjust,
18 oppressive or confiscatory, considering the company’s potential exposure explained below.
19 Toscano Decl., ¶ 10. The Gross Settlement Amount is also reasonable in light of the facts of the
20 foregoing action, the real risk that no PAGA penalties would be paid, and inherent risks and
21 uncertainties associated with PAGA claims. *Id.* at ¶ 11.

22 Plaintiff calculated the potential exposure at the initial violation rate of \$100.00 per pay
23 period as follows: 5,556 x \$100.00 per pay period is \$555,600.00. Toscano Decl., ¶ 13. If the
24 Court stacked different types of penalties in each pay period, Plaintiff calculated the exposure as
25 follows:

- 26 a. 5,556 pay periods x \$100 per pay period x 100% violation rate = \$555,600.00
27 for rest break violations;
28 b. 5,556 pay periods x \$100 per pay period x 29.8% violation rate = \$165,600 for

meal period violations;

- c. 5,556 pay periods x \$100 per pay period x 21% violation rate (for failure to pay daily overtime) = \$118,400.00 for unpaid wages;
- d. 5,556 pay periods x \$100 per pay period x 100% violation rate = \$555,600.00 for wage statement penalties and;
- e. 5,556 pay periods x \$100 per pay period x 100% violate rate = \$555,600.00 for unreimbursed business expenses.

Id. at ¶ 12. Defendant raised a number of arguments during settlement negotiations and provided evidence that could have defeated Plaintiff's claims. *Id.* at ¶ 13. For example, Plaintiff argued that Defendant fails to provide aggrieved employees with compliant breaks because Defendant fails to ensure adequate store coverage and requires aggrieved employees to remain "on-call" via their work cell phones and constantly responsive to customer needs. *Id.* Defendant responded by citing policy documents that allegedly authorize compliant meal and rest breaks. *Id.* Plaintiff argued that Defendant fails to pay overtime and sick pay at the regular rate due to its failure to include bonuses in the regular rate of pay. Defendant responded by arguing that daily overtime is paid correctly and the bonuses on which Plaintiff bases her claim are discretionary. Plaintiff argued that Defendant owes unpaid wages for aggrieved employees' performance of mandatory pre- and post-shift duties. Defendant responded that Plaintiff's claim is based on isolated incidents pertaining to her alone, not a group-wide issue. *Id.* Plaintiff also alleged Defendant failed to reimburse necessary business expenses by requiring employees to use personal phones and vehicles for work-related purposes. *Id.* Defendant responded by again arguing that Plaintiff's claim for this issue is based on isolated incidents pertaining to her alone, not a group-wide issue, and additionally, Defendant provided aggrieved employees with reimbursements upon request. *Id.*

Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and can be reduced by the Court. Toscano Decl., ¶ 14. Under Labor Code § 2699(e)(2), the Court can reduce the PAGA penalties "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." In other words, were this matter to go to trial, any award granted

1 would be at the discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although
2 she believes there would be no persuasive grounds to reduce the penalties, the Court could
3 determine otherwise and significantly reduce the PAGA penalties, especially with such a small
4 employer. *Id.* The wide range of potential recovery and the additional delays and risks of trial
5 justified settling for a reasonable amount of recovery. *Id.*

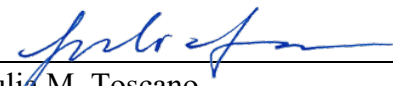
6 **VI. CONCLUSION**

7 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
8 pursuant to PAGA in this Action.

9
10 Dated: June 27, 2025

AEGIS LAW FIRM, PC

11
12 By _____


Julia M. Toscano

Attorneys for Plaintiff Kourtney Lee Evans