Kevin A. Lipeles (Bar No. 244275)
kevin@kallaw.com
Thomas H. Schelly (Bar No. 217285)
thomas@kallaw.com
Justen Lipeles (Bar No. 363409)
justen@kallaw.com
LIPELES LAW GROUP, APC
1060 Aviation Blvd, Suite 100
Hermosa Beach, California 90254
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
Olivia Beneduce
On behalf of herself, and all current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

OLIVIA BENEDUCE, an individual, on her own behalf and on behalf of all current and former aggrieved employees, Plaintiffs, vs. CALIFORNIA PIZZA KITCHEN, INC. a Delaware corporation; and DOES 1 through 100, inclusive, Defendant.	Case No.: **2025CUOE051124** [Assigned for all purposes to Hon. Charmaine H. Buchner, Dept. 44] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed Concurrently with the Declarations of Kevin Lipeles, Olivia Beneduce, Jodey Lawrence; and [Proposed] Final Judgment and Order*] Date: August 12, 2026 Time: 1: 30 p.m. Place: Dept. 44 Complaint Filed: September 18, 2025 FAC: December 9, 2025 SAC: February 25, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 12, 2026, at 1:30 p.m. or as soon thereafter as the matter may be heard in Department 44 of the above-captioned Court located at 800 South Victoria Avenue, Ventura, CA 93009, Plaintiff Olivia Beneduce ("Plaintiff") will and does hereby move this Court for entry of order and judgment approving the parties' Private Attorneys General Act of 2004 ("PAGA") settlement pursuant to California Labor Code section 2698 *et seq*.

The parties have reached and fully executed a settlement that disposes of Plaintiff's matters entirely. However, and pursuant to statute, settlement of PAGA claims requires court approval. Lab. Code § 2699(s)(2). Thus, Plaintiff seeks court approval of the PAGA settlement so that the matter may be dismissed once the parties have complied with all mutual terms and conditions of the settlement. In this Motion, Plaintiff also seeks an order awarding attorneys' fees and reimbursement of litigation costs.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Kevin Lipeles, Olivia Beneduce, and Jodey Lawrence in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

DATED: June 23, 2026 LIPELES LAW GROUP, APC

By: ______________________
Kevin Lipeles, Esq.
Thomas Schelly, Esq.
Justen Lipeles, Esq.
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Olivia Beneduce ("Plaintiff") seeks approval of a settlement which provides for a non-reversionary fund of **$295,000.00** the ("Gross Fund Value" or "GFV") to settle a single claim for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") (Lab. Code §§ 2698 *et seq*.) that she brought, in a representative capacity, against Defendant California Pizza Kitchen, Inc. ("Defendant").[1] Plaintiff brought this Action as a representative of the State to recover penalties for alleged Labor Code violations on behalf of all non-exempt individuals who are or were employed by Defendant as non-exempt employees in the State of California from September 18, 2024 through the date the Court approves the settlement of this Action. The PAGA Members will not have to make a claim in order to recover; instead, they will be mailed their share of the Settlement directly. No money will revert to the Defendant; instead, any uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund in the name of the PAGA Member.

After engaging in direct negotiations over the course of many weeks and having reviewed data provided by Defendant, the Parties were able to reach a Settlement that is now before this Court. After all Court-approved deductions from the GFV common fund – i.e., (1) 35% of the GFV (**$103,250.00**) is allocated to attorneys' fees, (2) up to **$3,000.00**[2] in litigation expenses; (3) **$10,000** payment to Plaintiff in settlement of her individual case; and (4) **$15,000.00** in settlement administration costs – it is estimated that a PAGA Allocation of **$163,750.00** will remain, with 65% (**$106,437.50**) allocated to the California Labor and Workforce Development Agency ("LWDA"), and 35% (**$57,312.50**) allocated to the PAGA Members.

Plaintiff also seeks an award of attorneys' fees to Plaintiff's Counsel and reimbursement of the litigation costs. Plaintiff's Counsel and Plaintiff have dedicated their time and energy to litigating this

---

[1] A true and correct copy of the PAGA Settlement Agreement and Release ("Settlement" or "Settlement Agreement") is attached to the Declaration of Kevin Lipeles ("Lipeles Decl.") as Exhibit "C." A true and correct copy of the Notice of Settlement to be sent to all PAGA Members is attached to the Lipeles Decl. as Exhibit D.

[2] Pursuant to the Settlement Agreement, Plaintiff seeks $3,000.00 in costs, even though Plaintiff's actual costs are $3,387.10.

case on behalf of the PAGA Members. Plaintiff's counsel undertook such efforts on a pure contingency with no promise of payment. Plaintiff's Counsel achieved a laudable result in the face of a strong defense asserted by Defendant. For their efforts in achieving the exceptional result of a **$295,000** GFV, Plaintiff's Counsel seek an award of attorneys' fees in the amount of **$103,250** (35% of the GFV) as a percentage-of-the-fund and reimbursement of their out-of-pocket litigation expenses, in the amount of $3,000.00**.**

By any measure, the result here is outstanding, particularly considering the task of litigating a complicated case in the face of contrary precedents, and the risk of non-payment involved in undertaking this litigation. The work performed by Plaintiff's Counsel was extensive. Among other things, Plaintiff's Counsel obtained (i) Defendant's Employee Handbook, (ii) shift and meal break data, (iii) data relating to the number of alleged violations and the value of the recoverable penalties, including payroll data, (iv) Plaintiff's wage statements, and (v) Plaintiff's personnel file and incurred **$3,387.10** in costs.

Despite the many risks faced by Plaintiff's Counsel, and the difficulty in prosecuting this case, they nevertheless achieved an outstanding result for the PAGA Members and the State of California. For the reasons set forth herein, Plaintiff respectfully requests that this Court grant this Motion in its entirety.

II. <u>OVERVIEW OF THE LITIGATION</u>

A. THE LAWSUITS, ALLEGATIONS AND PROCEDURAL HISTORY

This settlement is the culmination of a PAGA lawsuit brought against Defendant. Plaintiff alleges a single PAGA cause of action against Defendant. Plaintiff worked for Defendant as an hourly, non-exempt employee from approximately August 7, 2021 through August 15, 2025. (Declaration of Olivia Beneduce ("Beneduce Decl.") ¶ 2.)

On September 18, 2025, Plaintiff sent her PAGA Notice to the LWDA. Plaintiff filed her Class Action Complaint on September 18, 2025, alleging the following claims: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide rest periods; (4) failure to provide timely off duty meal periods; (5) failure to maintain records and provide accurate itemized wage statements; (6) failure to pay all wages owed at termination; (7) failure to reimburse business expenses; (8) reporting time pay; (9) failure to provide employment records; and (10) unfair competition.

Plaintiff filed her First Amended Complaint on December 9, 2025, adding a claim pursuant to PAGA seeking penalties pursuant to Labor Code § 2699(f) for violations of the California Labor Code, on behalf of herself, and all other non-exempt individuals who are or were employed by Defendant as non-exempt employees in the State of California since September 18, 2024 ("PAGA Members").

On February 25, 2026, Plaintiff filed her Second Amended Complaint ("Operative Complaint"), removing the class claims and seeking penalties pursuant to Labor Code § 2699(f) for violations of California Labor Code sections: 96, 98.6, 200, 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 212, 213, 216, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233, 245, 246, 247, 248, 248.5, 248.6, 248.7, 249, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 516, 551, 552, 558, 1102.5, 1174, 1174.5, 1175, 1182, 1182.11, 1182.12, 1194, 1194.1, 1194.2, 1194.5, 1195, 1197, 1197.1, 1197.5, 1197.11, 1198, 1198.5, 1199, 2698 *et seq*., 2699, 2802, 2804, 2810.5, 6401, 6402, 6403, 6409.6, 6432; Cal. Gov't Code § 12952; Cal. Code Regs. Tit. 8, §§ 1527, 3366, 3457, 8397.4; 29 U.S.C. §§ 207, 216; IWC Wage Order No. 5-2001 §§ 2, 3, 4, 7, 11, 12, 14 ("the Action"). The SAC is the Operative Complaint. (Lipeles Decl., ¶ 22.) On March 10, 2026, the Court dismissed Plaintiff's class claims without prejudice. (Lipeles Decl., ¶ 23).

On April 3, 2026, Plaintiff filed an amended PAGA Notice, by online submission to the LWDA, setting forth additional facts and theories of the violations alleged against Defendant, including violations of California Labor Code sections: 96, 98.6, 200, 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 212, 213, 216, 218.5, 218.6, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233, 245, 246, 247, 248, 248.5, 248.6, 248.7, 249, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 516, 551, 552, 558, 1102.5, 1174, 1174.5, 1175, 1182, 1182.11, 1182.12, 1194, 1194.1, 1194.2, 1194.5, 1195, 1197, 1197.1, 1197.5, 1197.11, 1198, 1198.5, 1199, 1391, 2698 *et seq*.; 2699, 2802, 2804, 2810.5, 6401, 6402, 6403, 6409.6, 6432; Cal. Gov't Code § 12952; Cal. Code Regs. Tit. 8, §§ 1527, 3366, 3457, 8397.4; 29 U.S.C. §§ 207, 216; Cal. Civ. Code § 3294; Cal. Civ. P. Code 1021.5; IWC Wage Order No. 5-2001 §§ 2, 3, 4, 7, 11, 12, 14, 20 (Lipeles Decl., ¶ 24.) The exhaustion period for the amended PAGA Notice expired on June 8, 2026. (*Id.*)

B. SUMMARY OF CLAIMS

The Settlement addresses claims for which Plaintiff seeks civil penalties under PAGA for Labor Code violations that the Operative Complaint alleges Defendant committed against PAGA Members during the PAGA Period, including as follows:

1. Failure to Pay Overtime Wages: Plaintiff alleges that she and PAGA Members were not paid for performing required off-the-clock work. Plaintiff and PAGA Members routinely worked schedules such that they were due overtime pay due to off the clock work, working through their meal breaks without compensation and rounding of Plaintiff and the PAGA Members' clock-in and clock-out times.

2. Failure to Pay Minimum Wages: Plaintiff alleges that she and the PAGA Members were paid less than minimum wages due to Defendant's failure to afford compliant meal/rest breaks, requiring Plaintiff and the PAGA Members to work off the clock, rounding Plaintiff and PAGA Members' clock-in and clock-out times, inaccurately recording time worked by Plaintiff and other aggrieved employees, and failing to pay reporting time pay and split shift premiums.

3. Failure to Provide Proper Rest Breaks: Plaintiff alleges that she and the PAGA Members were never afforded any rest breaks because their schedules were too tight and due to staffing issues. Plaintiff alleges that she and the PAGA Members were not provided with one additional hour of compensation at the employee's regular rate of pay when they were not provided a compliant rest period.

4. Failure to Provide Proper Meal Breaks: Plaintiff alleges that she and the PAGA Members' meal breaks were shortened and/or not afforded. Plaintiff alleges that their meal breaks were not compliant due to labor shortage issues. Plaintiff alleges that she and the PAGA Members were not provided with one additional hour of compensation at the employee's regular rate of pay when they were not provided a compliant meal period.

5. Inaccurate Wage Statements: Plaintiff alleges that the wage statements of PAGA Members were not accurate because they failed to include, overtime, minimum wages, meal and rest period premiums, reporting time pay, and split shift premiums.

6. Failure To Pay Wages Due Upon Termination And/Or Resignation And/Or Quitting Employees: Plaintiff alleges that she and PAGA Members were not timely paid all wages due them when

they left their employ, due to Defendant's failure to pay employees at required overtime wage rates due to off the clock work, minimum wages, and for meal/rest breaks, split shift premiums and reporting time pay not properly afforded.

7. Failure to Reimburse: Plaintiff alleges that she and PAGA Members were not reimbursed for using their personal cell phones and vehicles, to perform work. Further, Defendant required Plaintiff and the PAGA Members to incur expenses for uniforms, uniform laundering and maintenance. Defendant failed and/or refused to reimburse them for including, but not limited to, use of their personal cell phones, vehicles, uniforms and uniform laundering/maintenance expenses, among other items.

8. Failure to Maintain Or Allow Inspection of Personnel Records: Plaintiff alleges that Defendant failed to maintain or allow Plaintiff and other PAGA Members to timely inspect their personnel records and payroll files.

9. Failure to Timely Pay Wages During Employment: Plaintiff alleges that Defendant failed to timely pay Plaintiff and other PAGA Members all wages for labor performed by the next regular payroll period.

10. Failure to Pay Reporting Time Pay: Plaintiff alleges that Defendant failed to pay reporting time pay to Plaintiff and PAGA Members when they reported for work, but were sent home within the first 2 hours of work.

11. Failure to Pay Interest on Deposits: Plaintiff alleges that Defendant failed to immediately return accrued interest on deposits made by Plaintiff and other PAGA Members upon their returning their uniforms to Defendant.

12. Failure to Provide Sick Pay: Plaintiff alleges that Defendant failed to provide Plaintiff and the PAGA Members with paychecks showing any accrual of sick time, pay sick pay at the regular rate of pay or provide California Supplemental Paid Sick Leave.

13. Failure to Provide Vested Vacation Pay: Plaintiff alleges that Defendant failed to pay Plaintiff and PAGA Members at their final rate of pay for unused vested paid vacation days.

14. Failure to Provide Suitable Seating: Plaintiff alleges that Defendant failed to provide Plaintiff and PAGA Members with suitable seats in reasonable proximity to their work areas. (Lipeles Decl., ¶ 25.)

C. DIRECT SETTLEMENT NEGOTIATIONS

Beginning in mid-October 2025, the parties participated in direct settlement negotiations which led to the Settlement Agreement signed by all Parties by January 27, 2026. (Lipeles Decl*.,* 29, Ex. C, Settlement, ¶ 2.3.)

The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action (Lipeles Decl*.,* ¶ 30.)

D. NOTICE TO LWDA

The Settlement Agreement and this motion for approval was submitted to the LWDA concurrently with this filing. (Lipeles Decl., ¶ 50.) Plaintiff will submit a supplemental declaration confirming this, and advising the Court of any response from the LWDA.

III. OVERVIEW OF THE SETTLEMENT

The complete terms of the Settlement are set forth in Exhibit C to the Declaration of Kevin Lipeles, filed concurrently herewith. The Settlement provides for a non-reversionary GFV of **$295,000** to be paid by Defendant on behalf of the PAGA Members.[3] (Settlement, ¶¶ 1.7, 3.1.) The essential terms are summarized below.

(a) Defendant agrees to pay the GFV of **$295,000** which includes reasonable attorneys' fees and litigation costs, settlement administration costs, and a payment to the State of California under PAGA. (Settlement, ¶¶ 1.7; 3.1.)

(b) <u>PAGA Allocation</u>: Approximately **$163,750.00** will be available for distribution to the PAGA Members and the LWDA. Of this amount, the LWDA will receive 65%, or approximately **$106,437.50**, and PAGA Members will receive 35%, or approximately **$57,312.50.** (*Id.,* ¶¶ 1.8, 1.23.)

(c) No later than 30 days after the Effective Date, Defendant shall deposit the GFV with the Settlement Administrator. (*Id.*, ¶ 4.4.)

---

[3] "PAGA Member(s)" shall mean Plaintiff and all other non-exempt individuals who are or were employed by Defendant as non-exempt employees in the State of California during the time period of September 18, 2024, to the date upon which the Court approves the settlement of the Action. (Settlement, ¶ 1.16)

(d) Plaintiff's Counsel will not seek an amount greater than **$103,250.00** for attorneys' fees. (*Id.*, ¶¶1.8, 1.15, 3.2.1.)

(e) Plaintiff's costs up to $3,000.00. (*Id.*, ¶¶ 1.8, 1.15, 3.2.1.) The actual costs incurred to date are **$3,387.10**.

(f) Notice to PAGA Members and administration of the Settlement will be accomplished through a third-party settlement administrator, Phoenix Class Action Administration Solutions. (*Id.*, ¶ 7.1.) The Settlement Administrator estimates that the costs for settlement administration will be **$15,000.00**. (Declaration of Jodey Lawrence, ¶ 22).

(g) In exchange for the above settlement consideration, Defendant shall be entitled to a release from each and every PAGA Member, including Plaintiff, of the following claims, including California Labor Code sections: 96, 98.6, 200, 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 212, 213, 216, 218.5, 218.6, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 233, 245, 246, 247, 248, 248.5, 248.6, 248.7, 249, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 510, 512, 516, 551, 552, 558, 1102.5, 1174, 1174.5, 1175, 1182, 1182.11, 1182.12, 1194, 1194.1, 1194.2, 1194.5, 1195, 1197, 1197.1, 1197.5, 1197.11, 1198, 1198.5, 1199, 1391, 2698 *et seq*.; 2699, 2802, 2804, 2810.5, 6401, 6402, 6403, 6409.6, 6432; Cal. Gov't Code § 12952; Cal. Code Regs. Tit. 8, §§ 1527, 3366, 3457, 8397.4; 29 U.S.C. §§ 207, 216; Cal. Civ. Code § 3294; Cal. Civ. P. Code 1021.5; IWC Wage Order No. 5-2001 §§ 2, 3, 4, 7, 11, 12, 14, 20. (Settlement, ¶ 5.2.)

A. THE RELEASED CLAIMS

Defendant will receive a release of PAGA claims as described in the Settlement Agreement at paragraphs 1.30, 5.2.

B. ADMINISTRATION PROCESS

The Settlement provides for the Settlement Administrator to distribute the Gross Value Fund. (*Id.*, ¶ 4.5.) In distributing the settlement checks to the PAGA Members, the Settlement Administrator will also provide, with each Individual Settlement Payment mailed, a PAGA Notice explaining the payment and the case. (Lipeles Decl., ¶ 49, Ex. D.)

IV. ARGUMENT

A. STANDARD OF REVIEW

Labor Code section 2699(l)(2) states that "the superior court shall review and approve any settlement of any civil action filed pursuant to this part."

Plaintiff contends, and for the purposes of this motion Defendant does not contest, that the Court should look to: (1) the standard of review used in analogous statutory schemes; (2) federal court decisions approving PAGA settlements; and (3) the purposes and policies of PAGA.

1. Analogous Statutory Schemes

A PAGA case is in the nature of a *qui tam* proceeding. *Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal.4th 348, 394. California has at least two other statutory schemes whereby an individual may sue on behalf of the State or in the public interest: The California False Claims Act and Proposition 65. Under both schemes, a court must approve a settlement or dismissal of the action.

Under the California False Claims Act, a *qui tam* plaintiff may only dismiss the case with a court's (and the government's) consent. (Gov't Code § 12652(c)(1.) In deciding whether to give consent, a court must take into account "the best interests of the parties involved and the public purposes behind the act." *Id.* Moreover, if a *qui tam* plaintiff objects to a settlement between the government and a defendant, the court can only approve the settlement after finding it is "fair, adequate, and reasonable under all the circumstances." (Gov't Code § 12652(e)(2)(B.)

Similarly, Proposition 65 actions, like PAGA actions, are brought by a private Plaintiff to safeguard public rights. *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App. 4th 46, 63. In addition to complying with specified statutory criteria, Prop 65 settlements may only be approved if: (1) they are "just" and (2) they "serve the public interest." (*Id*. at 61-62.) In making this determination, the *Kintetsu* court described the appropriate inquiry similar to the "fair, reasonable, and adequate" test used in class actions. (*Id.* at 61.) The *Kintetsu* court also stated that, in determining whether to approve a Prop 65 settlement, a court should consider the policies underlying the statute. (*Id.* at 63.)

2. **Federal Cases**

In addition to analogous California law, several federal district court cases have also enunciated a standard for reviewing PAGA actions in the context of larger class action settlements. The federal courts have concluded that a PAGA settlement should only be approved when it is "genuine and meaningful, [and] consistent with the underlying purpose of the statute to benefit the public." *O'Connor v. Uber Technologies* (N.D. Cal. 2016) 201 F. Supp. 3d 1110; *Viceral v. Minstras Group, Inc.* (N.D. Cal. Oct. 11, 2016) 2016 WL 5907869 *9.

3. **The Purposes and Policies of PAGA**

PAGA was passed because the Legislature believed it necessary "to achieve maximum compliance with state labor laws" and "to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." (2003 Cal. Legis. Serv. Ch. 906 § 1(a).) The Legislature further found that, while self-policing efforts have had some success, "in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." (*Id*. at § 1(b).) Through PAGA, the Legislature thus sought to "enlist[] willing citizens in the task of private enforcement," *Iskanian*, 59 Cal.4th at 390. In bringing a PAGA action, "[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement agencies, representing the same legal right and interest as those agencies…" *Iskanian*, 59 Cal.4th at 394.

As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement priorities are "to vigorously enforce minimum labor standards in order to ensure employers are not required or permitted to work under substandard unlawful conditions…" and to "protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards." (Lab. Code § 90.5(a).)

B. THE SETTLEMENT SHOULD BE APPROVED

1. **The Settlement Falls Within the Range of Possible Approval**

"The PAGA is limited to the recovery of *civil* penalties." *Villacres v. ABM Industries Inc.* (2010) 189 Cal. App. 4th 562, 579. Under PAGA, the default civil penalty for an employer's initial violation is one hundred dollars ($100) per employee per pay period, and two hundred dollars ($200) per pay period for any subsequent violations. (Lab. Code § 2699(f)(2).)

At the time of direct settlement negotiation, there were approximately 4,125 PAGA Members during the PAGA Period with 70,015 pay periods during the PAGA Period. (Settlement ¶ 4.1[4]; Lipeles Decl., ¶ 39.) If Plaintiff were to prevail on all her causes of action, the realistic discounted maximum penalties would be $9,863,975.00. However, Plaintiff estimates that her likelihood of proving all her underlying claims is low and thus her likelihood of recovering the potential maximum theoretical exposure in the Action, without stacking penalties (since under Labor Code § 2699(h)(3)(i), as amended PAGA penalties cannot be stacked); $7,001,500 (computed by multiplying 70,015 pay periods by $100 each) or anything close to that amount in civil penalties, is very unlikely. (Lipeles Decl., ¶ 40.)

The Settlement should be approved because it confers a substantial benefit on PAGA Members, while proceeding with litigation would impose significant risk with no guarantee of increased benefits.

2. <u>Although the Parties Dispute Whether Any Violations Occurred, the Settlement Achieves Compliance With, and Deters Violations of, State Labor Laws</u>

While the Parties dispute whether Defendant's employment practices violate the Labor Code, the significant settlement amount will also serve as a deterrent to similar violations. Accordingly, the proposed Settlement reasonably advances PAGA's purpose by achieving compliance with the Labor Code and deterring similar violations.

3. <u>The Settlement Serves to Enlist Private Citizens in Enforcement of PAGA</u>

Plaintiff also believes the proposed Settlement acts to encourage private enforcement of PAGA. Through the Settlement, Plaintiff's counsel will receive attorneys' fees and costs as determined by the Court, and all PAGA Members will receive a 35% share of the PAGA Allocation.

4. <u>The Settlement Is "Just" and "In the Public Interest"</u>

The proposed Settlement is both just and in the public's interest. First, this settlement reasonably values the PAGA claims as to Defendant. While Plaintiff believes the claims are meritorious and that she would have recovered unreduced penalties, Defendant denies all liability and asserted numerous defenses to the claims. For instance, Defendant points out that they have compliant written policies that were

[4] Calculations at the time of negotiations were based on 70,015 Pay Periods. At the time of negotiating the Settlement Agreement, Defendant informed Plaintiff's Counsel that the actual number of Pay Periods is 78,902.

enforced. Defendant asserts that trial would require multiple witnesses and be unmanageable.

As set forth in the Declaration of Kevin Lipeles, there are multiple risks in this case.[5] (Lipeles Decl., ¶¶ 40-41.) For example, as to the off-the-clock claims, those claims would almost certainly turn on a battle of the experts both as to whether the off-the-clock work is occurring, and the frequency of it. Further, it would also be necessary to show that Defendant knew that the off-the-clock work was occurring in order to prevail on these claims. *Brinker Rest. Corp. v. Superior Court,* 53 Cal.4th 1004, 1051 (2012) (holding that for an off-the-clock claim: “liability is contingent on proof [that the employer] knew or should have known off-the-clock work was occurring.”

The same is true of the rest period and expense reimbursement claims. As to the meal break claims, as to violations shown in the record Plaintiff would rely on the rebuttable presumption set forth in *Donohue v. AMN Services, LLC,* 11 Cal.5th 58 (2021) But even there a battle of the experts would pose significant risk as: “[r]epresentative testimony, surveys, and statistical analysis, along with other types of evidence are available as tools to render manageable determinations of the extent of liability.” (*Id.* at 77.)

There is also the risk that the trial court which tries the claims would limit the scope of the case and/or the evidence admitted given the discretion conferred under *Estrada v. Royalty Carpet Mills*, Inc., 15 Cal.5th 582, 619 (2024).

Additionally, Defendant would have argued that it has lawful and compliant policies and procedures regarding reimbursement of business expenses. Defendant would have further argued that employees are entitled to reimbursement for work-related expenses, such as for cellphone and vehicle usage, only if they can prove that the employer knew or had reason to know that actual expenses were incurred. *See Gattuso v. Harte-Hanks Shoppers, Inc.,* 42 Cal. 4th 554, 568 (2007) (requirement to reimburse depends on “whether each of those expenses was ‘necessary,’ which in turn depends on the reasonableness of the employee's choices”); *Cassady v. Morgan, Lewis & Bockius LLP*, 145 Cal. App. 4th 220, 232 (2006), *as modified* (Dec. 21, 2006) (Labor Code section 2802 “expressly conditions the right to indemnity on a showing that the expenditures arose as a direct consequence of the discharge of

[5] The risks discussed relate to the claims in the FAC, which was the operative complaint at the time of direct negotiations.

the employee's duties"); *Snap! Mobile, Inc. v. Croghan*, No. 18-CV-04686-LHK, 2019 WL 884177, at *11 (N.D. Cal. Feb. 22, 2019) ("[F]or purposes of § 2802, before an employer's duty to reimburse is triggered, it must either know or have reason to know that the employee has incurred an expense") (*quoting Stuart v. RadioShack Corp*., 641 F. Supp. 2d 901, 903-04 (N.D. Cal. 2009). Defendant would have further argued that the reimbursement claim would require an individualized inquiry into each expense, including whether it was incurred, whether it was necessary, and whether Defendant was aware of it.

Defendant would have also argued that Plaintiff's reporting time claim failed as a matter of law as reporting time, which is provided for in the wage orders, not the Labor Code, is not subject to PAGA penalties. Defendant would have argued that its policies concerning reporting time were at all times compliant with the Labor Code and Wage Orders, and that any deviations from those policies were anomalous incidents for which Defendant should not be held accountable on a representative basis as each would require individualized inquiry into (1) the length of the shift scheduled; (2) the hours actually worked; and (3) the reason the employee worked less than the scheduled shift.

Further, a trial court also has significant discretion to reduce the amount of a PAGA penalties award. Labor Code section 2699(e); *Amaral v. Cintas Corp.,* 163 Cal. App. 4th 1157, 1213 (2008. For example, in *Fleming v. Covidien*, 2011 WL 7563047 *8 (C.D. Cal. 2011 the court reduced PAGA penalties from $2.8 million to $500,000 which is an 82% reduction.

Nevertheless, Defendant has agreed to pay a GFV of **$295,000** in exchange for a PAGA release involving approximately 4,296 PAGA Members who were subjected to similar working conditions during the applicable time frame. Accordingly, Defendant is paying an average of **$68.67** ($295,000 ÷ 4,296) per PAGA Member. If the Court grants Plaintiff's application for fees and costs, the State and the PAGA Members will still share approximately **$38.11** ($163,750 ÷ 4,296) per PAGA Member for civil penalties – still a significant and reasonable recovery.

Notably, as set forth in the Lipeles Declaration, the settlement amount of $295,000 represents 12.04% of the estimated realistic potential recovery of $2,450,525.00 based on the overtime/minimum wage claims since stacking is not permitted under Labor Code § 2699(h)(3)(i), as amended. Lipeles Decl. ¶ 40. Accordingly, a GFV of **$295,000**, or 12.04% of the potential maximum penalties, is fair and adequate. (Lipeles Decl. ¶¶ 30, 40-41, 43.)

However, the purpose of PAGA is not to compensate employees, who retain any private right of action they may have under the applicable Labor Code provisions. In that respect, the Settlement also requires that each employee receive a notice that describes this litigation and the settlement sum. Plaintiff contends this notice will educate PAGA Members as to the requirements of the Labor Code, something that is in the public interest and consistent with PAGA's purpose. (*See* Lab. Code § 2699 (m, n) (stating that civil penalties recovered under PAGA shall be distributed to the LWDA for [among other things] "education of employers and employees about their rights and responsibilities under this code.")

Because the proposed Settlement is neither unjust nor ignores the public interest, it should be approved.

C. THE PROPOSED AWARD OF ATTORNEYS' FEES AND COSTS ARE FAIR, ADEQUATE, AND REASONABLE TO PLAINTIFF'S COUNSEL AND SHOULD BE APPROVED

The settlement requires that attorneys' fees and costs be paid from the common fund. This is appropriate, even in the non-class action context. *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 561 (approving percentage of recovery method in wage and hour class action).

When attorneys' fees are awarded out of a common fund preserved or recovered by means of litigation, the award is not *per se* unreasonable merely because it is calculated as a percentage of the common fund. *Laffitte,* 1 Cal.5th at 573 ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.")

Here, Plaintiff's Counsel requests attorneys' fees of no more than **$103,250** (35% of the GFV) and their litigation expenses per the Settlement in the amount of **$3,000.00.** In view of Plaintiff's Counsel's efforts and risk in pursuing this case, these amounts are well within the range of reasonableness and thus warrant this Court's approval.

Plaintiff and the PAGA Members, as the prevailing party Plaintiff in settlement, are entitled to recover their attorneys' fees and costs for their wage claims, and the associated interest and penalties. *See* Lab. Code §§ 218.5, 226(e), 1194, 2699(g); Code Civ. Proc. § 1021.5 (a); *Earley v. Superior Court* (2000) 79 Cal. App. 4th 1420. A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g.*, *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291.

This award is justified here because Plaintiff's Counsel achieved a strong result for the PAGA Members in an extremely risky case while bearing the substantial burdens of contingency representation and the fees requested are within the market rate. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1049. Plaintiff's Counsel has expended time, effort, and money that they could have expended on less risky cases against other Defendants.

It is estimated that the average amount each aggrieved employee will receive based on their 35% share of the penalties is **$13.34**. (The aggregate sum provided to employees and the LWDA, assuming all deductions, is **$163,750.00**.) However, as stated above in section IV. B. 4., the purpose of PAGA is not to compensate employees, who retain any private right of action they may have under the applicable Labor Code provisions.

Plaintiff's Counsel's previous experiences in litigating wage and hour class actions also support the reasonableness of the fee request, as does the caliber of opposing counsel. Plaintiff's Counsel's previous experiences in similar matters were integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. (Lipeles Decl., ¶¶ 5-18.) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, a fee award of 35% of the GFV is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation supports the fairness and reasonableness of the requested fee award. *See, e.g.*, *Vizcaino v. Microsoft Corp*. (W.D. Wash. 2001) 142 F. 2d 1299, 1303 .

It is an accepted practice in wage and hour class action settlements to award attorneys' fees to class counsel based on a percentage of the gross fund value agreed upon by the parties. (Lipeles Decl., ¶ 52.) California courts have long recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the common fund. *Serrano v. Priest* ("*Serrano III*") (1977) 20 Cal.3d 25, 48-49.

Equitable considerations also dictate that Plaintiff's Counsel should be rewarded for achieving a valuable settlement without protracted litigation. The Ninth Circuit has recognized that the lodestar method "creates incentives for counsel to spend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Vizcaino,* 290 F.3d at 1050, n.5. The Ninth Circuit has thus cautioned that, while a lodestar may be used as a crosscheck on the reasonableness of a percentage fee method if a district court in its discretion chooses to do so, a lodestar calculation is not required and "class counsel should [not] necessarily receive a lesser fee for settling a case quickly." *Id*.

Accordingly, because this case presents considerable risks, coupled with the ensuing risks of lengthy appeals and risk of no recovery, the excellent result achieved by Plaintiff's Counsel shows that the amounts allocated to both attorneys' fees and costs under the Settlement warrant final approval.

1. <u>The Requested Attorneys' Fees Are Also Justified By The Lodestar Method</u>

The lodestar crosscheck "provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." *Laffitte*, 1 Cal.5th at 504. Only when the lodestar multiplier is "far outside the normal range" would the trial court "have reason to reexamine its choice of a percentage." *Id.* "[T]rial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Id.* (internal quotations omitted).

Under the lodestar method, the court computes the "lodestar" amount by multiplying the number of hours reasonably extended by each attorney or legal staff member by their reasonable hourly rates. *Serrano III*, 20 Cal. 3d at 48. The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, contingent risk, and the degree of success achieved. *Id.* at 49.

A lodestar crosscheck here confirms that the requested award is more than reasonable. Plaintiff's Counsel has already logged many hours in billable time at their current standard hourly rates, resulting in a lodestar of **$69.930.00**. (Lipeles Decl., ¶ 53-59.) The amount of attorneys' fees Plaintiff's

Counsel seek results in a modest 1.5 multiplier.[6] (*Id.* at ¶ 60.) The standard hourly rates for Plaintiff's Counsel – ranging from $250 for paralegals and up to $850 for attorneys – are reasonable. Plaintiff's Counsel's rates are in line with those charged by experienced class action lawyers who practice on a national scale and below the range of those approved by other courts in similar circumstances. *See Laffey Matrix* http://www.laffeymatrix.com/see.html (last visited June, 2026) (setting forth hourly rates from $508 to $1,227 for attorneys of similar experience levels).

Finally, the request for Plaintiff's Counsel's litigation expenses of **$3,000.00,** which are less than the actual costs incurred**,** is fair and reasonable. (Lipeles Decl., ¶ 51, Ex. F.) These costs include but are not limited to filing fees, courier costs, process server costs, to name just a few. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. *Id*. Accordingly, they warrant approval.

V. CONCLUSION

For all the reasons discussed above, Plaintiff respectfully requests that this Court approve the motion in its entirety and approve the proposed Settlement.

DATED: June 23, 2026

LIPELES LAW GROUP

KEVIN LIPELES
THOMAS SCHELLY
JUSTEN LIPELES
Attorneys for Plaintiff
OLIVIA BENEDUCE

[6] $103,250.00/$69,930.00=1.5.