

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Eden Zakay (State Bar #339536)
eden@zakaylaw.com
Jaclyn M. Joyce (State Bar #285124)
jaclyn@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
Perssia P. Razma (State Bar #351398)
prazma@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

Attorneys for Plaintiff Erika Amaya

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ERIKA AMAYA, individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

GRINGO VENTURES, LLC a California
limited liability company; GRINGOS
VENTURES, LLC, an unknown business entity;
DOS GRINGOS, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 37-2023-00043453-CU-OE-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE PAGA
SETTLEMENT**

Hearing Date: May 30, 2025
Hearing Time: 9:30 am

Judge: Marcella O. McLaughlin
Dept.: C-72

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PERTINENT FACTUAL AND PROCEDURAL BACKGROUND	2
	A. Plaintiffs' Exhaustion of Administrative Remedies Under PAGA	2
	B. Plaintiffs' Civil Action Against Defendants	2
III.	TERMS OF THE PAGA SETTLEMENT	4
	A. The Gross Settlement Amount	4
	B. Allocation of PAGA Member Payments	4
	C. Funding and Distribution	5
	D. Release of Claims	6
IV.	THE COURT SHOULD APPROVE THE PAGA SETTLEMENT	7
	A. The Gross Settlement Amount is Fair and Reasonable	8
	i. Estimated Penalties Defendants' Alleged Meal Period Violations	9
	ii. Estimated Penalties for Defendants' Alleged Rest Period Violations	9
	iii. Estimated Penalties for Defendants' Alleged Labor Code Section 226 Violations	10
	iv. Estimated Penalties for Defendants' Violation of Labor Code §2802	10
	v. Estimated Penalties for Unpaid Wages	10

1	B. The Gross Settlement Compares Favorably to The Likely Recover	11
2		
3	C. The Remaining Settlement Terms Are Fair and Reasonable	12
4		
5	V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE	13
6		
7	A. The Requested PAGA Counsel Fees Payment is Fair and Reasonable	13
8		
9	B. PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.	14
10		
11	VI. CONCLUSION	16
12		

///

TABLE OF AUTHORITIES

CASES

<i>Amaral v. Cintas Corp. No. 2</i>	
(2008) 163 Cal.App.4th 1157, 1209.....	8
<i>Boyd v. Bank of America,</i>	
2014 WL 6473804, at *11 (C.D. Cal. 2014).....	14
<i>Cardenas v. McLane Foodservice, Inc.</i>	
2011 U.S. Dist. LEXIS 13126, *10.....	11
<i>Carrington v. Starbucks Corp.</i>	
30 Cal. App. 5th 504, 529 (2018).....	8,12
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794, 1800-1801.....	7
<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i>	
2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	14
<i>Fleming v. Covidien, Inc.</i>	
2011 WL 7563047, *4 (C.D. Cal. 2011).....	12
<i>Gola v. University of San Francisco</i>	
San Francisco Superior Court Case No. CGC-18-5655018.....	12
<i>Harris v. Marhoefer</i>	
24 F.3d 16, 19 (9th Cir. 1994).....	14
<i>Hartless</i>	
273 F.R.D. at 645-46.....	14
<i>Hibbs-Rines v. Seagate Technologies</i>	
2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009).....	11
<i>Hopkins v. Stryker Sales Corp.</i>	
No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	14
<i>Iskanian v. CLS Transportation</i>	
59 Cal. 4th 348, 381 (2014).....	1
<i>Kaanaana v. Barrett Bus. Servs., Inc.</i>	
29 Cal App 5th 778, 788 (2018).....	12
<i>Moniz v. Adecco USA, Inc.</i>	
(2021) 72 Cal.App.5th 56, 77, 88.....	7
<i>Ordonez v. Radio Shack, Inc.</i>	
(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	9
<i>Pellegrino v. Robert Half Intern., Inc.</i>	
182 Cal.App.4th 278 (2010).....	14
<i>Rider v. City of San Diego</i>	
11 Cal. App. 4th 1410, 1423 n.6 (1992).....	14
<i>Taylor v. FedEx Freight, Inc.</i>	
2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016).....	14
<i>Vandervort v. Balboa Capital Corp.</i>	
8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	14
<i>Villa v. United Site Servs. of California, Inc.</i>	
(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	9
<i>Wershba v. Apple Computer, Inc.</i>	
91 Cal.App.4th 224, 254 (2001).....	14
///	

1	<i>Williams v. Superior Court</i>	
	(2017) 3 Cal.5th 531, 549.....	7
2	<i>ZB, N.A. v. Superior Court</i>	
	8 Cal. 5th 175, 182, 196 (2019).....	1,4

RULES, CODES & STATUTES

5	<i>Cal. Code of Civ. Proc. § 382</i>	13
	<i>Cal. Code of Civ. Proc. § 384</i>	6
6	<i>Cal Lab. Code § 201</i>	2,8
	<i>Cal. Lab. Code § 202</i>	2,8
7	<i>Cal Lab. Code § 203</i>	2,8
	<i>Cal. Lab. Code § 204</i>	2,8
8	<i>Cal. Lab. Code § 226</i>	2
9	<i>Cal. Lab. Code § 226(a)</i>	2, 8
	<i>Cal. Lab. Code § 226(a)(8)</i>	10
10	<i>Cal. Lab. Code § 226.7</i>	2, 8
	<i>Cal. Lab. Code § 510</i>	2, 8
11	<i>Cal. Lab. Code § 512 et seq.</i>	2, 8, 9
	<i>Cal. Lab. Code § 551</i>	2
12	<i>Cal. Lab. Code § 552</i>	3
13	<i>Cal. Lab. Code § 558 et seq.</i>	2, 8
	<i>Cal. Lab. Code § 1194</i>	2, 8
14	<i>Cal. Lab. Code § 1197</i>	2, 8
	<i>Cal. Lab. Code § 1197.1</i>	2
15	<i>Cal. Lab. Code § 1198</i>	2, 8
	<i>Cal. Lab. Code § 2800</i>	2
16	<i>Cal. Lab. Code § 2802</i>	2, 8
17	<i>Cal. Lab. Code § 2699</i>	4
	<i>Cal. Lab. Code § 2699(1)</i>	3
18	<i>Cal. Lab. Code § 2699(e)(2)</i>	11
	<i>Cal. Lab. Code § 2699(f)(2)</i>	11
19	<i>Cal. Lab. Code § 2699(f)</i>	11
20	<i>Cal. Lab. Code § 2699(g)(1)</i>	1
	<i>Cal. Lab. Code § 2699.3(a)(2)(A)</i>	2
21	<i>Cal. Lab. Code § 2698</i>	2

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Erika Amaya (“Plaintiff Amaya”) seeks approval of the PAGA Settlement Agreement
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 238
5 PAGA Members, defined as all current and former non-exempt employees who worked at least one
6 pay period for Defendants Gringo Ventures, LLC d/b/a Dos Gringos Ventures, LLC; or Dos Gringos,
7 LLC, (“Defendants”) in California during the period between August 2, 2022, and September 5, 2024
8 (“PAGA Period”). Agreement at §§ 1.22, 1.26, 4.1. This is only a settlement of Plaintiff’s PAGA
9 claim for civil penalties and is not a class settlement and does not release the individual wage claims,
10 if any, of the affected employees other than Plaintiff herself. Cal. Lab. Code § 2699(g)(1); *Iskanian*
11 *v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
12 (2019) (unpaid wages are not recoverable under PAGA).

13 If approved, the PAGA Members and the California Labor Workforce and Development
14 Agency (“LWDA”) will share in a Gross Settlement Amount of One Hundred Thousand Dollars and
15 Zero Cents (\$100,000.00). Agreement at §§ 1.10. After deducting any Court-approved PAGA
16 Counsel Award, PAGA Representative Incentive Award, and the Settlement Administration Costs,
17 the Net Settlement Amount shall be distributed 75% to the LWDA and 25% to the PAGA Members.
18 Agreement at §§ 3.2.1–3.2.3.

19 An objective evaluation of the proposed Settlement confirms that the relief negotiated on
20 behalf of the PAGA Members and the LWDA is fair and reasonable. The Settlement is a product of
21 informed, adversarial, non-collusive and mediated negotiations between experienced counsel. As
22 discussed below, the proposed Settlement satisfies all criteria for PAGA settlement approval.
23 Accordingly, Plaintiff and PAGA Counsel respectfully request this Court grant approval of the
24 Agreement. JCL Dec., at ¶ 12.

25 ///

26 ///

27 _____
28 ¹ The Agreement is attached as Ex. “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

II. PERTINENT FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Exhaustion of Administrative Remedies Under PAGA

On August 2, 2023, Plaintiff served Defendants and the LWDA with a Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendants for alleged violations of the California Labor Code, including California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, the applicable IWC Wage Orders. (LWDA Case No.: LWDA-CM-972410-23). JCL Dec., at ¶¶ 4; 13.

Following Plaintiff's submission of the PAGA Notice, the 65-day “waiting period” on Plaintiff's right to file a civil action under PAGA, *see* Cal. Lab. Code § 2699.3(a)(2)(A), lapsed without the LWDA notifying Plaintiff that it intended to investigate the claims in the PAGA Notices. To date, the LWDA still has not advised Plaintiff of any intent to take action with respect to the claims in the PAGA Notice. JCL Dec., at ¶ 14.

B. Plaintiff's Civil Actions Against Defendants

On October 6, 2023, Plaintiff filed a Representative Action Complaint against Defendants in the Superior Court of the State of California, County of San Diego, Case No. 37-2023-00043453-CU-OE-CTL, alleging a single cause of action for Violations of the Private Attorneys General Act (Labor Code §2698) (the “PAGA Action”). JCL Dec., ¶ 15.

On February 13, 2024, pursuant to the existence of an arbitration agreement between the Parties, the Parties stipulated to arbitration of Plaintiff's individual claim, and to the stay of the representative portion of Plaintiff's PAGA claim. JCL Dec., ¶ 16.

On February 23, 2024, Plaintiff filed an Arbitration Demand with the American Arbitration Association, designated *Erika Amaya v. Gringo Ventures, LLC, et. al.*, American Arbitration Association Case No. 01-24-40002-3555. JCL Dec., ¶ 17.

On September 5, 2024, the Parties attended a global mediation presided over by Jason Marsili, Esq., an experienced mediator of wage and hour representative actions. In advance of the mediation, Defendants provided Plaintiff with sufficient information to properly evaluate Defendants' liability exposure for civil penalties to the PAGA Members. The data and documents Defendants produced included, among other things, the total number of PAGA Members and pay periods, written wage and

1 hour policies, and a 32% sample of time and payroll records for the PAGA Members. The mediation
2 concluded without a settlement. At mediation, Defendants asserted financial hardship and
3 subsequently produced extensive financial records, including their 2022 and 2023 tax returns. Plaintiff
4 retained Kenneth Creal, CPA, a respected and experienced forensic accountant, who reviewed the
5 financial materials in detail. Based on his analysis of the records produced, Mr. Creal concluded that
6 the proposed settlement is reasonable in light of Defendants’ demonstrated financial condition. With
7 the assistance of Mediator Marsili, the Parties eventually reached a settlement, which was
8 subsequently memorialized in the form of a Memorandum of Understanding. After reaching an
9 agreement in principle, the Parties drafted and negotiated a long-form Settlement which is the subject
10 of the instant motion. The Settlement was negotiated in light of all known facts and circumstances and
11 the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
12 representative claims, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of
13 Defendants’ potential defenses, the financial condition of Defendants, and the significant delay and
14 potential appellate issues inherent to litigation – and was reached after extensive arm’s length
15 negotiations, with the assistance of the mediator. JCL Dec., at ¶ 18.

16 The Settlement is intended to fully and finally resolve the Released Claims asserted by Plaintiff
17 on behalf of the PAGA Members and the State of California. This is only a settlement of the PAGA
18 claims for civil penalties and is not a class settlement and does not release the individual claims, if
19 any, of the PAGA Members other than those of Plaintiff. This Settlement does not release any claim
20 that is not a PAGA claim.² Nor does this Settlement waive Defendants’ right to assert *res judicata* or
21 other available defense to any asserted claim or lawsuit. JCL Dec., at ¶ 19.

22 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
23 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
24 settlement approval as set forth in the accompanying proof of service. Additionally, Plaintiff will
25 submit to the LWDA a copy of the Court’s judgment and order approving the Agreement within ten
26 (10) days after entry of judgment or order. JCL Dec., at ¶¶ 6, 20.

27
28 ² As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th 175 at 196: “Nonparty employees are bound by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 **III. TERMS OF THE PAGA SETTLEMENT**

2 **A. The Gross Settlement Amount**

3 This PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(s)(2).
4 The Agreement negotiated by the Parties provides for a “Gross Settlement Amount” payment in the
5 amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) to resolve the Released
6 Claims. From the Gross Settlement Amount, there is a deduction of the PAGA Counsel Award
7 consisting of attorneys’ fees of not more than one-third (1/3) of the Gross Settlement Amount
8 (currently estimated to be Thirty-Three Thousand Three Hundred and Thirty-Three Dollars and
9 Thirty-Three Cents (\$33,333.33) *and* costs and expenses supported by declaration of
10 Fifteen Thousand, Six Hundred Nine Dollars and Seventy-Nine Cents (\$15,609.79)³, payment of
11 Settlement Administration Costs in an amount not to exceed Four Thousand Five Hundred Dollars
12 and Zero Cents (\$4,500.00), and an Incentive Award in the amount of Ten Thousand Dollars and Zero
13 Cents (\$10,000.00) or in an amount that the Court authorizes to be paid to Plaintiff, in addition to
14 Plaintiff’s pro rata portion of the PAGA Member Payment, for initiating the Action and providing
15 services in support of the Action, and for executing a general release of claims. Agreement at § 1.32.
16 After these deductions, the amount remaining is the Net Settlement Amount in an amount currently
17 estimated to be Thirty-Six Thousand Five Hundred Fifty-Six Dollars and Eighty-Eight Cents (\$36,556.88).
18 Agreement at § 3.2.3.

19 Of the Net Settlement Amount seventy-five percent (75%) shall be paid to the LWDA as the
20 LWDA Payment and the remaining twenty-five percent (25%) shall be paid to the PAGA Members
21 as the PAGA Member Payments. § 3.2.3. This allocation is required by Labor Code § 2699 as
22 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

23 **B. Allocation of PAGA Member Payments**

24 The Settlement Administrator will calculate each PAGA Member Payment by (a) dividing the
25 amount of the PAGA Members’ 25% share of the Net Settlement Amount by the total number of Pay
26 Periods worked by all PAGA Members during the PAGA Period and (b) multiplying the result by each
27 PAGA Employee’s Pay Periods. Agreement at § 3.2.3.1.

28 _____
3

1 At the time of mediation, Defendants estimated that there were 238 PAGA Members who
2 worked 4,300 Pay Periods during the PAGA Period, based on company records. If the actual number
3 of Pay Periods worked by the PAGA Members during the PAGA Period exceeds the estimated 4,300
4 Pay Periods by more than 10%, the Gross Settlement Amount will increase proportionally for the
5 number of workweeks over 110% of 4,300 (4,730). Agreement at § 8.

6 **C. Funding and Distribution**

7 Within thirty (30) calendar days of the Effective Date, Defendants shall fund half of the PAGA
8 Gross Settlement Amount, and six (6) calendar months after the first payment, Defendants shall fund
9 the remaining half of the PAGA Gross Settlement Amount. The Effective Date means the later of (i)
10 the 61st day after entry of the Approval Order and Judgment, if no appeal, review, or writ has been
11 filed; or (ii) if an appeal, review, or writ is sought from the Approval Order and Judgment, the day
12 after the Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied,
13 and the Approval Order and Judgment is no longer subject to further judicial review. Agreement at
14 §§ 1.8, 1.9.

15 Within fifteen days of the Effective Date, Defendants will deliver the “PAGA Member Data”
16 to the Settlement Administrator in the form of a Microsoft Excel spreadsheet that contains each PAGA
17 Member’s full name; last known address; Social Security Number; start dates and end dates of
18 employment; and any other information the Settlement Administrator deems necessary to accurately
19 calculate the number of Pay Periods worked by each PAGA Member during the PAGA Period.
20 Agreement at § 4.2.

21 Within fourteen (14) days after Defendants fully fund the first half of the PAGA Gross
22 Settlement Amount, the Settlement Administrator will mail checks for all Individual PAGA Member
23 Payments. Agreement at § 4.2. Within fourteen (14) days after Defendants fully fund the second half
24 of the PAGA Gross Settlement Amount, the Settlement Administrator will mail checks for the LWDA
25 PAGA Payment, the Settlement Administration Costs, Plaintiff’s Incentive Award, Plaintiff’s Counsel
26 Fees Payment, and Plaintiff’s Counsel Litigation Expenses Payment. Disbursement of the Plaintiff’s
27 Counsel Fees Payment, and Plaintiff’s Counsel Litigation Expenses Payment shall not precede
28 disbursement of Individual PAGA Member Payments. Agreement at § 4.2.

1 The checks to Individual PAGA Members shall be mailed by regular First-Class U.S. Mail to
2 each PAGA Member's last known mailing address no later than fourteen (14) business days after
3 Defendants fully fund the first half of the PAGA Gross Settlement Amount together with the Notice
4 of PAGA Settlement. Agreement at § 4.4.1. Any checks issued to PAGA Members shall remain valid
5 and negotiable for one hundred eighty (180) days from the date of their issuance. Agreement at §
6 4.4.1. The Settlement Administrator must conduct a PAGA Member Address Search for all PAGA
7 Members whose checks are returned undelivered without USPS forwarding address. Within seven (7)
8 days of receiving a returned check the Settlement Administrator must re-mail checks to the USPS
9 forwarding address provided or to an address ascertained through the PAGA Member Address Search.
10 Agreement at § 4.4.2. The Settlement Administrator need not take further steps to deliver checks to
11 PAGA Members whose re-mailed checks are returned as undelivered. The Settlement Administrator
12 shall promptly send a replacement check to any PAGA Member whose original check was lost or
13 misplaced, requested by the PAGA Member prior to the Void Date. Agreement at § 4.4.2. In the event
14 a PAGA Member's check has not been cashed within one hundred eighty (180) days, all funds
15 represented by such uncashed checks, plus any interest accrued thereon, shall be paid to the
16 Community Law Project, a Cy Pres, pursuant to California Code of Civil Procedure section 384.
17 Agreement at 4.4.3. Before mailing any checks, the Settlement Administrator must update the
18 recipients' mailing addresses using the National Change of Address Database. Agreement at § 4.4.1.

19 **D. Release of Claims**

20 Following the Court's approval of the Settlement and upon Defendants' funding of the Gross
21 Settlement Amount in full, in exchange for the consideration set forth in this Agreement, Plaintiff, the
22 LWDA, release the Released Parties from the Released Claims. Agreement at § 5.2. The Released
23 Parties means Defendants and their former, present and future owners, parents, and subsidiaries, and
24 all of their current, former and future spouse(s), children, officers, directors, members, managers,
25 employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors,
26 assigns, accountants, insurers, reinsurers, and/or legal representatives. Agreement at § 1.31. The
27 Released Claims means all claims, rights, demands, liabilities and causes of action for civil penalties
28 under the PAGA claim asserted, or that reasonably could have been asserted in the Operative

1 Complaint or could have arisen out of the allegations made in the Operative Complaint or LWDA
2 letter dated August 2, 2023, and expressly excluding all other claims, including claims for vested
3 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
4 compensation, and PAGA claims outside of the PAGA Period. Agreement at § 1.30.

5 Pursuant to the Agreement, Plaintiff has agreed to provide a general release of her individual
6 claims. Agreement at § 5.1. The Parties are unaware of any other cases, including class, individual
7 and PAGA, that might be affected by this settlement. JCL Dec., at ¶ 27.

8 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

9 Labor Code § 2699(s) requires that the Court “shall review and approve any settlement of any
10 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
11 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco USA,*
12 *Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
13 settlement (§ 2699, subd.(1)(2)), and the Supreme Court has in dictum referred to this review as a
14 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
15 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that any
16 negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that “adoption
17 of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the
18 interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Moniz,*
19 *supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v.*
20 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words,
21 “[i]n review and approval of a proposed settlement under section 2699, subd. (1)(2), a trial court thus
22 must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the
23 state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently,
24 the Parties respectfully ask the Court to review and approve the Settlement of the PAGA claims and
25 the amount to be paid as part of the proposed Settlement.

A. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$100,000.00 is fair and reasonable and, therefore, should be approved. JCL Dec., ¶ 22. Here, *without stacking* the PAGA penalties, Defendants' liability exposure is estimated at approximately \$951,906 in PAGA penalties. JCL Dec., ¶ 23. Plaintiff's expert estimated Defendants' exposure as follows:

Claim	Penalty Amount	Number of Pay Periods w/ Violation	Percentage of Pay Periods	Total Penalties
<i>Meal Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50 ⁴	3,213	71.3%	\$160,603
<i>Rest Period Violations</i> Cal. Labor Code §§ 226.7 and 512	\$50	3,213	71.3%	\$160,603
<i>Wage Statement Violations</i> Cal. Labor Code § 226(a)	\$100	2,252	50%	\$225,250
<i>Business Reimbursement Violations</i> Cal. Labor Code § 2802	\$100	1,351	30%	\$135,150
<i>Unpaid Wages</i> Cal. Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197, 1997.1 1198 and 558	\$100	2,703	60%	\$270,300

JCL Dec., ¶ 23.

At mediation, Defendants raised the possibility that they would be unable to satisfy a larger PAGA settlement due to the Defendants' financial condition. As noted above, PAGA Counsel retained Certified Public Accountant, Kenneth L. Creal, to review and analyze Defendants' finances,

⁴ A \$50 penalty rate was used for a number of reasons for meal and rest periods. First, Pursuant to Cal. Lab. Code § 558(a)(1), an employer is subject to a penalty of \$50 for violations of a Labor Code section regulating hours and days of work, including meal period and rest period violations, off-the-clock work resulting in minimum wage and overtime violations, and regular rate violations. Thus, because section 558(a)(1) specifically provides for a civil penalty, Plaintiff used a \$50 penalty per violation for the meal break claims. Second, Defendants argued that increased civil penalties for subsequent violations do not apply unless Plaintiff can present evidence that the Labor Commission or a court notified the employer that it was in violation of the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 ["Until the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."]. Third, Defendants also argued that courts have considerable discretion to reduce the penalty awards under PAGA. See, e.g. *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (reducing the maximum PAGA penalty amount by 90%, at \$5 per pay period)

1 including their 2022 and 2023 tax returns. Based on Mr. Creal's review, he determined that
2 Defendants could not afford a larger settlement than the one contemplated here. JCL Dec., ¶ 18.

3 **i. Estimated Penalties for Defendants' Alleged Meal Period Violations**

4 Plaintiff alleges that Defendants failed to provide meal periods in violation of Cal. Lab. Code
5 § 512. Specifically, Plaintiff alleges that as a result of Defendants' understaffing, Plaintiff and other
6 PAGA Members were often required to work while clocked out during what was supposed to be their
7 off-duty meal periods. Plaintiff alleges that her meal breaks were often cut short or interrupted to assist
8 Defendants' customers and complete time-sensitive orders. Plaintiff expressed that often her
9 supervisors would tell her she could not take a lunch break until orders were completed, and that she
10 would come back early from lunch but wait in line to clock back in, such that her clock-in and clock-
11 out times do not reflect the actual duration of her lunch breaks. Plaintiff estimates Defendants' liability
12 for this claim to be \$160,603. JCL Dec., ¶ 24.

13 **ii. Estimated Penalties for Defendants' Alleged Rest Period Violations**

14 Plaintiff further allege that Defendants failed to provide rest breaks. Specifically, Plaintiff
15 alleges that as a result of Defendants' understaffing, Plaintiff and other PAGA Members were often
16 required to work during what was supposed to be their off-duty rest periods. Plaintiff alleges that their
17 rest breaks were often cut short, interrupted, or completely missed in order to assist Defendants'
18 customers. Defendants argued that its rest period policy is fully compliant with California law and that
19 Plaintiff's rest break claim would have mainly relied on the testimony of PAGA Members, making it
20 a riskier claim. Establishing liability likely would have entailed competing testimony stating either
21 rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*
22 (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the
23 Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient
24 for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.*
25 (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, plaintiffs' own evidence confirms that
26 the written policy does not generate uniform practices."). In light of the foregoing, and considering
27
28

1 Defendants' defenses, Plaintiff estimated Defendants' potential liability for this claim to be
2 approximately \$160,603. JCL Dec., ¶ 25.

3 **iii. Estimated Penalties for Defendants' Alleged Labor Code Section 226**
4 **Violations**

5 Plaintiff alleges that the wage statements furnished by Defendants to the PAGA Members were
6 facially non-compliant with Cal. Lab. Code § 226(a)(8). Specifically, Plaintiff alleges that Defendants
7 failed to include the name and address of the legal entity that is the employer on the wage statements
8 issued to PAGA Members. Defendants contend that Plaintiff cannot establish that any employee
9 suffered any injury as a result of this alleged violation, nor that a "knowing an intentional failure"
10 occurred, as required by the statute. In light of the foregoing, and considering Defendants' defenses,
11 Plaintiff estimated Defendants' potential liability for this claim to be approximately \$225,250. JCL
12 Dec., ¶ 26.

13 **iv. Estimated Liability for Defendants' Violation of Labor Code §2802**

14 Plaintiff alleges that Defendants required Plaintiff and PAGA Members to purchase latex
15 gloves, scissors, an apron, non-slip shoes, thick jackets and warm hats due to the cold conditions in
16 the facility. Plaintiff indicated she was provided with one pair of latex gloves per workday but they
17 would rip while handling the flowers due to thorns. Defendants contend that Plaintiff and PAGA
18 Members were provided with all the tools necessary for the job, including adequate personal
19 equipment such as gloves, and that any additional items purchased were either optional, for personal
20 comfort, or not required by Defendants or necessary to complete required tasks. In light of the
21 foregoing, and considering Defendants' defenses, Plaintiff estimated Defendants' potential liability
22 for this claim to be approximately \$135,150. JCL Dec., ¶ 27.

23 **v. Estimated Penalties for Unpaid Wages**

24 Plaintiff alleges that Defendants failed to pay for all hours worked. First, Plaintiff alleges that
25 she and other PAGA Members were required to work while off-the-clock but were not compensated
26 for this time. Specifically, Plaintiff alleges that she and other PAGA Members were required to
27 perform work-related tasks before clocking in and after clocking out, including assisting customers,
28 submitting to COVID-19 testing, cleaning, and checking equipment. Plaintiff alleges that she and other

1 PAGA Members were not compensated for this time spent working while off-the-clock. JCL Dec., ¶
2 28. Defendants argued, among other things, that all PAGA Members were properly paid minimum
3 and overtime compensation for all hours worked and that PAGA Members were instructed not to work
4 off-the-clock, and to the extent any employee worked off the clock in connection with Covid
5 screenings, which Defendants deny, this was a limited period of time within the PAGA Period. In light
6 of the foregoing, and considering Defendants’ defenses, Plaintiff estimated Defendants’ potential
7 liability for this claim to be approximately \$270,300. JCL Dec., ¶ 29.

8 **B. The Gross Settlement Compares Favorably to The Likely Recovery**

9 In light of the above, the Gross Settlement Amount is approximately 10.5% of Defendants’
10 potential PAGA exposure. The Gross Settlement Amount compares favorably to the likely recovery
11 of PAGA penalties through continued litigation in light of potential exposure and considering
12 Defendants’ financial condition. JCL Dec., ¶ 30.

13 Defendants’ maximum exposure to PAGA penalties is not a realistic outcome of the litigation
14 because it fails to account for the risks of continued litigation including, but not limited to, Defendants’
15 defenses. Here, Defendants argued that they can only be assessed civil penalties for actual violations
16 of the Labor Code. *See* Lab. Code § 2699(f)(2). In other words, to recover any civil penalties, Plaintiff
17 would be required to prove the underlying Labor Code violations. (*Cardenas v. McLane Foodservice,*
18 *Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) [“Given the statutory language [of PAGA],
19 a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a
20 violation of the Labor Code by the defendant.”].) To do this, Plaintiff would need to prove each PAGA
21 Member was subject to the alleged Labor Code violation. Thus, Defendants contended that Plaintiff
22 would be required to “prove Labor Code violations with respect to each and every individual on whose
23 behalf plaintiff seeks to recover civil penalties under PAGA.” *Hibbs-Rines v. Seagate Technologies,*
24 2009 WL 513496, *4 (N.D. Cal. Mar. 2, 2009). JCL Dec., ¶ 31.

25 Lastly, the maximum penalty figure does not consider that Courts have complete discretion to
26 “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the
27 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
28 arbitrary and oppressive, or confiscatory.” (Cal. Lab. Code § 2699(e)(2)). JCL Dec., ¶ 32. In fact,

1 courts routinely exercise their authority to reduce PAGA penalties by 85% to 95%. *See e.g. Carrington*
2 *v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (reducing PAGA penalties to \$5 per pay period;
3 “Although the trial court may have disagreed with Starbucks regarding the issue of liability, it clearly
4 took the circumstances proffered by Starbucks into consideration when it imposed the penalty ... only
5 \$5 per initial violation”); *Kaanaana v. Barrett Bus. Servs., Inc.*, 29 Cal. App. 5th 778, 788 (2018),
6 review granted on other grounds (noting that the trial court “exercised its discretion to reduce the
7 [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were
8 deprived of 13 percent of the 30-minute meal period”); *Fleming v. Covidien, Inc.*, 2011 WL 7563047,
9 *4 (C.D. Cal. 2011) (exercising discretion to reduce the maximum amount of PAGA civil penalties
10 for plaintiffs’ section 226 claims from \$2,800,000 to \$500,000 because the employees suffered no
11 injuries as a result of the erroneous wage statements and made no complaints about the errors or
12 omissions in the wage statements, thus reducing the maximum penalty by 82%); *see also, Gola v.*
13 *University of San Francisco*, 90 Cal. App. 5th 548 (2023), *as modified* (May 9, 2023), *reh’g denied*
14 (May 15, 2023), *review denied* (July 12, 2023), *and disapproved of by Naranjo v. Spectrum Sec. Servs.,*
15 *Inc.*, 15 Cal. 5th 1056, 547 P.3d 980 (2024) (concluding after a full-blown bench trial that a penalty
16 of 15% of the maximum PAGA penalties was the appropriate penalty). The gross amount obtained
17 by PAGA Counsel is reasonable in light of Defendants’ arguments.

18 Given Defendants’ defenses to the claimed Labor Code violations at issue, and the risks and
19 costs of continued litigation, Plaintiff and PAGA Counsel believe that the Gross Settlement Amount
20 is fair and reasonable. This Settlement was negotiated by experienced counsel at arm’s length. JCL
21 Dec., ¶ 33. The LWDA has been provided notice of this motion and the PAGA Settlement, and the
22 decision of LWDA to accept the PAGA Settlement and not oppose the motion should be given
23 considerable weight. Moreover, the LWDA is a sophisticated government entity that can assert and
24 protect its own rights. JCL Dec., ¶ 34.

25 **C. The Remaining Settlement Terms Are Fair and Reasonable**

26 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
27 2699(s) does not require that a court approve any other elements of the proposed settlement. Because
28 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to

1 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
2 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
3 herein, the settlement terms for attorneys' fees and costs are reasonable.

4 **V. THE PAGA COUNSEL AWARD IS FAIR AND REASONABLE**

5 PAGA Counsel seeks approval of not more than one-third (1/3) of the Gross Settlement
6 Amount (currently estimated to be Two Hundred Fifty-Three Thousand Three Hundred Thirty-Three
7 Dollars and Thirty-Three Cents (\$33,333.33) and attorneys' expenses in the amount of Fifteen
8 Thousand, Six Hundred Nine Dollars and Seventy-Nine Cents \$15,609.79⁵ for reimbursement of
9 actually incurred litigation expenses. PAGA does not have any requirements for reviewing attorneys'
10 fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this Settlement is a
11 matter of contract for a contingent representation. Nevertheless, should this Court review the requested
12 attorneys' fees, the requested fees and costs are reasonable for experienced wage and hour counsel.
13 JCL Dec., ¶¶ 36-46.

14 **A. The Requested PAGA Counsel Fees Payment is Fair and Reasonable**

15 The requested attorneys' fees of \$33,333.33 and reimbursement of attorneys' expenses of
16 \$15,609.79 is fair, reasonable, and justified by the result achieved. PAGA Counsel negotiated a
17 recovery of \$100,000.00, the maximum sum possible given Defendants' financial condition. This
18 result justifies the requested fees equal to one-third (1/3) of this recovery. At the time this case was
19 brought, the result was far from certain. Defendants' defenses to the merits of the case created
20 difficulties with proof and complex legal issues for PAGA Counsel to overcome. Here, as noted above
21 in section IV(A), several defenses asserted by Defendants present serious threats to the claims of
22 Plaintiff and the PAGA Members. While Plaintiff believes that these defenses could be overcome,
23 Defendants maintain that these defenses have merit and therefore present a serious risk to recovery.
24 The Settlement was possible because, in PAGA Counsels' eyes, PAGA Counsel was able to persuade
25 Defendants that there was an appreciable risk that Plaintiff would prevail on the factual and legal
26 issues underlying liability and overcome difficulties in proof as to monetary relief. JCL Dec., ¶ 36.

27
28

⁵ As detailed *infra*, at the time of filing this motion, PAGA Counsel incurred \$23,987.12 litigating this matter.

Further, the fee award is justified by the work performed. Generally, the Ninth Circuit and California courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

As detailed in PAGA Counsels' time and billing records submitted herewith, PAGA Counsels' current combined loadstar is \$109,977.5 JCL Dec., ¶52; Declaration of Shani Zakay ("Zakay Dec.") at ¶¶ 4-6; Declaration of Brian J. St. John ("St. John Dec.") at ¶ 15-16. Thus, PAGA Counsels' fee request is equal to PAGA Counsel's loadstar with a reasonable multiplier of 0.91 – well below the 2.13 multiplier approved in *Laffitte*. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

B. PAGA Counsel Are Entitled to Reimbursement of Actual and Reasonably Incurred Litigation Costs.

Attorneys who create a common fund for the benefit of a group of individuals are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. See *Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by

1 attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
2 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court
3 awarded litigation costs for consultants, online legal research, copying, postage, long distance
4 charges, travel expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs
5 for the filing of this motion, PAGA Counsel collectively expended \$15,249.29 prosecuting this action
6 (JCL Law Firm, APC \$7,080.05 ; Zakay Law Group, APLC - \$7,027.89; Lawyers for Justice, PC -
7 \$1,141.35). JCL Dec. ¶¶ 7, 54-55; Zakay Dec., ¶¶ 7-8; St. John Dec., ¶ 17. PAGA Counsels' out-of-
8 pocket expenses are the types of expenses normally charged to paying clients including the following:
9 filing fees; copying; postage; mediation fees; and expert costs, which were all incurred during, and
10 were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed.
11 JCL Dec., ¶¶ 8, 54.

12 **VI. PLAINTIFF'S SERVICE AWARD IS FAIR AND REASONABLE**

13 Incentive awards are intended to “compensate class representatives for work done on behalf of
14 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
15 sometimes, *to recognize their willingness to act as a private attorney general.*” *Rodriguez v. West*
16 *Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (emphasis added). Courts routinely approve
17 incentive awards to compensate named plaintiffs for the services they provide and the risks they incur
18 during the litigation. Courts routinely approve incentive award to compensate named plaintiffs for the
19 services they provide and the risks they incur during the litigation. *Bell v. Farmers Ins. Exch.*, 115
20 Cal.App.4th 715, 726 (2004) (upholding “service payments” to plaintiffs for their efforts in bringing
21 class case).

22 The Settlement provides for an Incentive Award of \$10,000 for Plaintiff. The Incentive Award
23 is fair and reasonable compensation for Plaintiff’s efforts bringing the action, assisting PAGA Counsel
24 with the litigation and settlement, regularly conferring with PAGA Counsel on the status of her case
25 and the strategies for prosecuting the claims and agreeing to provide Defendants a broad general
26 release of all claims arising out of her employment. Plaintiff willingly came forward to protect and
27 advance the rights of the PAGA Members on important legal disputes affecting California
28 employees. By way of example, Plaintiff assumed the serious risk of liability for Defendants’ costs

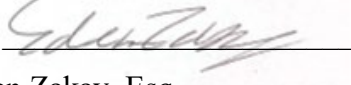
1 and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily
2 undertook the risk to vindicate the rights of the PAGA Members. JCL Dec., ¶ 56. Plaintiff's efforts in
3 bringing the lawsuit conferred a monetary benefit to 238 PAGA Members. Accordingly, Plaintiff and
4 PAGA Counsel respectfully request the Court approve the Incentive Award of \$10,000 in accordance
5 with the Settlement Agreement. JCL Dec., ¶ 57.

6 **VII. CONCLUSION**

7 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement
8 as set forth in the Agreement and enter the proposed order and judgment submitted herewith.

9
10 Dated: May 6, 2025

ZAKAY LAW GROUP, APLC

11 By : 
12 Eden Zakay, Esq.