Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Allen Feghali (SBN 301080)
E-mail: afeghali@moonlawgroup.com
Michael Citrin (SBN 335033)
E-mail: mcitrin@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa Street, Suite 3100
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Kristina Carrasco

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

DANIEL HERNANDEZ, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

TEQUILEROS GROUP, INC.; and DOES 1 through 10, inclusive,

Defendants.

Case No.: STK-CV-UOE-2025-0017541

REPRESENTATIVE ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT

[Filed with (1) the Declaration of Kane Moon, (2) the Declaration of Jodey Lawrence re: Qualifications and Costs for Settlement Administration, (3) [Proposed] PAGA Approval Order, and (4) [Proposed] Judgment]

PAGA APPROVAL HEARING:
Date: August 18, 2026
August 19, 2026
August 20, 2026
August 21, 2026
August 25, 2026
Time: 9:00 a.m.
Dept.: 10D
Judge: Honorable John Soldati

Action filed: November 25, 2025
Trial date: Not set

TO THIS HONORABLE COURT, TO ALL PARTIES, AND TO COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on ______________________, at 9:00 a.m. in Department 10D of the San Joaquin County Superior Court, Stockton Courthouse, 180 E. Weber Avenue, Stockton, California 95202, Plaintiff Kristina Carrasco ("Plaintiff") will, and hereby does, move the Court for an Order and Judgment, pursuant to California Labor Code sections 2698, *et seq.*, as follows:

1. Approving the Joint Stipulation and Settlement Agreement ("Settlement") between Plaintiff and Defendant Tequileros Group, Inc.;
2. Appointing Moon Law Group, PC as PAGA Counsel;
3. Approving the requested Attorney Fee Award of $35,000.00;
4. Approving the requested Cost Award of $2,417.25;
5. Appointing Phoenix Class Action Administration Solutions as the Administrator and approving a $5,250.00 as the Administration Costs;
6. Approving the scope of the Released Claims and Released Parties;
7. Approving a non-reversionary Gross Settlement Amount of at least $105,000.00;
8. Approving approximately $62,332.75 for PAGA Penalties as settlement of the Released Claims, to be distributed as 65% ($40,516.29) to the LWDA) and 35% ($21,816.46) to Aggrieved Employees;
9. Directing consummation of the Settlement pursuant to its terms and provisions;
10. Entering Judgment and dismissing the above-captioned action with prejudice; and
11. Retaining jurisdiction over the Parties, this action, and this Settlement, including following any entry of Judgment for purposes of enforcement, interpretation, settlement administration, and any post-Judgment issues that arise.

This Motion is based upon this notice, the attached Memorandum of Points and Authorities, the declarations and exhibits filed concurrently herewith, the records and files in this action, and any other further records or argument that the Court may properly receive at or before the hearing.

As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

///

Respectfully submitted,

DATED: July 15, 2026 **MOON LAW GROUP, PC**

By:______________________________________

Kane Moon
Allen Feghali
Michael Citrin
Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATUTES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Kristina Carrasco ("Plaintiff") seeks approval of a non-reversionary $105,000.00 gross settlement of claims for civil penalties alleged pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). After series of settlement negotiations, Plaintiff reached a resolution with Defendant Tequileros Group, Inc. ("Defendant") (collectively, Plaintiff and Defendant are the "Parties"). The Parties have executed a Joint Stipulation and Settlement Agreement (the "Settlement"), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of Kane Moon in Support of Motion for Approval of PAGA Settlement ("Moon Decl.") submitted concurrently herewith. Pursuant to Labor Code section 2699(s)(2), Plaintiff now files this motion seeking an order approving the proposed Settlement.

The Settlement resolves all claims for civil penalties under PAGA that arose during the PAGA Period and that were alleged in the above-captioned matter ("Action"). (Settlement, ¶ I.A.) For purposes of settlement, the "PAGA Period" is November 25, 2024, through July 31, 2026. (*Id.* at ¶ I.T.) This Settlement is on behalf of the California Labor and Workforce Development Agency (the "LWDA"), Plaintiff, and all non-exempt, hourly employees who worked for Defendant in California during the PAGA Period ("Aggrieved Employees"). (*Id.* at ¶ I.C.)

Settlement of a PAGA claim requires court approval. Pursuant to the operative PAGA statute, the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." (Lab. Code § 2699(s)(2).) In deciding whether to grant approval of a proposed settlement, the primary issue to be decided is whether the settlement is fair, adequate, and reasonable. Specifically, the issue is whether the PAGA penalties to which the parties have agreed provide "genuine and meaningful" relief that is "consistent with the underlying purpose of the statute to benefit the public," and whether the penalties are reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sonrise Farm LP* (C.D. Cal. July 22, 2015) No. CV 12-2615 PSG (JEMx), 2015 WL 12732709, at *5; *see also O'Connor v. Uber Techn., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

As set forth herein, the proposed Settlement embodies all the features of a settlement that is fair, adequate, and reasonable, as (1) it is the product of an arm's-length negotiation, (2) negotiated by attorneys experienced in wage and hour litigation, (3) following sufficient investigation necessary to evaluate the relative strength and value of the PAGA claims, and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.

The meaningful value achieved by the Settlement at issue may be gleaned from the fact that the LWDA and the estimated **269** Aggrieved Employees will, cumulatively, receive approximately **$62,332.75** as PAGA Penalties. (Moon Decl., ¶ 19.) This is a significant recovery, not only because further litigation may have resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant, but also because an investigation by experienced PAGA counsel and analysis of discovery revealed minimal identifiable violations, the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on a representative basis at all due to the potential manageability issues and current state of the law. For these reasons, as set forth more fully below, Plaintiff respectfully requests the Court enter the proposed order and proposed judgment submitted concurrently herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Defendant is a restaurant chain in California. (Moon Decl., ¶ 4.) Plaintiff worked for Defendant during the PAGA Period as a server/cashier. (*Id.*) Throughout her employment, Plaintiff is classified as non-exempt and paid on an hourly basis. (*Id.*) Plaintiff contends she and her coworkers were subjected to the same or similar unlawful labor practices during their employment by Defendant, including failure to pay all wages. (*Id.*)

Plaintiff's claims for unpaid wages stems from allegations of Defendant's failure to pay employees all minimum and overtime pay owed, including due to Defendant's failure to compensate employees for off-the-clock work, and Defendant's failure to incorporate all remunerations into the regular rate of pay. (*Id.* at ¶ 5.) Plaintiff's meal and rest period claims are based on allegations that due to the nature of their work and Defendant's employment practices, employees regularly experienced missed, untimely, or interrupted breaks, and that Defendant failed to provide any premiums for non-compliant rest breaks or all premiums for non-compliant meals. (*Id.*) Plaintiff also alleges that Defendant failed to reimburse employees for all reasonable and necessary business expenses incurred, including expenses incurred for the use of employees' personal cellphone and vehicles for work purposes, and purchase of specific items (e.g., knife sharpener and shoes) for work purposes. (*Id.*) Plaintiff further alleges other employees did not receive all wages owed at the time of termination nor accurate itemized wage statements due to Defendant's failure to pay all wages and premiums. (*Id.*) Accordingly, Plaintiff alleges Defendant is liable for civil penalties under PAGA. (*Id.*)

The Action was filed by former plaintiff Daniel Hernandez in the San Joaquin County Superior Court on November 25, 2025. (*Id.* at ¶ 6.) The Complaint alleged causes of action on behalf of former plaintiff and those similarly situated aggrieved employees under PAGA for Defendant's alleged failure to pay all minimum wages, failure to pay all overtime wages, failure to provide lawful meal periods, failure to authorize and permit rest periods, failure to indemnify necessary expenditures, failure to timely pay all wages due at termination, and failure to provide compliant wage statements. (*Id.*) Plaintiff Kristina Carrasco was substituted in place of former plaintiff Daniel Hernandez upon the filing of the First Amended Complaint, which is the operative complaint for purposes of this Settlement and alleges only a single claim for civil penalties under PAGA. (*Id.*)

Pursuant to PAGA, on or around February 16, 2026, Plaintiff submitted notice of the alleged Labor Code violations to the California Labor and Workforce Development Agency (the "LWDA"), with certified mail service on Defendant, and paid the required filing fee. (*Id.* at ¶ 7, Ex. 2.) The administrative exhaustion period under PAGA expired without the LWDA indicating any intent to investigate the allegations. (*Id.* at ¶ 7.) Accordingly, Plaintiff is duly authorized to act as a private attorney general with respect to the PAGA claims involved in this action. (*Id.*) Pursuant to Labor Code section 2699(s)(1), Plaintiff subsequently submitted to the LWDA a file-stamped copy of the First Amended Complaint containing the Court-assigned case number. (*Id.* at ¶ 8.) To date, the LWDA has not sought to intervene in this action. (*Id.*)

Defendant ardently opposes the merits of this case and denies Plaintiff's factual allegations. (*Id.* at ¶ 9.) Defendant argues all employees were properly paid for all hours worked and that it did not require or permit employees to work off-the-clock. (*Id.*) As for the regular rate claim, Defendant argues there was no issue with paying employees the proper regular rate of pay because any additional renumeration was discretionary and thus, not required to be incorporated into the regular rate of pay. (*Id.*) Defendant maintains all employees were provided with the opportunity to take all their code-compliant meal and rest breaks and that missed breaks, if any, were solely the result of employees' voluntary choice. (*Id.*) As for the unreimbursed business expenses, Defendant maintains it did not require employees to incur any business-related expenses. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendant argues penalties are not warranted because employees suffered no actual damage or harm as a result. (*Id.*; *see, e.g.*, *Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12–05860 CRB, 2013 WL 622032, at *10 ["A plaintiff must adequately plead an injury arising from an employer's failure to provide full and accurate wage statements, and the omission of the required information alone is not sufficient."].) Additionally, Defendant alleges its good-faith belief that it paid all wages precludes the imposition of waiting time penalties because Plaintiff would be unable to show Defendant's alleged conduct was done willfully or knowingly. (Moon Decl., ¶ 9; *see, e.g.*, *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant claims it did not engage in any unfair business practices and denies liability under PAGA. (Moon Decl., ¶ 9.) Defendant also maintains the claims are not susceptible to proof on a representative basis because of the individualized and varying nature of each employee's experience, making this matter unmanageable. (*Id.*)

B. <u>Discovery and Investigation</u>

Following the filing of the complaint, former plaintiff propounded formal discovery upon Defendant. (*Id.* at ¶ 10.) Thereafter, the Parties agreed to settle the representative PAGA claims. (*Id.*) The Parties engaged in informal discovery exchange prior to negotiations. (*Id.*) Defendant provided sufficient information, which enabled Plaintiff's Counsel to meaningfully investigate Plaintiff's allegations and assess the value of the PAGA claims. (*Id.*) Specifically, Defendant disclosed information regarding the approximate number of Aggrieved Employees and PAGA Pay Periods, and other relevant policies and practices in effect during the relevant period. (*Id.*)

Prior to negotiations, Plaintiff's Counsel reviewed and analyzed all the information that Defendant disclosed, in conjunction with information provided by Plaintiff. (*Id.* at ¶ 11.) Further, Plaintiff's Counsel investigated the applicable law regarding the claims and defenses asserted in this action. (*Id.*) Accordingly, Plaintiff's Counsel were able to evaluate the probability of success on the merits and Defendant's monetary exposure. (*Id.*) In sum, Plaintiff and her Counsel's familiarity with the facts of the case and the legal issues involved allowed them to act intelligently in negotiating the Settlement. (*Id.*)

C. Settlement Negotiations

The Parties agreed to settle the representative PAGA claims through private negotiations without a mediator. (*Id.* at ¶ 12.) The negotiations were at arm's length and although conducted in a professional matter, were adversarial. (*Id.*) Both sides were willing to explore the potential for a settlement of the dispute, but they were also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) Negotiations were protracted, with extended discussions and instances in which it appeared the Parties would not reach a resolution. (*Id.*) Following a full discussion of the strengths and weaknesses of the claims and defenses, the Parties ultimately reached a resolution, the material terms of which are encompassed within the Settlement at issue. (*Id.*)

In reaching a resolution, the Parties recognized that the issues presented in this action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.* at ¶ 13.) Plaintiff and her Counsel also considered the risk and uncertainty of the outcome inherent in any litigation when determining whether this Settlement was the correct option. (*Id.*) In sum, Plaintiff and her Counsel believe the proposed Settlement is in the best interests of Aggrieved Employees and the LWDA. (*Id.*) In compliance with Labor Code section 2699(s)(2), notice of settlement and a copy of the proposed Settlement has been submitted to the LWDA along with a copy of Plaintiff's motion and the hearing date. (*Id*. at ¶ 14, Ex. 3.) To date, the LWDA has not indicated any objection to the Settlement. (*Id.* at ¶ 15.)

D. Key Terms of the Proposed Settlement

The Settlement's key financial and other terms include:

1. Gross Settlement Amount, Funding, Disbursement, and Uncashed Checks. The Gross Settlement Amount ("GSA") is a non-reversionary $105,000.00. (Settlement, ¶¶, I.M, III.A.) The Gross Settlement Amount will be wired by Defendant to the Settlement Administrator within 20 days of the Effective Date.[1] (*Id.* at ¶ III.E.2.b.) Disbursement will occur within 15 days after Defendant fully funds the GSA. (*Id.* at ¶ III.E.2.d.). Aggrieved Employees must cash or deposit their Individual Settlement Share checks within 180 calendar days after the checks are mailed to them. (*Id.* at ¶ III.E.6.) If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing the reminder notice, the Settlement Administrator will, within 200 calendar days after the checks are mailed, cancel the checks. (*Id.* at ¶ III.E.6.b.) All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall be transmitted by the Settlement Administrator to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (*Id.*)

2. Escalator Clause: It was estimated for purposes of settlement that Aggrieved Employees worked approximately 5,131 pay periods between the start of the PAGA Period and April 28, 2026. (*Id.* at ¶ III.A.1.) To the extent that the total number of pay periods increases by more than 10% of this estimate during the PAGA Period, the Gross Settlement Amount shall increase proportionately by the number of pay periods worked in excess of 10%. (*Id.*) For example, if the pay periods increase by 15%, then the Gross Settlement Amount will increase by 5%. (*Id.*) In the alternative, Defendant can avoid increasing the Gross Settlement Amount by electing to end the PAGA Period when the number of PAGA Pay Periods reaches 5,644. (*Id.*) Defendant shall inform Plaintiff of its election prior to the PAGA approval hearing. (*Id.*)

3. Attorney Fee and Cost Award. The Settlement includes Attorney Fee Award in an amount not to exceed 1/3 of the GSA (i.e., at least $35,000.00), plus reimbursement for out-of-pocket litigation costs not to exceed $15,000.00, payable to Plaintiff's Counsel from the GSA. (*Id.* at ¶ III.C.1.) In the event actual costs are less and/or the amount of fees and costs approved by the Court

[1] "Effective Date" means the date the Court grants approval of the settlement. (Settlement, ¶ I.J.)

are less than the amounts requested, the difference will be allocated to the Net Settlement Amount. (*Id.*) Plaintiff's Counsel has incurred $2,417.25 in litigation costs. (Moon Decl., ¶ 17, Ex. 4)

4. Administration Costs. The Settlement provides an Administration Costs to the Settlement Administrator, payable from the GSA, in an amount up to $6,000.00, for its fees and expenses in administering this Settlement. (Settlement, ¶ III.C.2.) In the event the amount of actual administration costs is less and/or the amount approved by the Court is less than requested, the difference will be allocated to the Net Settlement Amount. (*Id.*) The Parties jointly selected Phoenix Class Action Administration Solutions ("Phoenix") as the neutral entity to administer this Settlement with a bid for $5,250.00. (*Id.* at ¶ I.BB; Moon Decl., ¶ 18, Ex. 5; Declaration of Jodey Lawrence on Behalf of Phoenix: Qualifications and Costs for Settlement Administration, ¶ 22, Ex. B.)

5. Net Settlement Amount. Net Settlement Amount. It is the total amount of money available for payout to Aggrieved Employees and the LWDA, which is the GSA less the Attorney Fee Award, Cost Award, and Administration Costs. (Settlement, ¶ 1.Q[2].) Accordingly, the Net Settlement Amount is estimated to be approximately **$62,332.75**,[3] which will be distributed 65% (i.e., 65% * $62,332.75 = **$40,516.29**) to the LWDA and 35% (i.e., 35% * $62,332.75 = **$21,816.46**) to Aggrieved Employees pursuant to PAGA law governing Plaintiff's claims. (Moon Decl., ¶ 19.)

6. Individual Settlement Share. Each Aggrieved Employee will be entitled to his or her pro rata amount from the 35% share of PAGA Penalties that is directly proportional to the number of pay periods worked in the PAGA Period without having to submit any claim form. (Settlement, ¶¶ III.B.1, III.B.1.a.1.) This results in an average Individual PAGA Payment of approximately **$81.10** for each of the estimated 269 Aggrieved Employees ($21,816.46 / 269), and a PAGA Pay Period value of **$4.25** for each of the 5,131 estimated PAGA Pay Periods ($21,816.46 / 5,131). (Moon Decl., ¶ 20.) Individual PAGA Payments will be allocated to 100% penalties for tax purposes. (*See id.* at ¶ III.B.2.)

---

[2] Due to a scrivener's error, the Net Settlement is defined as the Gross Settlement Amount less the Attorney Fee Award, Cost Award, *PAGA Representative Payment*, and Administration Costs. (Settlement, ¶ 1.Q [emphasis added].) However, there is no PAGA Representative Payment under the Settlement. (Moon Decl., ¶ 19, n.2.)

[3] The estimated Net Settlement Amount was calculated by deducting the following amounts from the GSA ($105,000.00): $2,417.25 for the Cost Award, $35,000.00 for the Attorney Fee Award, and $5,250.00 for the Administration Costs. (*See* Settlement, ¶ I.Q.)

7. Released Claims: Upon full funding of the GSA, Plaintiff and the LWDA shall fully release and discharge Defendant and the Released Parties from any and all claims that were alleged or could have been alleged based on the claims, facts, and/or allegations contained in the operative Complaint and in the PAGA Notice submitted by Plaintiff to the LWDA. (*Id.* at ¶ I.Y.) The release shall be for the PAGA Period. (*Id.*)

8. Released Parties. Defendant including its past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors (including TGZ Inc.), assigns, members, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies. (*Id.* at ¶ I.Z.)

III. DISCUSSION

A. Availability of Civil Penalties

The LWDA and its constituent departments and divisions are authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer. With a stated goal of improving enforcement of existing Labor Code obligations, the California Legislature adopted the Private Attorneys General Act of 2004, permitting, as an alternative, an aggrieved employee to initiate a private civil action on behalf of him- or herself and other current or former employees." (Lab. Code § 2699(a).) Before an employee may file an action seeking to recover civil penalties for violations of any of the Labor Code provisions enumerated in Labor Code section 2699.5, he or she must comply with the Act's administrative procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting a prescribed period of time to permit the LWDA to investigate and to decide whether to cite the employer for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330.)

B. The Settlement Merits Approval

Settlement of PAGA claims must be approved by a Court. (Lab. Code § 2699(s)(2).) Here, the circumstances weigh heavily in favor of approval, as explained below.

1. The Relief Is Genuine, Meaningful, and Consistent with the Dual Statutory Purposes of Deterrence and Punishment under PAGA

The $105,000.00 GSA amounts to "genuine and meaningful" relief "consistent with the underlying purpose of the statute to benefit the public." (Moon Decl., ¶ 31; *see O'Connor*, 201 F.Supp.3d at 1133–35 [denying settlement approval where allocation for PAGA claims was 0.1% of the estimated full worth].) This is an excellent result, particularly because, under the Settlement, Aggrieved Employees and the LWDA will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything at all. (Moon Decl., ¶ 31.)

The Settlement is a fair and reasonable resolution that satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and providing Aggrieved Employees with genuine and meaningful relief, on the other. (Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendant has had to hire legal counsel, engage in employee-wide discovery, and participate in negotiations. (Moon Decl., ¶ 33.) Assuming approval is granted, Defendant will also have to pay civil penalties pursuant to PAGA. Not including its own attorneys' fees and costs, Defendant will pay at least $105,000.00 to resolve this matter—of which approximately $62,332.75 is allocated toward PAGA Penalties and will be distributed as 65% to the LWDA and 35% to Aggrieved Employees, in compliance with PAGA law governing the claims in this Action. (*See* Settlement, ¶¶ III.C.3, III.C.4.) This amount represents roughly **49%** of the realistic exposure for the claims ($62,332.75 / $128,275.00), as discussed below. (Moon Decl., ¶ 33.)

2. The Settlement Amount Provides a Realistic Value for the Claims that is within the "Ballpark" of Reasonableness

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations between the Parties. (Moon Decl., ¶ 12.) Plaintiff's Counsel performed an extensive investigation into the facts, claims, and defenses at issue and Defendant's potential liability, including a review of governing law and analysis of informal discovery. (*Id.* at ¶¶ 10–11.) Plaintiff's Counsel used the foregoing discovery and investigation to prepare for negotiations and assessed the probability of success on the merits and Defendant's monetary exposure, discussed the strengths and weaknesses of the claims and defenses in depth at negotiations and months of continued negotiations, and ultimately negotiated the resulting Settlement. (*Id.* at ¶¶ 10–13.)

Based on Plaintiff's Counsel's analysis of the arguments and information provided by Defendant, and on information from Plaintiff, Plaintiff's Counsel evaluated Defendant's both maximum and risk-adjusted potential exposure in preparation for negotiations. (*Id.* at ¶ 23.) Although the Plaintiff's Counsel's analysis revealed that the time and pay records supported several violations by Defendant, those identifiable violations were primarily limited to the regular rate and meal period claims. (*Id.*) The records themselves did not provide strong support for the off-the-clock work, rest period, and expense reimbursement claims, and derivative penalties for those claims, as these claims are predominantly testimony based. (*Id.*) In other words, Plaintiff's analysis revealed that certain claims were not as strong as originally believed (*Id.*)

Because Defendant did not require employees to record rest periods, there are no records to establish the rest period claim on the merits. (*Id.* at ¶ 25.) Additionally, there are no records to establish the off-the-clock work claim and the reimbursement claim on the merits. (*Id.*) Rather, proof of these claims would need to be supported by declarations from Aggrieved Employees regarding missed rest periods, off-the-clock work, and reimbursements as the records themselves cannot demonstrate what breaks were missed, when, and why, what business expenses were incurred, and they cannot demonstrate the time, if any, Aggrieved Employees spent working off the clock. (*Id.*)

Indeed, the maximum exposure figures that were calculated for negotiations were based on assumed high violation rates that would not likely be demonstrated at trial, as they assume either the participation of all Aggrieved Employees, or alternatively, the use of surveys or statistical data as a surrogate (which would still require the participation of a majority of Aggrieved Employees to establish a sound representation of all non-exempt employees). (*Id.* at ¶ 25.) The reality is that many, if not all, employees would be unwilling to participate due to fear of retaliation. (*Id.*) However, even assuming those employees would be willing to participate, obtaining such declarations would potentially reveal that each Aggrieved Employee had a different experience. (*Id.*) The individualized nature of their employment experience and the numerosity of employees affected present significant risk with manageability and proof on the merits. (*Id.*)

The likelihood that Defendant could assert viable legal defenses would likely further reduce its overall exposure. (*Id.* at ¶ 26.) For example, the individualized and testimony-intensive nature of the claims could bar manageability of this representative action or otherwise significantly reduce Defendant's overall liability. (*Id.*) Further, a claim-by-claim penalty calculation is overly optimistic as it presumes Plaintiff would be able to stack the penalties, although penalty stacking is not expressly permitted by PAGA. (*Id.* at ¶ 27.) Rather, without either (i) a prior finding by the LWDA or a court within the past five years that the employer violated PAGA or (ii) evidence that the employer's conduct was malicious, fraudulent, or oppressive, PAGA only provides for a maximum $100 penalty for each pay period. (Lab. Code § 2699(f)(2)(A)–(B).) Moreover, Plaintiff's Counsel believe it would be unrealistic to expect the Court to award the full (penalty-stacked) exposure given the discretionary nature of awarding penalties and given Defendant's defenses, including that any failure to pay premiums, regular rate wages, or for off-the-clock work was not knowingly or willfully done, and additionally, to the extent employees received wage statements that were allegedly inaccurate, employees suffered no actual resulting damage or harm. (Moon Decl., ¶ 27.) Moreover, awarding the full penalties amount would likely raise Due Process concerns. (*Id.*) For the foregoing reasons, the *realistic* exposure is thus far below the *optimistic* maximum estimate. (*Id.* at ¶ 28.)

Based on the foregoing, Plaintiff's Counsel believe it is more reasonable to assess penalties on a $100.00 civil penalty per pay period basis pursuant to Labor Code § 2699(f)(2)(A) for each of the estimated 5,131 pay periods at issue, as opposed to a claim-by-claim approach. (*Id.* at ¶ 29.) Accordingly, Plaintiff's Counsel estimate Defendant's maximum PAGA exposure to be **$513,100.00** ($100.00 x 5,131). (*Id.*) However, based on the discovery, Defendant's arguments during negotiations and continued settlement discussions, an understanding that the claims are heavily dependent on the unlikely participation by Aggrieved Employees and their varying employment experience, and other important considerations discussed above, it is reasonable to assume a violation occurred in at most one-fourth of all pay periods, which results in a realistic (*risk-adjusted*) exposure of **$128,275.00** ($513,100.00 / 4). (*Id.*) As a result, the GSA of $105,000.00 represents approximately **82%** of the realistic exposure ($105,000.00 / $128,275.00). (*Id.*)

The proposed Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery. (*Id.* at ¶ 30.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the GSA of $105,000.00 is within the "ballpark" of reasonableness, and that settlement approval is appropriate. (*Id.*; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133; *see Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims," but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation"].)

3. The Settlement Is a Fair and Reasonable Result Following a Thorough Investigation and Accounting of Various Litigation Risks

Plaintiff's Counsel have conducted a thorough investigation into the facts of the allegations. (Moon Decl., ¶ 33.) Based on discovery and on their own independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*) Furthermore, considering all known facts and circumstances, the risk of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits, Plaintiff's Counsel respectfully submit that the Settlement is in the best interests of the Aggrieved Employees and the State of California. (*Id.*)

Although Plaintiff's Counsel believe there is merit to Plaintiff's allegations, they also acknowledge a legitimate controversy exists as to each allegation. (*Id.* at ¶ 34.) Plaintiff's Counsel also recognize that proving the amounts of penalties owed to each Aggrieved Employee would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Moreover, Plaintiff's Counsel are also of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 35.) Indeed, a Court may reduce 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." (Lab. Code § 2699(e)(2).) In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and subject to a substantial reduction. (Moon Decl., ¶ 35.) While Plaintiff's Counsel believe there would be no persuasive grounds to reduce penalties, they recognize that the Court could determine otherwise and significantly reduce any award of penalties. (*Id.* at ¶ 36.) This wide range of potential recovery and additional delays and risks of trial provide justification to settle for a reasonable amount of recovery at this point in the litigation. (*Id.*) In all, based on the investigation and analysis of the claims in preparation for negotiations, the maximum exposure did not comport with the realistic exposure that Defendant faced, as discussed above. (*Id.*)

Plaintiff's Counsel took into account the risk of not being able to proceed on a representative basis at all due to the potential manageability issues, the risk of not prevailing at trial, and the risk that even if Plaintiff prevailed at trial, the penalties would be limited due to the largely discretionary nature of awarding PAGA penalties. (*Id.* at ¶ 37.) The provisions of the Labor Code triggering PAGA penalties in this case include Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). (*Id.*) However, PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e)(2).) Accordingly, it is entirely possible that even if Plaintiff would be successful at trial, assuming she is first able to win on the merits and then defeat the manageability issues presented at litigation by the number of Aggrieved Employees in this action, Plaintiff may still be awarded substantially less than what was obtained through the Settlement. (Moon Decl., ¶ 37.)

The Settlement avoids the significant risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 38.) Though the Parties have engaged in a significant amount of investigation, and informal discovery, they have not conducted formal discovery procedures. (*Id.*) Moreover, Plaintiff would have through the rigors of trial and win on the merits before court may award the representative PAGA claims. (*Id.*) Preparation for trial and the prospect of appeals in the wake of any summary judgment ruling would remain for the Parties. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial, a lengthy and uncertain process that could result in recovering less than was settled for. (*Id.*)

C. <u>The Requested Attorney Fee/Cost Are Reasonable and Should Be Approved</u>

The Settlement provides an award of attorneys' fees in an amount of 1/3 of the GSA (i.e., no less than $35,000.00, plus reimbursement for actual litigation costs in the amount of $2,417.25. (Moon Decl., ¶ 57; *see* Settlement, ¶ III.C.1.)

1. Plaintiff's Counsel Request an Award of Fees Based on the Common Fund Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g.*, *Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund." (*Id.* at p. 34.)

Here, Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 58.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[ ] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying this doctrine include:

> fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

> **This court is compelled to ask, "Is this process necessary?" Under a cost-benefit**

> **analysis, the answer would be a resounding, "No!"** Not only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378–79.) California Courts now routinely use the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g.*, *In re Pac. Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378–79 [approving attorneys' fee award of 33%].)

2. The Matter Involves a Fee and Cost Shifting Provision under PAGA

Labor Code section 2699 provides for the recovery reasonable attorney's fees as well as costs of suit. (Lab. Code § 2699(k)(1).) Specifically, it states: "Any employee who prevails in any [PAGA] action shall be entitled to an award of reasonable attorney's fees and costs . . ." (*Id.*) Under this provision, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees were larger than the total recovery for the Aggrieved Employees at the conclusion of this case. (*Id.*) This fee/cost-shifting provision reflects the understanding that Plaintiff's Counsel must accept significant risk of substantial expenses and consumption of time, energy, and other resources in litigating a PAGA claim, and thus, that Plaintiff's Counsel is not only permitted, but entitled, to recover reasonable attorneys' fees and costs if successful in litigating a PAGA claim.

The Settlement at issue is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendant while at the same time rewarding Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Plaintiff's Counsel who undertook this matter on a contingent basis, with no guarantee of recovery. (Moon Decl., ¶¶ 62–66.) Once Plaintiff's Counsel undertook this litigation on behalf of the Aggrieved Employees, they committed to pursue it to its conclusion, and were accordingly precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. (*Id.* at ¶ 64.)

3. Counsel's Experience, Reputation, and Ability Support the Requested Fee Award

As demonstrated by their prior experience in pursuing class and representative actions on behalf of employees, Plaintiff's Counsel possess considerable expertise in litigating class action and representative matters. (*Id*. at ¶¶ 39–54.) Plaintiff's Counsel have been involved as lead counsel or co-counsel in a multitude of class and representative actions resulting in beneficial results to class members and aggrieved employees in California. (*Id.*) Because it is reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and experience, the requested fee award is supported here.

Plaintiff's Counsel's experience in wage-and-hour class and representative actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of this Settlement. (*Id.* at ¶ 55.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 53.) Based on these and other factors, Plaintiff's Counsel have frequently received fee awards of this percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 43, 48.) Thus, the requested fee award is reasonable and fair.

4. While the Lodestar Method Is Not Necessary in Common Fund Cases, the Court May Perform a Cross-Check to Award Fees

"Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*, *supra*, 82 Cal.App.4th at pp. 49–50].) Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id*.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id*. at pp. 556–57.)

Further, "California case law permits fee awards in the absence of detailed time sheets." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.) The Court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Generally, hours are reasonable if they were "reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 431.)

Here, Plaintiff's Counsel's current lodestar is *no less than* **$41,400.00**, which is based on *no less than* **52.9 hours** of attorney time spent to-date at their customary hourly rates. (Moon Decl., ¶ 59.) Thus, in comparison to this lodestar, although application of a positive multiplier would be warranted in this case, none is requested. (*Id.* at ¶¶ 62-63.) In other words, Plaintiff's Counsel's lodestar is *greater* than the fee request. (*Id.* at ¶ 62(c).) Further, the foregoing lodestar does not reflect additional works that will be devoted to this litigation, including to obtain and monitor approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the case. (*Id.* at ¶ 60.) The amount of fees requested under the Settlement is warranted based on the contingent risk that Plaintiff's Counsel incurred, the difficulty of the questions involved, the substantial benefit conferred on the Aggrieved Employees and State of California as a result of the Settlement, and the skill displayed by Plaintiff's Counsel. (*Id.* at ¶ 63.) Plaintiff's Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.* at ¶ 61.) Thus, the request for attorneys' fees is more than reasonable under a lodestar check.

5. Plaintiff's Counsel's Costs Were Actually and Reasonably Incurred

Winning counsel are entitled to recover the out-of-pocket costs and expenses they reasonably incurred in investigating, prosecuting, and settling a case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974; Lab. Code § 2699(k)(1).) Here, Plaintiff's Counsel seek reimbursement in the total amount of $2,417.25 for expenses that were actually and reasonably incurred in this litigation. (Moon Decl., ¶ 68, Ex. 4.) Moreover, this amount is below the maximum allocation under the Settlement and thus, the remainder ($12,582.75) will revert to the PAGA Penalties. (*Id.* at ¶ 76; Settlement, ¶ III.C.1.) Thus, costs should be reimbursed in full.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grant approval of the Settlement and enter the proposed approval order and proposed judgment submitted herewith.

Respectfully submitted,

DATED: July 15, 2026 **MOON LAW GROUP, PC**

By: ___________________________________

Kane Moon
Allen Feghali
Michael Citrin
Attorneys for Plaintiff