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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO

ESPIRIDION GOPAR, an individual and on
behalf of all others similarly situated,

Plaintiff,

TAYLOR FARMS RETAIL, INC.; and DOES 1
through 50, inclusive,

Defendant.

Case No. CU-24-00222

**NOTICE OF MOTION AND PLAINTIFFS'
MOTION FOR APPROVAL OF PAGA
SETTLEMENT UNDER CALIFORNIA
LABOR CODE §§ 2698 ET SEQ.;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Assigned for all purposes to The Honorable
Omar Rodriguez, Dept. 1]

Date: June 22, 2026
Time: 10:30 a.m.
Dept.: 1
Action Filed: September 11, 2024
Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND ITS ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on June 22, 2026, at 10:30 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Omar Rodriguez, Judge presiding in Department 1 of the
4 above-referenced Court, located at 450 Fourth Street, Hollister, California 95023, Plaintiffs
5 Espiridion Gopar, Silvia Lopez Armenta, Maria Castro Garcia, Enedina De La Torre, Socorro Sena,
6 and Adolfo Esquivel Illu (collectively "Plaintiffs" or "PAGA Representatives"), on behalf of
7 themselves, the State of California, and all aggrieved employees (the "Aggrieved Employees"), will
8 and hereby does move this Court pursuant to California Labor Code § 2698 *et seq.* for an order
9 approving the PAGA Settlement Agreement ("Agreement" or "Settlement") between Plaintiffs and
10 Defendant Taylor Farms Retail, Inc. ("Defendant").

11 This motion will be based on this notice of motion, the attached memorandum of points and
12 authorities, the accompanying declarations of Kristen M. Agnew, Larry W. Lee, B. James
13 Fitzpatrick, Alison Baker, Harout Messrelian, Maralle Messrelian, Plaintiff Espiridion Gopar,
14 Plaintiff Silvia Lopez Armenta, Plaintiff Maria Castro Garcia, Plaintiff Enedina De La Torre,
15 Plaintiff Socorro Sena, Plaintiff Adolfo Esquivel Illu, and Jodey Lawrence (Phoenix Settlement
16 Administrators), the records and file herein, and on such other evidence as may be presented at the
17 hearing of the motion.

18 DATED: May 28, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

19
20 By: _____

B. James Fitzpatrick
Larry W. Lee
Kristen Agnew

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22 Attorneys for Plaintiffs and the Aggrieved Employees
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1 **I. INTRODUCTION**

2 Through this Motion, Plaintiffs Espiridion Gopar, Silvia Lopez Armenta, Maria Castro
3 Garcia, Enedina De La Torre, Socorro Sena, and Adolfo Esquivel Illu (“Plaintiffs” or “PAGA
4 Representatives”) request that the Court enter an order approving the non-reversionary settlement
5 with Defendant Taylor Farms Retail, Inc. (“Defendant” or “Taylor Farms”) as set forth in the
6 concurrently filed PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”).¹

7 Pursuant to the terms of the Settlement, Defendant will pay the Gross Settlement Amount of
8 \$1,290,000.00, which includes an estimated payment of approximately \$795,137.71 in civil penalties
9 to Aggrieved Employees and the California Labor and Workforce Development Agency (“LWDA”).
10 (Settlement Agreement §§ 1.9, 4.2.) As further explained below, Plaintiffs and their counsel believe
11 that the Settlement is fair, reasonable, and in the best interests of the Aggrieved Employees and the
12 State. Accordingly, Plaintiffs respectfully request that the Court enter an order approving the
13 Settlement in the form lodged herewith ordering the Parties and Administrator to carry out the terms
14 of the Settlement Agreement and enter a Final Judgment thereon.

15 **II. SUMMARY OF THE PROCEDURAL HISTORY**

16 The Settlement encompasses the instant matter of *Espiridion Gopar v. Taylor Farms Retail,*
17 *Inc.*, San Benito Superior Court Case No. CU-24-00222 (“*Gopar Action*”), as well as three related
18 representative PAGA actions against Taylor Farms: (1) *Silvia Lopez Armenta, Maria Castro Garcia,*
19 *and Enedina De La Torre v. Taylor Farms Retail, Inc.*, Monterey Superior Court Case No.
20 23CV001891 (“*Armenta Action*”); (2) *Socorro Sena v. Taylor Farms Retail, Inc.*, Monterey Superior
21 Court Case No. 24CV004024 (“*Sena Action*”); and (3) *Oscar Duran Ramirez v. Taylor Farms Retail,*
22 *Inc.*, Monterey Superior Court Case No. 23CV000450 (“*Duran Ramirez Action*”). The extensive
23 procedural history of the *Gopar Action* and each of the related matters is detailed in Section 2 of the
24 Settlement Agreement and the accompanying Declarations of Kristen M. Agnew and Harout
25 Messrelian. For the Court’s convenience, Plaintiffs briefly summarize the pertinent facts below.

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28 ¹ A true and correct copy of the Settlement Agreement is attached to the Declaration of Kristen M.
Agnew as Exhibit 1.

1 **A. The *Gopar* Action**

2 Prior to filing the *Gopar* Action, Plaintiff Espiridion Gopar (“Plaintiff Gopar”) initiated
3 arbitration proceedings against Taylor Farms, on June 5, 2024. (Agnew Decl. ¶ 3.) Plaintiff Gopar
4 elected to withdraw the claim from arbitration and proceed in a court based on his allegation that
5 Defendant failed to remit the fees and costs to initiate the Gopar Arbitration proceeding. (*Id.*)

6 On September 11, 2024, Plaintiff Gopar filed a putative class action complaint in the *Gopar*
7 Action, asserting wage and hour claims for: (1) failure to pay minimum and overtime wages for time
8 spent calling or texting to determine shift start times and waiting in line for COVID-19 temperature
9 screenings, in violation of Labor Code sections 1194, 1197, and 1198; (2) failure to pay reporting
10 time wages when employees called or texted but were instructed not to report to work; (3) failure to
11 reimburse employees for expenses associated with using personal cell phones for work-related
12 purposes, in violation of Labor Code section 2802; (4) failure to provide accurate itemized wage
13 statements, in violation of Labor Code section 226(a); and (5) unfair business practices in violation
14 of Business and Professions Code section 17200 *et seq.* (Agnew Decl. ¶ 4.)

15 On October 28, 2024, Taylor Farms moved to compel arbitration and dismiss the *Gopar*
16 Action. (Agnew Decl. ¶ 5.) Following extensive briefing and oral argument, the Court denied that
17 motion. (*Id.*) Taylor Farms appealed the order, and the appeal remains pending. (*Id.*)

18 On July 24, 2025, Plaintiff Gopar submitted written notice to the LWDA and Taylor Farms
19 alleging that Defendant violated Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512, 558,
20 1194, 1197, and 1197.1 (the “Gopar PAGA Letter”). (Agnew Decl. ¶ 7, Exhibit 2.)

21 **B. The Related Representative Actions**

22 **1. The *Duran Ramirez* Action**

23 On or about July 11, 2022, Oscar Duran Ramirez submitted written notice to the LWDA and
24 Taylor Farms alleging that Defendant violated Labor Code sections 201, 202, 203, 204, 210, 226,
25 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198 and 2802 (the “Duran Ramirez PAGA
26 Letter”). (Messrelian Decl. ¶ 2 Exhibit 1.) On February 10, 2023, Mr. Duran Ramirez filed the *Duran*
27 *Ramirez* Action against Defendant, asserting a cause of action under PAGA. (*Id.* at ¶ 3.) Mr. Duran
28 Ramirez was unable to continue prosecuting the action. (*Id.* at ¶ 6.) Accordingly, on February 10,

2026, Plaintiff Adolfo Esquivel Illu (“Plaintiff Illu”) submitted a supplemental written notice to the LWDA and Taylor Farms adding claims for violations of Labor Code sections 233 and 246. (Messrelian Decl. ¶ 6, Exhibit 3.)

2. The Armenta Action

On or about June 14, 2023, Plaintiff Silvia Armenta (“Plaintiff Armenta”), Maria Castro Garcia (“Plaintiff Garcia”) and Enedina De La Torre (“Plaintiff De La Torre”) submitted written notice to the LWDA and Taylor Farms alleging that Defendant violated Labor Code sections 201-204, 226, 510, 1194, 1197, 1197.1, 1199, 2800 and 2802 (the “Armenta/Garcia PAGA Letter”). (Agnew Decl. ¶ 8, Exhibit 3.) That same day, Plaintiffs Armenta, Garcia and De La Torre filed initiated the *Armenta* Action. (*Id.*) The operative complaint in the *Armenta* Action sets forth a single cause of action for violation of PAGA based on alleged violations set forth in the Armenta/Garcia PAGA Letter. (*Id.*)

3. The Sena Action

Plaintiff Socorro Sena (“Plaintiff Sena”) initiated arbitration proceedings against Taylor Farms, on June 5, 2024. (Agnew Decl. ¶ 17.) In the arbitration, Plaintiff Sena asserted individual wage and hour claims under the Labor Code. (*Id.*) Plaintiff Sena later withdrew those claims from arbitration and elected to proceed in court based on her allegation that Taylor Farms failed to timely pay the fees and costs required to maintain the arbitration. (*Id.*)

On September 26, 2024, Plaintiff Sena filed a putative class action complaint in the *Sena* Action. (Agnew Decl. ¶ 18.) In the first amended complaint, Plaintiff Sena asserts class claims for violation of Labor Code sections 201, 202, 203, 226(a), 510, 1194, 1197, 1197.1, 1198 and 2802. (*Id.* at ¶ 21.) Defendant has a pending Motion to Compel Arbitration, Dismiss Class Claims, and Stay Proceedings in the *Sena* Action. (*Id.*)

C. Plaintiffs’ Investigation and Discovery

Plaintiff Armenta, Plaintiff Garcia and Plaintiff De La Torre initiated individual arbitrations against Taylor Farms. (Agnew Decl. ¶ 14.) In connection with those proceedings, the parties engaged in substantial written discovery. (*Id.* at ¶ 16.) They exchanged initial and supplemental disclosures, and propounded and responded to multiple sets of requests for production and special interrogatories.

(*Id.*) Taylor Farms also produced documents reflecting its policies and procedures concerning COVID-19 temperature screenings and what Plaintiffs contend are mandatory call-in practices, along with videos capturing temperature screenings and employee timeclock activity, spreadsheets showing the dates and times of temperature screenings, individual employee time and payroll data, pre-shift text message logs regarding shift start times, and new-hire training policy documents. (*Id.*)

D. Mediation and Settlement Negotiations

On March 28, 2025, the parties to the *Duran Ramriez* Action attended an all-day mediation with Tripper Ortman, an experienced mediator. (Messrelian Decl. ¶ 5; Agnew ¶ 24.) Although the matter did not settle at the mediation, the parties continued settlement discussions thereafter. (Messrelian Decl. ¶ 5; Agnew ¶ 24.) In connection with those discussions, Taylor Farms represented that Aggrieved Employees across the actions had worked approximately 357,000 pay periods between December 7, 2021 and February 6, 2026. (Agnew ¶ 26.) Based on that information, together with the substantial discovery exchanged in the arbitration proceedings, PAGA Counsel conducted a full penalties analysis regarding the value of the PAGA claim. (*Id.*)

Ultimately, on March 20, 2026, the Parties accepted a mediator's proposal that would resolve the *Gopar* Action, the *Duran Ramirez* Action, the *Armenta* Action and the *Sena* Action. (Agnew ¶ 27.) The Parties thereafter memorialized their agreement in the long-form Settlement Agreement now before the Court for approval, which was fully executed on April 29, 2026. (*Id.*) All settlement negotiations were conducted at arm's length. (*Id.* at ¶ 28.)

E. The Operative Complaint and Dismissal of the Related PAGA Actions

On May 19, 2026, Plaintiff Gopar and Taylor Farms filed a Joint Stipulation for leave to file a Second Amended Representative Action Complaint to: (1) add Silvia Armenta, Maria Castro Garcia, Enedina De La Torre, Socorro Sena, and Adolfo Esquivel Illu as named plaintiffs; (2) add Adolfo Esquivel Illu's counsel as PAGA counsel; and (3) add the PAGA claims that are pled in the *Duran Ramirez* Action. (Agnew Decl. ¶ 29.) The Second Amended Representative Action Complaint is the Operative Complaint. (*Id.*)²

² Within five (5) business days of the Court's signed order granting Approval of the Settlement, the

1 In the Operative Complaint, Plaintiffs seeks civil PAGA penalties based on Taylor Farms’
2 alleged policy and practice of: (1) failing to pay all minimum, regular, overtime, and reporting time
3 wages, in violation of Labor Code sections 201, 202, 203, 204, 510, 1194, 1197 and 1197.1; (2)
4 failing to pay overtime wages at the correct regular rate of pay that included all non-discretionary
5 remuneration, in violation of Labor Code sections 201, 202, 203, 204 and 510; (3) failing to provide
6 meal and rest periods or premium wages in lieu thereof, in violation of Labor Code sections 201,
7 202, 203, 204, 226.7 and 512; (4) failing to maintain accurate payroll records and provide accurate
8 itemized wage statements, in violation of Labor Code sections 226(a) and 1174(d); (5) failing to
9 reimburse all business expenses, in violation of Labor Code sections 2800 and 2802; (6) failing to
10 provide proper and accurately calculate paid sick leave, in violation of Labor Code sections 233 and
11 246; (7) failing to provide suitable seating and proper rest facilities pursuant to the applicable IWC
12 Wage Orders; and (8) failing to pay all earned wages upon separation of employment, in violation
13 of Labor Code sections 201, 202 and 203.

14 **III. THE SETTLEMENT TERMS AND STRUCTURE**

15 The material terms of the Settlement are described below and set forth in detail in the
16 concurrently filed PAGA Settlement Agreement.

17 **A. The Aggrieved Employees**

18 For purposes of the Settlement, “Aggrieved Employees” are defined as all individuals who
19 were employed by Defendant in California as non-exempt employees at any time during the PAGA
20 Period. (Settlement Agreement § 1.4.) The PAGA Period is December 7, 2021, through the earlier
21 of June 26, 2026 or the date the Court grants approval of this Settlement. (*Id.* at § 1.22.) Based on
22 information provided by Taylor Farms, approximately 4,533 Aggrieved Employees who collectively
23 worked 389,000 PAGA Pay Periods— that is a pay period during which an Aggrieved Employee
24 worked for Defendant for at least one day during the PAGA Period. (Agnew Decl. ¶ 32.)

25 //

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27 _____
28 Parties will seek dismissal of the *Duran Ramirez* Action, the *Armenta* Action and the *Sena* Action.
(Settlement Agreement § 3.5.)

1 **B. The Gross Settlement Amount**

2 Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of
3 \$1,290,000.00 on a non-reversionary basis. (Settlement Agreement §§ 1.9, 4.1.) Pending Court
4 approval, the Gross Settlement Amount will be allocated as follows: (1) attorneys' fees of one-third
5 of the Gross Settlement Amount which is \$430,000.00 ("PAGA Counsel Fees"); (2) actual litigation
6 costs incurred in this matter in the amount of \$30,112.29 ("PAGA Counsel Expenses")³; (3)
7 settlement administration costs of up to \$19,750.00 to be paid to the Settlement Administrator,
8 Phoenix Settlement Administrators, for sending notices and for calculating settlement shares and
9 preparing all checks and mailings ("Administration Expenses"); (4) PAGA Representative Service
10 Payments of \$2,500.00 to each of the six Plaintiffs, totaling \$15,000.00; and (5) PAGA Penalties in
11 the amount of \$795,137.71. (*Id.* at §4.2.)

12 **C. Payment to the LWDA and Aggrieved Employees**

13 The balance of the Gross Settlement Amount remaining after deduction of the approved
14 PAGA Counsel Fees, PAGA Counsel Expenses, Administrator Expenses, and PAGA Representative
15 Service Payments (the "Net Settlement Amount"), will be available for distribution to the LWDA
16 and Aggrieved Employees. (Settlement Agreement §§ 1.14, 4.2.4.) Assuming that the Court awards
17 the requested amounts, the Net Settlement Amount will total \$795,137.71. (Agnew Decl. ¶ 38.)
18 Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$596,353.28, will be
19 paid to the LWDA for PAGA penalties ("LWDA PAGA Payment"). (Settlement Agreement § 4.2.4;
20 Agnew Decl. ¶ 38.) The remaining twenty-five percent (25%), or approximately \$198,784.43, will
21 be distributed to Aggrieved Employees on a pro rata basis based on the number of PAGA Pay Periods
22 worked by each Aggrieved Employee. (Settlement Agreement § 4.2.4; Agnew Decl. ¶ 38.)

23 **D. The Requested PAGA Representative Service Payments**

24 Defendant also does not oppose Plaintiffs' request for individual PAGA Representative
25 Service Payments in the amount of \$2,500.00 each, for a collective total of 15,000.00. (Settlement
26

27 ³ At the time the Parties negotiated the Settlement Agreement, Plaintiffs had not yet determined
28 their actual litigation costs. Accordingly, the Settlement Agreement provides for reimbursement of
actual litigation costs up to \$50,000. (Settlement Agreement § 4.2.2.)

1 Agreement § 4.2.1.) The requested PAGA Representative Service Payments are intended to
2 compensate Plaintiffs for their efforts in prosecuting this Action on behalf of Aggrieved Employees,
3 including meeting and communicating with Class Counsel, reviewing the pleadings, documents, and
4 Settlement Agreement, and undertaking the risks associated with serving as named plaintiffs,
5 including potential reputational harm arising from their participation in litigation against their
6 employer. (Agnew Decl. ¶ 35; Gopar Decl. ¶¶ 8-11; Armenta ¶¶ 8-11; Garcia ¶¶ 10-13; De La
7 Torre ¶¶ 8-11; Sena ¶¶ 8-10; Illu ¶¶ 6-9.) Any portion of the PAGA Representative Service Payment
8 that is not approved by the Court shall become part of the Net Settlement Amount. (Settlement
9 Agreement § 4.2.1.)

10 **E. Attorneys' Fees and Reimbursement for Litigation Costs**

11 As part of the Settlement, Defendant does not object to Class Counsel's request for attorneys'
12 fees up to one-third (33.33%) of the Gross Settlement Amount, *i.e.* the sum of \$430,000.00 ("PAGA
13 Counsel Fees"), and reimbursement for actual litigation costs in an amount up to \$50,000.00 ("PAGA
14 Counsel Expenses"), subject to Court approval. (Settlement Agreement § 4.2.2.) Any portion of the
15 PAGA Counsel and/or PAGA Counsel Fees that is not approved by the Court shall become part of
16 the Net Settlement Amount. (*Id.*)

17 **F. The Administrator Expenses**

18 The Settlement Administrator, Phoenix Settlement Administrators, will be responsible for
19 preparing and mailing Settlement Notices, computing Individual PAGA Payments, and issuing
20 checks and required tax reports. (Settlement Agreement §§ 1.2, 6.4.) The Administrator Expenses
21 are estimated to be \$19,750.00. (*Id.* at § 4.2.3; Admin. Decl. ¶ 22, Ex. B.) Any portion of the
22 Administrator Expenses that is not approved by the Court shall become part of the Net Settlement
23 Amount. (Settlement Agreement § 4.2.3.)

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

25 Upon Defendant's payment of the Gross Settlement Amount, Plaintiffs, Aggrieved
26 Employees, the State of California, and the LWDA are deemed to release the Released Parties from
27 all of the Released PAGA Claims. (Settlement Agreement § 9.1.) As defined in the Settlement, the
28 term "Released PAGA Claims" means:

1 All claims for PAGA penalties that were alleged, or reasonably
2 could have been alleged, based on the factual allegations stated in
3 the Operative Complaint and the PAGA Notices, which occurred
4 during the PAGA Period.

5 (*Id.* at § 1.25) The release is expressly limited to civil penalties under the Private Attorneys General
6 Act and does not affect any individual claims that Aggrieved Employees may have. Aggrieved
7 Employees are not permitted to object to or opt out of the Settlement. (*Id.* at § 6.3.4.)

8 **IV. ARGUMENT**

9 **A. The Settlement Is Fair, Reasonable, and Adequate.**

10 Unlike a class action settlement, approval of a PAGA settlement is governed by Labor Code
11 section 2699, subdivision (s)(2), which provides that “[t]he court shall review and approve any
12 penalties sought as part of a proposed settlement agreement pursuant to this part.” Cal. Lab. Code §
13 2699(s)(2). Although PAGA does not prescribe a detailed approval procedure comparable to the two-
14 step process used in class actions, California courts have made clear that a trial court must
15 independently evaluate whether a proposed PAGA settlement is fair, reasonable, and adequate in
16 light of PAGA’s purposes. *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021).

17 That inquiry is necessarily different from the inquiry applicable to class settlements. A PAGA
18 action is not a class action. It is a representative enforcement action in which the aggrieved employee
19 acts as the proxy of the State to recover civil penalties for Labor Code violations. *Arias v. Superior*
20 *Court*, 46 Cal.4th 969, 980-986 (2009). For that reason, plaintiffs pursuing PAGA claims “need not
21 meet class action requirements,” and the Court’s focus is not whether the settlement mirrors the
22 procedures or standards applicable to absent class members.⁴ *Id.* at 987. Instead, the Court’s task is
23 to determine whether the proposed settlement is fair, reasonable, and adequate in view of PAGA’s
24 public purposes—namely, “to remediate present labor law violations, deter future ones, and to
25 maximize enforcement of state labor laws.” *Moniz*, 72 Cal.App.5th at 77; *see also Kang v. Wells*

26 ⁴ Unnamed aggrieved employees are not class members and therefore are not entitled to opt out of
27 the action or object in the same manner as absent class members in a class action settlement. *See*
28 *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *13 (N.D. Cal. Apr. 2, 2010);
Turrieta v. Lyft, Inc., 16 Cal.5th 664, 712–16 (2024).

1 *Fargo Bank, N.A.*, 2021 WL 5826230, at *15 (N.D. Cal. Dec. 8, 2021) (evaluating whether the
2 settlement was “fundamentally fair, reasonable, and adequate in view of PAGA’s public policy
3 goals”). In conducting that review, courts may consider factors commonly used in evaluating
4 settlements more generally, including the strength of the claims, the risks and expense of continued
5 litigation, the stage of the proceedings, and the amount of the settlement, so long as those factors are
6 assessed through the lens of PAGA’s enforcement objectives. *Moniz*, 72 Cal.App.5th at 76-77; *see*
7 *also Norman v. Strateman* 112 Cal. App. 5th 92, 103 n.2 (2025).

8 The Settlement easily satisfies that standard here. This was not a quick or uninformed
9 compromise. Rather, the Settlement was reached only after substantial investigation, litigation, and
10 arm’s-length negotiations concerning multiple overlapping PAGA matters. (Agnew Decl. ¶¶ 2-27;
11 Baker Decl. ¶ 2; Fitzpatrick Decl. ¶ 3; Messrelian Decl. ¶ 14; Declaration of Maralle Messrelian, ¶
12 7.) Counsel evaluated the strengths of the alleged Labor Code violations, the available defenses, the
13 risks presented by arbitration issues, the pendency of Taylor Farms’ appeal in the *Gopar* Action, and
14 the uncertainty, delay, and expense that continued litigation across several related actions would
15 entail. (Agnew Decl. ¶ 48.) Against that backdrop, the Settlement secures a substantial seven-figure
16 recovery and provides an immediate, certain, and meaningful PAGA result in lieu of years of
17 additional contested proceedings.

18 Just as important, the Settlement serves PAGA’s deterrent and enforcement purposes. PAGA
19 is “fundamentally a law enforcement action designed to protect the public,” not merely a vehicle for
20 private recovery. *Moniz*, 72 Cal.App.5th at 77; *Arias*, 46 Cal.4th at 980. The Gross Settlement
21 Amount here is significant. It reflects a real economic consequence for the alleged wage and hour
22 violations, promotes future compliance with California labor laws, and secures penalties now rather
23 than risking a lesser recovery—or no recovery at all—after further motion practice, appeals, and trial.
24 In these circumstances, the Settlement is fair, reasonable, and adequate under the Labor Code.⁵

25 _____
26 ⁵ The Settlement is also consistent with the State’s public policy favoring resolution of disputes.
27 *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (“California law
28 favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it
reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned
to understand their interests and resolve a dispute in a mutually beneficial manner without court

1 **B. Maximum Potential PAGA Exposure**

2 At the time the Parties negotiated the Settlement, Defendant estimated that Aggrieved
3 Employees had worked approximately 357,000 pay periods between December 7, 2021 and February
4 6, 2026. (Agnew Decl. ¶ 41.) Based on that estimate, PAGA Counsel calculated that—provided
5 Plaintiffs prevailed on the merits and the default penalty of \$100 per pay period applied—
6 Defendant’s maximum potential exposure was approximately \$35,700,000. (*Id.*) The Gross
7 Settlement Amount of \$1,290,000.00 represents approximately 3.61% of that maximum potential
8 exposure.

9 **C. Realistic Potential Exposure in Light of Defendant’s Defenses and the Risks of**
10 **Continued Litigation**

11 However, the maximum potential exposure discussed above does not account for PAGA
12 Counsel’s reasoned assessment of the strength of the PAGA claims, Defendant’s asserted defenses,
13 the substantial risks and expense of continued litigation, and the possibility that, even if Plaintiffs
14 prevailed, the Court could exercise its discretion to reduce any penalty award. (Agnew Decl. ¶ 42.)

15 Defendant denied, and continues to deny, Plaintiffs’ allegations and contends that it acted in
16 compliance with California law at all relevant times. (Agnew Decl. ¶ 43.) Among other things,
17 Defendant contends that Plaintiffs and the Aggrieved Employees were paid for all hours worked;
18 that any time spent undergoing temperature screenings was compensated and occurred on the clock;
19 that compliant meal and rest periods were provided, and that any missed, late, or short breaks were
20 voluntary and not the result of work demands; that all wages were timely paid; that wage statements
21 complied with the Labor Code; and that no unreimbursed business expenses were incurred. (*Id.* at ¶
22 43.)

23 Plaintiffs dispute those contentions and believe the claims have substantial merit. (Agnew
24 Decl. ¶ 43.) Even so, in evaluating the Settlement, continued litigation presented meaningful risk. To
25 establish liability, Plaintiffs would have been required to prove that Defendant’s policies and
26 practices systematically violated the Labor Code throughout the PAGA liability period. *See Rope v.*

27 _____
28 intervention into the settlement”).

1 *Auto-Chlor System of Washington, Inc.*, 220 Cal.App.4th 635, 651 (2013) (“PAGA requires that the
2 representative plaintiff establish that the employer have committed the Labor Code violations for
3 which recovery is sought against the aggrieved employees”); *Hibbs-Rines v. Seagate Technologies,*
4 *LLC.*, 2009 WL 513496, at *4 (N.D.Cal., 2009) (“Plaintiff will have to prove Labor Code violations
5 with respect to each and every individual on whose behalf plaintiff seeks to recover civil penalties
6 under PAGA”). That showing would have required substantial additional discovery, expert
7 testimony, statistical analysis, and evidence regarding Defendant’s timekeeping, temperature
8 screening, payroll, and break practices. (Agnew Decl. ¶ 44.) Defendant, for its part, denied liability
9 and was prepared to argue that any alleged violations were not the product of uniform unlawful
10 practices, but instead reflected isolated circumstances, employee choice, or conduct unknown to
11 management. (*Id.*) In other words, continued litigation would have presented sharply disputed factual
12 and legal issues requiring Plaintiffs to prove not only that violations occurred, but that they occurred
13 on a representative basis across the relevant period.

14 For this reason, the claims asserted by Plaintiffs presented significant manageability and
15 proof issues. (Agnew Decl. ¶ 45.) By way of example, Defendant contends that meal-period
16 violations cannot be established by time records alone because, even where time records reflect
17 missed, short, or delayed meal periods, such records create only a rebuttable presumption of
18 liability—not automatic liability. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 77 (2021). The
19 employer may rebut the presumption with evidence that employees were provided compliant, duty-
20 free meal periods, voluntarily chose to work, or were paid the required premium. *Id.* Rather,
21 Defendant maintains that the Court would need to determine, on an employee-by-employee and shift-
22 by-shift basis, the circumstances of each allegedly missed, late, short or interrupted meal period. That
23 individualized inquiry, according to Defendant, would create litigation risk for Plaintiff both as to
24 liability and as to the value of any recoverable penalties. (Agnew Decl. ¶ 45.)

25 Further, continued litigation carried substantial appellate risk. (Agnew Decl. ¶ 46.) Defendant
26 has appealed the Court’s denial of its motion to compel arbitration, and that appeal remains pending.
27 As a result, further litigation likely would have delayed resolution for years, increased costs, and
28 created additional uncertainty as to both liability and recovery. Against that backdrop, the Settlement

1 secures a meaningful and certain recovery now, rather than a speculative recovery years later.

2 **D. The Court's Discretion to Reduce Civil Penalties**

3 Additionally, even if Plaintiffs prevailed on the merits, the Court would retain discretion
4 under Labor Code section 2699 (e)(2), to reduce any penalty award it found “unjust, arbitrary and
5 oppressive, or confiscatory.” Although “PAGA penalties...are mandatory, not discretionary” in the
6 sense that penalties must be awarded upon a showing of a Labor Code violation, the amount awarded
7 remains subject to reduction based on the facts and circumstances of the case. *Amaral v. Cintas Corp.*
8 *No. 2*, 163 Cal.App.4th 1157, 1213 (2008); Lab. Code, § 2699(e)(2).

9 California courts have repeatedly recognized and applied that discretion. In *Carrington v.*
10 *Starbucks Corp.*, for example, the plaintiff prevailed on his PAGA claim at trial, yet the trial court
11 reduced the maximum penalty amount by 90 percent based on the employer’s good-faith efforts to
12 comply with the law, and the Court of Appeal affirmed. 30 Cal.App.5th 504, 517, 539 (2018).
13 Similarly, in *Raines v. Coastal Pacific Food Distributors, Inc.*, the Court of Appeal recognized that
14 trial courts may reduce PAGA penalties for technical or inadvertent violations, particularly where
15 the violations caused little or no injury. 23 Cal.App.5th 667, 681 (2018). And in *Thurman v. Bayshore*
16 *Transit Management, Inc.*, the Court of Appeal upheld a substantial reduction in PAGA penalties
17 where the employer was not initially on notice of the violations and took steps to come into
18 compliance once made aware of them, contrasting those circumstances with cases in which full
19 penalties may be warranted because the employer acted with a “cavalier approach” to its obligations
20 or with reckless disregard. (2012) 203 Cal.App.4th 1112, 1136.

21 In evaluating the Settlement, PAGA Counsel therefore considered not only the maximum
22 theoretical exposure, but also the realistic potential recovery in light of the factors that could lead a
23 court to reduce penalties. (Agnew Decl. ¶ 47.) Those considerations included Defendant’s defenses,
24 the factual disputes regarding whether violations occurred, and the manageability challenges
25 presented by trying PAGA claims over the entire period at issue. (*Id.* at ¶¶ 44, 45, 47.) Taking those
26 risks into account, PAGA Counsel believes that a reduced penalty value of \$10 per pay period
27 provides an appropriate benchmark for estimating a realistic potential exposure of \$3,570,000
28 (357,000 pay periods x \$10). (*Id.* at ¶ 47.) The \$1,290,000 Gross Settlement Amount therefore

represents approximately 36.13% of the realistic potential exposure as assessed in light of the risks of continued litigation. In PAGA Counsel's view, that result is excellent for both the State and the Aggrieved Employees given the strengths and weaknesses of the claims, the substantial defenses asserted by Defendant, and the significant risks of continued litigation.

E. Benefits of Settlement

The Settlement provides immediate and certain relief to the LWDA and the Aggrieved Employees while avoiding the substantial risks, delay, and expense of continued litigation. It eliminates the possibility of a defense verdict and avoids years of further proceedings, including the pending appeal and any subsequent appeals following trial. The Settlement also allocates PAGA penalties based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA period, thereby ensuring a proportional distribution tied to the alleged period of harm. Under these circumstances, the certainty and immediacy of the recovery obtained through Settlement outweigh the possibility of a larger, but highly uncertain, recovery after years of additional litigation.

V. REQUEST FOR ATTORNEYS' FEES AND COSTS

A. The Court Should Approve PAGA Counsel's Requested Attorneys' Fees

Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys' fees in the amount of \$430,000.00 and an award of litigation costs to PAGA Counsel in the amount of \$30,112.29, consisting of \$18,096.71 incurred by Messrelian Law, \$8,490.62 incurred by Diversity Law Group, and \$3,524.96 incurred by Fitzpatrick & Swanson. (Agnew Decl. ¶ 58; Fitzpatrick Decl. ¶ 7; Messrelian Decl. ¶¶ 9-13.) Labor Code section 2699(k)(1) provides for the recovery of attorneys' fees and costs in any successful action brought under PAGA.

Although this is not a class action, courts evaluating fee requests in representative wage-and-hour settlements have recognized that the percentage-of-the-benefit method provides a useful and appropriate framework for determining a reasonable fee. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 503 (2016). Under that approach, the Court's objective is to award a fee that approximates the market rate for contingent representation and fairly compensates counsel for the result achieved. *See Laffitte*, 1 Cal.5th at 503; *Serrano v. Priest*, 20 Cal.3d 25, 48 (1977).

Here, the requested fee award of one-third of the Gross Settlement Amount is reasonable and consistent with the market rate commonly approved in wage and hour representative actions. Courts have repeatedly recognized that one-third of the common fund falls within the range of reasonable fee awards, particularly where counsel undertook the matter on a fully contingent basis and achieved a substantial result without prolonged litigation through trial. *See Amaro v. Anaheim Arena Management, LLC*, 69 Cal.App.5th, 521 (2021) (“Fee awards in class actions average around one-third of the recovery regardless of whether the percentage method or the lodestar method is used”); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery”); *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. 2011) (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million”).

That percentage is especially appropriate here given the risks assumed by PAGA Counsel. Counsel undertook the representation on a wholly contingent basis, advanced substantial time and expense with no guarantee of recovery, and faced the risks inherent in complex representative wage and hour litigation, including contested liability, manageability issues, and the prospect of extended proceedings against a sophisticated corporate defendant. (Agnew Decl. ¶¶ 2-17, 42-47, 57; Fitzpatrick Decl. ¶¶ 4, 6; Lee Decl. ¶ 2; Messrelian Decl. ¶ 10-12.) PAGA Counsel also successfully opposed Defendant’s motion to compel arbitration and obtained a favorable ruling that is now the subject of a pending appeal. (Agnew Decl. ¶ 6.) Under these circumstances, the requested fee fairly compensates PAGA Counsel for the risks undertaken and the result achieved, and should therefore be approved.

B. The Court Should Approve Reimbursement of PAGA Counsel’s Actual Litigation Costs

PAGA Counsel’s request for litigation costs is also reasonable. PAGA Counsel seeks reimbursement of \$30,112.29 in costs actually incurred in prosecuting this matter, including filing fees, mediation expenses, postage, and copying costs. (Agnew Decl. ¶ 58, Exhibit 4; Fitzpatrick Decl. ¶ 7, Exhibit A; Messrelian Decl. ¶ 13, Exhibit 4.) Those are the types of routine and necessary

litigation expenses regularly reimbursed in representative actions and were reasonably incurred for the benefit of the LWDA and the Aggrieved Employees. Accordingly, the requested costs should be approved in full.

VI. THE COURT SHOULD APPROVE THE PAGA REPRESENTATIVE SERVICE PAYMENTS

Courts have held that named plaintiffs in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that service awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their **willingness to act as a private attorney general**”) (emphasis added).

Here, Plaintiffs seek PAGA Representative Service Payments in the amount \$2,500.00, totaling \$15,000.00. The Service Payments are intended to compensate Plaintiffs for the time spent on this case, including reviewing pleadings, the potential for hesitation from later prospective employers that might find out he brought this claim. (Settlement Agreement § 4.2.1; Agnew Decl. ¶ 35; Gopar Decl. ¶¶ 8-11; Armenta ¶¶ 8-11; Garcia ¶¶ 10-13; De La Torre ¶¶ 8-11; Sena ¶¶ 8-10; Illu ¶¶ 6-9.) This requested enhancement is consistent with awards approved in common fund cases. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in ERISA case).

VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The parties agreed to use Phoenix Settlement Administrators (“Phoenix”) as the third-party settlement administrator in this case. (Settlement Agreement § 1.2.) Phoenix will be responsible for

1 updating the addresses for the Aggrieved Employees (including conducting a National Change of
2 Address search), mailing the Notice of Settlement in English and Spanish, establishing a toll-free
3 phone line and email for inquiries, calculating the Individual PAGA Payments based on PAGA Pay
4 Periods, issuing settlement checks to Aggrieved Employees and the LWDA, issuing required tax
5 forms (IRS Form 1099), establishing a Qualified Settlement Fund, and handling returned mail and
6 re-mailings, among other duties. (*Id.* at §§ 6.2 and 6.3.) Phoenix capped its fees at \$19,750.00 for
7 administering the Settlement. (*Id.* at § 4.2.3; Admin. Decl. ¶ 22, Exhibit B.) Based on PAGA
8 Counsel's experience in other class and PAGA settlements, Phoenix's costs for administering this
9 Settlement are competitive, standard for the scope of work required, and fair and reasonable. (Agnew
10 Decl. ¶ 36.) Approval of these costs is necessary for the Settlement to be implemented.

11 **VIII. NOTICE TO THE LWDA HAS BEEN PROVIDED**

12 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion to the
13 LWDA's website. (Agnew Decl. ¶ 60, Exhibit 5; Messrelian Decl. ¶ 15, Exhibit 5.)

14 **IX. CONCLUSION**

15 Plaintiffs and PAGA Counsel submit that the proposed Settlement as documented in the
16 Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Aggrieved
17 Employees and the State of California. Plaintiffs respectfully request that the Court approve the
18 Settlement Agreement, approve the requested fees and costs, approve the administration expenses,
19 and order the Parties and Administrator to carry out the Settlement according to the terms of the
20 Settlement Agreement and enter the concurrently filed [Proposed] Order Granting Approval and
21 Judgment to that end.

22 DATED: May 28, 2026

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

23
24 By: _____

B. James Fitzpatrick
Larry W. Lee
Kristen Agnew

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26 Attorneys for Plaintiffs and the Aggrieved Employees
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