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MARIA GUADALUPE MENDEZ, on behalf of herself and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

MARIA GUADALUPE MENDEZ, Plaintiff, v. JUQUILITA MARKET, INC.; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV005255 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: August 22, 2025 Time: 8:30 a.m. Dept.: 15 Complaint Filed: December 11, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 22, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Thomas W. Wills, judge presiding, in Department 15 of the above-referenced Court located at 1200 Aguajito Road, Monterey, California, Plaintiff Maria Guadalupe Mendez ("Plaintiff") will and hereby moves this Court for the following relief with respect to the Private Attorneys General Act Settlement Agreement ("Settlement Agreement"), pursuant to the procedures set forth in Labor Code § 2698, *et seq*.:

1. That the Court finds that the Agreement appears to be within the range of reasonableness of a settlement;

2. That the Court approve the Gross Settlement Amount of Ten Thousand Dollars and No Cents ($10,000.00);

3. That the Court approve attorneys' fees to Plaintiff's counsel in the amount of Three Thousand Three Hundred Dollars and No Cents ($3,300.00) (33.3% of the Gross Settlement Payment), and Plaintiff's counsel's litigation costs not to exceed Two Thousand Five Hundred and No Cents ($2,500.00);

4. That the Court approve the service award to Plaintiff in the amount of One Thousand Dollars and No Cents ($1,000.00);

5. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator and approve the administration costs in an amount not to exceed One Thousand Five Hundred Dollars and No Cents ($1,500.00); and

6. That the Court approve the PAGA Fund[1] in the amount of One Thousand Seven Hundred Dollars and No Cents ($1,700.00) to be paid as follows: One Thousand Two Hundred Seventy-Five Dollars and No Cents ($1,275.00) (75% to the Labor and Workforce Development Agency); and Four Hundred Twenty-Five Dollars and No Cents ($425.00) (25%

[1] The PAGA Fund is the total after deducting the (1) Attorneys' Fees, (2) Attorneys' Costs, (3) Settlement Administration costs, and (4) Service Award to Plaintiff.

to the PAGA Members).

This Motion will be based on this Notice, the Memorandum of Points and Authorities, the Declarations of B. James Fitzpatrick, Laura L. Franklin, and Plaintiff, the records and file herein, and on such other evidence as may be presented at the hearing of the motion.

Dated: July 9, 2025

FITZPATRICK & SWANSTON

By: *__/s/ B. James Fitzpatrick__*
B. James Fitzpatrick
Laura L. Franklin
Attorneys for Plaintiff,
Maria Guadalupe Mendez, on behalf of herself and all similarly aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA"), Plaintiff hereby moves the Court for an order approving the non-reversionary PAGA settlement as set forth in the concurrently filed Private Attorneys General Act Settlement Agreement (the "Settlement Agreement" or "Settlement")[2]. The Settlement concerns a PAGA group comprised of sixteen (16) individuals who were formerly employed by Juquilita Market, Inc. ("Defendant").

Plaintiff alleges that Defendant failed to accurately record and pay for all hours worked, failed to pay overtime wages, failed to provide complaint meal and rest periods, failed to reimburse for work-related expenses, and failed to issue accurate wage statements, resulting in violations of the PAGA based on Labor Code §§ 201, 202, 204, 226, 226.7, 510, 1174, 1194, 1197, 1199, 2699, 2802, and 2698.

As will be explained in further detail below, based on the California Supreme Court's opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as called for under the PAGA on behalf of the State of California and other similarly situated aggrieved employees, without seeking class certification or meeting the requirements of class certification (*i.e.*, numerosity, typicality, commonality, and adequacy). As such, while the PAGA settlement reached herein is on behalf of the State of California and other aggrieved employees, the usual two-step preliminary and final approval process is not required. Rather, as called for under Labor Code § 2699(l), all that is required is an approval by this Court of any settlement of the PAGA claims by the Parties. The Parties have reached such a PAGA settlement and now seek this Court's approval of their settlement, which provides for the payment of civil PAGA penalties.

As demonstrated below, the proposed settlement warrants the Court's approval. The

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[2] The Settlement Agreement is attached to the Declaration of Laura L. Franklin ("Franklin Decl.") as **Exhibit A**.

settlement was reached after the exchange of documents and information pertaining to the alleged aggrieved employees' claims, including documents reflecting their hours scheduled and worked and corresponding payments issued to them by Defendant. Further, the Settlement was reached after arms' length negotiations at mediation with a well-respected mediator who has extensive experience with complex wage and hour claims, Christopher Panetta of Fenton & Keller.

Pursuant to the terms of the Parties' proposed Settlement Agreement, Defendant will pay the total amount of Ten Thousand Dollars and No Cents ($10,000.00) (the "Gross Settlement Payment").[3] This amount encompasses a settlement of PAGA claims asserted in this lawsuit, attorneys' fees to Plaintiff's counsel in the amount of $3,300.00 (33.3% of the Gross Settlement Payment), Plaintiff's counsel's litigation costs not to exceed $2,500.00, a service award to Plaintiff in the amount of $1,000.00; and settlement administration costs in an amount not to exceed $1,500.

Based on the amounts above, the PAGA Fund will be at least $1,700.00. (Declaration of Laura L. Franklin ("Franklin Decl.") ¶ 4.) Pursuant to the PAGA, this amount includes approximately $1,275.00 to be distributed to the California Labor and Workforce Development Agency ("LWDA"), and approximately $425.00 to be distributed to the "PAGA Settlement Members," "all individuals who are or previously were employed by Defendant in California as hourly, non-exempt employees, at any time during the PAGA Period." (*Ibid.*; Settlement Agreement at ¶ 10.) The proposed settlement, moreover, does not release any substantive claims of PAGA Settlement Members, merely their rights to bring PAGA claims predicated on the same violations of the Labor Code raised in this Action that accrued during the PAGA Period. (Settlement Agreement at ¶ 15, 49; Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶ 4.)

In light of the above, the proposed settlement constitutes an adequate, fair, and

[3] The Gross Settlement Amount shall be paid in two installment payments. The first is due within one week of the Court approving the Settlement, and the second and final payment is due within six months after the Court approving the Settlement.

reasonable settlement on behalf of the State of California and PAGA Settlement Members and accomplishes the goals of PAGA.

II. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>

A. Summary of the Litigation and Settlement

Defendant owns and operates a small grocery store in Salinas, California (the "Market"), which includes an on-site restaurant (taqueria) and an on-site butcher shop. Plaintiff was employed by Defendant at the Market from August 2022 until on or about July 30, 2023, as a non-exempt cashier/stocker/server. (Franklin Decl. ¶ 6.)

Plaintiff alleges that she and other employees were subjected to Labor Code violations during their employment, including during the PAGA Period. Specifically, Plaintiff alleges that Defendant: (1) failed to accurately record and pay for all hours worked; (2) failed to pay premium overtime wages for daily and weekly overtime hours worked; (3) failed to provide employees with the opportunity to take compliant meal and rest breaks or premium pay in lieu thereof; (4) failed to reimburse employees for the required use of their personal cell phones for work; and (5) failed to provide accurate wage statements as required by Labor Code § 226(a). (Franklin Decl. ¶ 7.)

On October 26, 2023, Plaintiff submitted a Notice of Labor Law Violations ("PAGA Notice") to the Labor and Workforce Development Agency and Defendant asserting claims for civil penalties pursuant to PAGA predicated on violations of Labor Code §§ 201, 201.3, 202, 203, 204, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, and 2802. (Franklin Decl. ¶ 8.)

Defendant, via its counsel, reached out to Plaintiff's counsel after receiving the PAGA Notice and the separate letter from Plaintiff's counsel requesting Plaintiff's personnel and pay records. (Franklin Decl. ¶ 9.) Defendant informally shared information and documents pertaining to Plaintiff's claims, and the Parties subsequently agreed to participate in private mediation and entered into a tolling agreement. (*Ibid.*)

Prior to the mediation, Defendant Plaintiff's counsel with information and documents pertaining to the alleged aggrieved employees' claims, including copies of the wage statements and time records for each of the aggrieved employees and the applicable employee handbook. (Franklin Decl. ¶ 10.) The documents and information provided allowed Plaintiff's counsel to analyze liability and exposure in preparation for the mediation. (*Ibid*.)

On June 10, 2024, the Parties participated in a mediation with Christopher E. Panetta, Esq. regarding the claims presented by Plaintiff. (Franklin Decl. ¶ 11.) Although the case did not settle at mediation, the Parties continued to discuss resolution thereafter, with the mediator's assistance. (*Ibid*.)

In September 2024, the Parties entered into a Memorandum of Understanding ("MOU") that memorialized the essential terms of an agreed settlement that resolves the present PAGA action. (Franklin Decl. ¶ 12.) The MOU was fully executed on September 20, 2024. (*Ibid*.)

Mr. Panetta also assisted the Parties in reaching an agreement to settle Plaintiff's Individual Claims, which has since been memorialized in a separate Confidential Settlement Agreement and Release of Claims[4] (the "Confidential Individual Settlement"). (Franklin Decl. ¶ 13.)

On December 11, 2024, in accordance with the terms of the MOU, Plaintiff filed her PAGA complaint (the "Complaint"), so that the Parties could then seek the Court's approval of this PAGA settlement, as required by Labor Code § 2699. (Franklin Decl. ¶ 14.)

In January 2025, the Parties entered into the longform PAGA Settlement Agreement, which was fully executed January 10, 2025. (Franklin Decl. ¶ 15.) The material terms of the Settlement are described below and set forth in detail in the Settlement Agreement, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Laura L. Franklin.

III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT

A. The PAGA Settlement Members

The "PAGA Settlement Members" affected by this Settlement include "all individuals who are or previously were employed by Defendant in California as hourly, non-exempt

[4] Plaintiff's counsel will provide the Court with a copy of the Confidential Settlement Agreement and Release at the Court's request.

employees, at any time during the PAGA Period." (Settlement Agreement ¶ 10.) The PAGA Period commences on October 26, 2022, and ends on June 26, 2024 . (*Id.* ¶ 9.)

Based upon Defendant's records, there are sixteen (16) PAGA Settlement Members. (Franklin Decl. ¶ 17.) Defendant also represents that the total number of pay periods worked by PAGA Settlement Members during the PAGA Period is approximately 401. (Settlement Agreement ¶ 29.)

B. The Gross Settlement Amount

The Settlement Agreement requires Defendant to pay the Gross Settlement Payment of Ten Thousand Dollars and No Cents ($10,000.00). (Settlement Agreement ¶¶ 5, 28.) The terms of the Settlement Agreement provide for an award of attorneys' fees not to exceed $3,300.00 (33.3% of the Gross Settlement Payment), and reimbursement of litigation costs of up to $2,500.00 to Plaintiff's counsel[5]; a service award to Plaintiff in the amount of $1,000.00, and settlement administration costs of up to $1,500.00. (*Id.* at ¶¶ 30, 35, 36.)

C. Attorneys' Fees and Reimbursement for Litigation Costs

As part of the Settlement Agreement, Defendant does not object to Plaintiff's counsel's request for attorneys' fees of 33.3% of the Gross Settlement Payment ($3,300.00), plus reimbursement of litigation costs in the amount of $2,500.00, subject to the Court approving this Settlement. (Settlement Agreement ¶ 30.) Any portion of the attorneys' fees and costs not approved by the Court will be added to the PAGA Fund. (*Id.* ¶ 32.)

D. Service Award to Plaintiff

Plaintiff requests the payment of a Service Award in the amount of $1,000.00. This amount is intended to compensate Plaintiff for her efforts and work in prosecuting this case, including meeting and communicating with Counsel, reviewing the pleadings and documents in this case, and the Settlement Agreement. (Franklin Decl. ¶ 20.) Any portion of the Service Awards not approved by the Court shall be added to the PAGA Fund. (Settlement Agreement ¶ 36.)

[5] As explained below, Plaintiff's counsel seeks reimbursement of actual litigation costs in the amount of $1,065.25.

E. Settlement Administration Costs

The Settlement Agreement provides for the payment of fees and expenses reasonably incurred by the Settlement Administrator. (Settlement Agreement ¶ 33.) The Parties have agreed to utilize Phoenix Settlement Administrators to administer the Settlement, with the administration costs estimated not to exceed $1,500.00. (*Id.*; Franklin Decl. ¶ 21; Ex B.) Any portion of the settlement administration costs not approved by the Court shall be added to the PAGA Fund. (Settlement Agreement ¶ 34.)

F. The PAGA Fund

The PAGA Fund is the balance of the Gross Settlement Payment remaining after the deduction of the Court approved: (i) attorneys' fees ($3,300.00); (ii) litigation costs ($2,500.00); (iii) Service Award to Plaintiff ($1,000.00); and (iv) Settlement Administration Costs ($1,500.00). Counsel estimates that the PAGA Fund will be at least $1,700.00. (Settlement Agreement ¶ 37; Franklin Decl. ¶ 4.)

Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or approximately $1,275.00, will be distributed to the LWDA for PAGA penalties. (Settlement Agreement ¶ 3; Franklin Decl. ¶ 23.) The remaining twenty-five percent (25%) of the PAGA Fund, or approximately $425.00 will be distributed to the PAGA Settlement Members. (*Ibid*.)

The portion of the PAGA Fund distributed to the PAGA Settlement Members will be distributed on a *pro rata* basis, based on the number of pay periods each PAGA Settlement Member worked for Defendant during the PAGA Period divided by the aggregate total number of pay periods worked by all PAGA Settlement Members as non-exempt employees in California during the PAGA Period. (Settlement Agreement ¶ 41; Franklin Decl. ¶ 24.)

As noted above, there are 16 PAGA Settlement Members who collectively worked a total of approximately 401 pay periods during the PAGA Period. (Settlement Agreement ¶ 29; Franklin Decl. ¶ 17.) Based thereon, on a raw average, each PAGA Settlement Member may potentially recover approximately $26.56, or approximately $1.06 per pay period, from the portion of the PAGA Fund attributable to the PAGA Settlement Members. (Franklin Decl. ¶ 25.) The amount any particular PAGA Settlement Member will be entitled to recover will fluctuate depending on the number of pay periods he or she worked as a non-exempt employee in California during the PAGA Period. This is fair, as it directly allocates greater penalties to individual PAGA Settlement Members who have allegedly suffered greater harm.

G. Uncashed Checks.

Funds from any checks that have not been cashed within 180 days of issuance do not revert and shall be paid to the designated *cy pres* recipient: Watsonville Law Center. (Settlement Agreement ¶ 47). Counsel does not have any conflicts of interest with this designated recipient. (Franklin Decl. ¶ 26; Fitzpatrick Decl. ¶ *.)

H. Scope of the Released Claims

In exchange for the payments described above, Plaintiff and the PAGA Settlement Members will release the Released Parties from the following limited release:

> [A]ll claims for civil penalties pursuant to PAGA that were alleged, or could reasonably have been alleged, based on the facts stated in Plaintiff's Complaint filed on December 11, 2024 and/or in Plaintiff's PAGA Notice submitted to the LWDA, including such penalty claims premised on alleged violations of Labor Code §§ 201, 202, 204, 226, 226.7, 510, 1174, 1194, 1197, 1199, 2699, 2802, and 2698.

(Settlement Agreement at ¶¶ 15, 49.)

The Settlement does not release Defendant from violations of any predicate statutes other than PAGA and will not affect a waiver of individual claims by PAGA Settlement Members against Defendant for any of the underlying Labor Code claims. (*See Ibid.*) The release is expressly limited to claims for civil penalties under the PAGA pertaining to the Labor Code violations raised in this lawsuit that accrued during the PAGA Period, thereby excluding all non-PAGA claims. (*Id.*)

IV. <u>THE SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED</u>

A. PAGA Overview

Prior to the enactment of PAGA, many of the penalties provided against employers for violations of certain Labor Code provisions were solely within the province of the California Department of Labor to seek, enforce, and assess. (*Arias v. Superior Court*, *supra,* 46 Cal. 4th 969, 980.) However, due to the lack of financing to California's agencies and the potential number of Labor Code violations by California employers, the California Legislature found that it was in the public interest to allow aggrieved employees to act as private attorneys general and to enforce and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code violations committed by their employers. (*Id.*) As such, PAGA was enacted to allow such enforcement and recovery by private individuals who have been aggrieved by their employers.

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violation(s) alleged to have been violated by the employer. (*See* Cal. Labor Code § 2699.3, subd. (a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged violations or the time for the LWDA to investigate the violations passes, the aggrieved employee is allowed to proceed in a civil action against the employer on behalf of all other similarly aggrieved employees. (*See* Cal. Labor Code § 2699.3, subd. (a)(2)(A).)

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

Finally, in a settlement of a PAGA action brought by an aggrieved employee, the Superior Court must "review and approve any settlement of any civil action filed pursuant to" PAGA. (Cal. Lab. Code § 2699, subd. (l)(2).) As the Parties to this current PAGA action have reached such an agreement, the Parties now seek this Court's approval as to the settlement of the penalties amount.

B. The Settlement Effectuates the Objectives of PAGA

With respect to evaluating the reasonableness of the settlement of the PAGA claim, the Court's focus is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *See Moniz v. Adecco USA, Inc*., 72 Cal.App.5th 56, 77 (2021); *see also Kang v. Wells Fargo Bank, N.A*., 2021 WL 5826230, at *15 (N.D.Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals").

Here, the Settlement vindicates the rights of PAGA Group Members who have experienced alleged violations of the Labor Code. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016) ("If the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA"). The Settlement is also consistent with the State's public policy favoring resolution of disputes. "California law 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 intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal*., 3 Cal. 4th 273, 277- 278 (1992)).

C. Class Action Settlement Standards Do Not Govern the Settlement Approval Process for PAGA Claims

In class action cases, the purpose of the Court's preliminary evaluation of the settlement is to determine whether it is within the "range of reasonableness," and thus whether notice to the class of the terms and conditions of the settlement, and the scheduling of a formal fairness hearing, are worthwhile. (*See* Alba Conte & Herbert B. Newberg (4th ed. 2002 and Supp. 2004) *4 Newberg on Class Actions* § 11.25 *et seq.* and § 13.64 ("*Newberg*").) The "judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." (*Manual for Complex Litigation,* Fourth (Fed. Jud. Ctr., 4th ed. 2004) § 21.632.) To make the preliminary fairness determination, courts may consider several relevant factors, including "the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; [and] the experience and views of counsel…." (*See Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026.)

By contrast, court approval of PAGA settlements is governed by Section 2699(1) of the Labor Code, which provides, in relevant part: "The court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part." The Parties are not obligated to "satisfy class action requirements," including the standards for class action settlement approval. (*Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court's holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim).)

Notably, unlike the class action settlement approval process, there is also no statutory mechanism for this Court to conduct a two-step settlement approval review. (Cal. Lab. Code § 2699, subd. (1).) In addition, "[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim" or "contest a settlement, if any, reached between the parties." (*Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. 2010) 2010 WL 1340777, p. *13.)

D. The Scope of the Release is Appropriately Limited

The limited scope of the release supports approval of this PAGA settlement. If approved, the Settlement would release the Released Parties from claims to recover civil penalties under PAGA that accrued during the PAGA Period and are predicated on the underlying violations of the Labor Code or Wage Order that were alleged, or could have been alleged, in Plaintiff's complaint or notice letter to the LWDA in this action. (Settlement Agreement ¶¶ 15, 49.) The Settlement would ***not*** impact any other aggrieved employees' ability to pursue PAGA claims predicated on other allegations aside from those raised in this lawsuit or any Labor Code claims not predicated on the PAGA.

Because an aggrieved employee's PAGA action is a substitute for an action brought by the government, "judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." (*Arias*, 46 Cal. 4th at p. 986.) However, "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*Id.* at p. 987; *see also*, Cal. Lab. Code § 2699(g)(l) (non-party aggrieved employees retain all rights "to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part").)

Here, as described above, the PAGA Settlement Members will be subject to only a limited release strictly confined to the civil penalties under the PAGA based on the facts and Labor Code violations alleged in this action. (Settlement Agreement ¶¶ 15, 49.) The release is therefore appropriately tailored, and the settlement should be approved.

E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation

Although Plaintiff is reasonably confident that she would prevail at trial, proceeding in litigation entails significant risk on the underlying merits of Plaintiff's theory, in addition to the still-developing law under PAGA. (Franklin Decl. ¶ 27.)

1. Plaintiff's Claims are Contested

Plaintiff asserts that her representative PAGA claims are based on the allegations that Defendant failed to accurately record and pay for all hours worked, failed to pay premium overtime wages, failed to provide off-duty meal and rest periods, failed to reimburse employees for work-related expenses; and failed to provide accurate itemized wage statements. (Franklin Decl. ¶ 28.)

a. Unpaid Minimum and Overtime Wages

Plaintiff alleges that Defendant failed to pay for all hours worked. Defendant's time and pay records appear to show that employees' time worked was recorded to the minute and that employees were required to clock out for both meal and rest breaks (discussed below). However, Plaintiff's counsel found that the total hours worked shown on employees' time records is often significantly different from the total hours listed on the employees' corresponding wage statements. This appears to be, at least in part, due to an inconsistent rounding practice whereby time entries appear to be rounded to the nearest half hour for wage payment calculation purposes. Notably, Defendant appears to round up in favor of employees often, but not always, and the rounding practice is not consistent throughout the PAGA period. (Franklin Decl. ¶ 29.)

Moreover, Defendant's records show that it did not pay any overtime premium wages until November 2023, following its receipt of Plaintiff's PAGA notice. In Plaintiff's case, for example, she did not receive any overtime premium wages at any point during her employment, even though her regular schedule included 10-hour shifts on two days per week (8:00 a.m. to 6:00 p.m.). Rather, she and the other employees received the same straight-time hourly rate of pay, regardless of the number of daily and/or weekly overtime hours worked. (Franklin Decl. ¶ 30.)

b. Unlawful Meal and Rest Periods

Plaintiff also alleges that Defendant failed to provide off-duty meal and rest periods, requiring employees to remain at the premises and on-call to help customers during their break if needed. Defendant's records also reflect short and late meal periods and short rest periods (less than 10 minutes) taken by employees during the PAGA Period, with no premium pay provided to employees for such noncompliant breaks. (Franklin Decl. ¶ 31.)

Defendant, for its part, disputes that employees were required to remain on-call during breaks and denies the existence of a common policy that required employees to miss, delay, or interrupt their breaks to perform work-related tasks. Notably, the applicable Meal and Rest

Breaks policy produced by Defendant does not authorize or charge employees with the responsibility to take timely breaks. On the contrary, it says, "Your supervisor will let you know when you should take your breaks." The policy is also facially noncompliant regarding meal breaks, in that it limits the right to take a 30-minute breaks to employees "who work at least 8 hours in a day." (Franklin Decl. ¶ 32.)

c. Failure to Reimburse Business Expenditures

Plaintiff further alleges that Defendant regularly and consistently violated Labor Code section 2802 by failing to reimburse employees for expenses incurred in the performance of their duties, including expenses associated with the use of personal phones for mandatory work-related phone calls. (See *Cochran v. Schwan's Home Service, Inc*., 228 Cal.App.4th 1137, 1144 (2014) ("If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802").) Plaintiff produced documents affirming that her direct supervisor regularly communicated work-related instructions and questions to Plaintiff via text message to Plaintiff's personal cell phone, without reimbursement. Defendant denies that this practice extended to other employees and denies the existence of a common policy that required employees to use their cell phones for work. (Franklin Decl. ¶ 33.)

d. Wage Statements

Regarding Plaintiff's wage statement claim, as a further consequence of Defendant's failure to record the actual hours worked by Plaintiff and the employees, Defendant failed to provide the employees with complete and accurate itemized wage statements. (Franklin Decl. ¶ 34.)

2. The Potential Value of the PAGA Claims

Due to the discretionary nature of PAGA penalties, the probable value of claims for PAGA civil penalties is often difficult to evaluate. Assuming a $100.00 civil penalty for each of the estimated 401 pay periods worked by the 16 employees at issue, Defendant's maximum exposure for civil penalties under PAGA is approximately $41,000.00. (Franklin Decl. ¶ 35.) As such, the gross settlement amount of $10,000.00 equates to approximately 24% of the maximum potential value of the PAGA penalties at issue.

Although Plaintiff's Counsel believes Plaintiff's allegations have merit, counsel acknowledges that the claims are disputed, as described above. In addition, settling for nearly a quarter of the maximum potential PAGA penalties was reasonable, particularly given the small number of affected employees (16), the early stage in litigation, and the likelihood that attorneys' fees could quickly become a significant barrier to resolution if the matter proceeded to formal litigation. It is also notable that, upon receiving Plaintiff's PAGA Notice, Defendant appeared to be diligently working with its counsel to remedy its noncompliant practices and address the asserted PAGA claims. (Franklin Decl. ¶ 36.)

Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where "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." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such a reduction to be proper. *Id*. at 539; *see O'Connor*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to $1 billion, such award "could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").

Here, Plaintiff's Counsel recognizes that Defendant could make a compelling argument that the award of PAGA penalties would be confiscatory and that a full penalty award, especially when coupled with the cost of defense, would cripple Defendant's business and potentially result in bankruptcy. (Franklin Decl. ¶ 37.) Defendant may also point to the recent enactment of comprehensive amendments to PAGA with the July 1, 2024 signing of Senate Bill 92 and Assembly Bill 2288, which provide employers with new opportunities to substantially reduce or even eliminate PAGA penalties. While these reforms do not apply to cases such as this one where the civil action was filed or the PAGA notice was submitted to the LWDA prior to June

19, 2024 (Lab. Code, § 2699(v)(2)), Plaintiff acknowledges that this recent overhaul of PAGA may be considered by the Court when exercising its discretion to determine appropriate PAGA penalties in this action.

The Court's assessment of the proposed Settlement must take into account that any penalties awarded may be subject to substantial reduction. When this is considered, in conjunction with the history of PAGA case law and settlements, the recent PAGA reform, and the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable. Settlement for a reduced value allows for the distribution of penalties in an amount which accounts for the risk of continued litigation, and Defendant's likely arguments that higher penalties would have been confiscatory. It also sufficiently deters Defendant from engaging in similar conduct in the future, which is one of the primary goals of PAGA.

Based on the foregoing, and in consideration of the due process concerns related to penalizing Defendant disproportionately to the amount of damages at issue, and the discretionary nature of awarding penalties, it is reasonable to assume for resolution purposes, that a violation occurred in approximately one-fifth (or 0.2) of all pay periods resulting in a realistic, risk-adjusted exposure of $8,200.00 ($41,000.00 maximum exposure x 0.2). (Franklin Decl. ¶ 38.)

Here, the proposed settlement of $10,000.00 exceeds the *realistic, risk-adjusted* exposure (estimated at $8,200.00) and amounts to approximately 24% of the *maximum* potential exposure ($10,000.00 ÷ $41,000.00). (Franklin Decl. ¶ 39.) In either case, this percentage exceeds other PAGA settlements approved by courts. (*see, e.g.*, *Hopson v. Hanesbrands Inc*. (N.D. Cal. Apr. 3, 2009) 2009 WL 928133, *9 (approving total PAGA allocation that was 0.49% of $408,420.32 gross settlement; *Moore v. PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, *8 (approving total PAGA allocation that was 0.5% of $10,000,000 gross settlement); *Lusby v. Gamestop Inc*. (N.D. Cal. 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of $750,000 gross settlement).)

A PAGA allocation need not represent any particular percentage of the overall settlement value in order to secure court approval. As demonstrated by the cases cited above, the courts routinely approve PAGA settlements representing only a tiny fraction of the overall settlement value. The proposed settlement sum in this case vastly exceeds the percentage of overall settlement value of other PAGA settlements and should be approved by the Court.

F. The Attorneys' Fees are Reasonable

PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Lab. Code § 2699, subd. (g).) Similar to awarding fees in a class action, California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees for representative actions is to use a percentage of the total value of benefits to class members by the settlement. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("*Serrano III*"); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent*, 557 F. 2d at p. 769.)

The California Supreme Court has also held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported by a lodestar cross-check that employed a multiplier of 2.13. *Id*. at 487. The court in *Laffitte* explained that when cross-checking a percentage fee request against the lodestar method, the court should examine the imputed multiplier in the lodestar calculation and, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at 505.

When the primary method employed to determine fees is the percentage method, courts have discretion to use the lodestar method to "cross-check" the amount of fees calculated by way of percentage. The Laffitte court emphasized, however, that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig*., 396 F.3d 294, 306-307 (3d Cir. 2005) ("[The lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." *Id*. (emphasis added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines" one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check"); Report of the Third Circuit Task Force*, Court Awarded Attorney Fees,* 108 F.R.D. 237 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge.").

Courts find reasonable multipliers in a lodestar cross-check can "range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 255 (2001); *see also*, *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was affirmed in full by the California Supreme Court in its decision guiding lower courts on assessing fees.

With respect to Plaintiff's Counsel's lodestar, Plaintiff's Counsel will have expended approximately 54.7 hours litigating this case, which includes anticipated time spent after approval responding to correspondence and phone calls from PAGA Settlement Members, the Settlement Administrator, and defense counsel. (Fitzpatrick Decl. ¶ 4, Ex. A.) Plaintiff's Counsel requests a reduced hourly rate of $595.00 per hour. (Fitzpatrick Decl. ¶ 7.) Paralegals at Fitzpatrick & Swanston bill at a rate of $185.00 per hour. (Fitzpatrick Decl. ¶ 7.) The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time records are not required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey,* 447 U.S. 54, 62 (1980). The fee award should also include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which Plaintiff's Counsel seeks compensation involve only these types of tasks. Thus, the number of hours for which fees are sought is reasonable.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-33 (1998).

Plaintiff's counsel's skill and experience justify the requested rates. As shown in the supporting declarations, Plaintiff's counsel have significant experience in the area of employment and wage and hour actions. Specifically, Plaintiff's counsel's practice focuses on representing employees in employment matters, particularly wage and hour cases. (Franklin Decl. ¶¶ 40-41; Fitzpatrick Decl. ¶¶ 5-7.) As such, based on the hours and applicable rate, Plaintiff's Counsel's lodestar amount through the finalization of this settlement – without a multiplier – will be approximately $16,957.50. (Fitzpatrick Decl. ¶ 8.)

Once the court establishes the lodestar amount, it may enhance the lodestar number by applying a multiplier in order to adjust the fees awarded to an amount appropriate to the circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. Id., *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139 (2001).

Lealao contains several factors justifying an enhancement based on the percentage-of-the-benefit, namely, no objections, commendable conduct by counsel, and significant recoveries, all of which were previously detailed above. (*Lealao*, 82 Cal. App. 4th at 51-53.) The extreme effort undertaken by counsel, as shown by their hours and the significantly high amount of each claim being paid out, shows commendable conduct.

It is also critical to note that prompt settlement cannot be used to diminish the fee or the enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal. App. 4th at p. 52 (the promptness of settlement "cannot be used to justify the refusal to apply a multiplier").) According to *Lealao*, courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not punished, for achieving this goal in a timely fashion. (*Id.*)

Here, based upon Plaintiff's Counsel's lodestar of $28,560.00, Plaintiff's lodestar actually exceeds the fees requested, such that a negative multiplier is implicated. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) (noting that courts using the lodestar method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful litigation of this action. For these reasons, Plaintiff's Counsel's request for attorneys' fees in the amount of $3,300.00 should be approved as fair, reasonable, and adequate.

G. The Costs are Reasonable

Additionally, Plaintiff's Counsel's request for reimbursement of $2,500.00 is also reasonable, given that the actual PAGA-related litigation costs far exceed the allocated amount. Plaintiff's Counsel has incurred $5,314.95 in litigation costs to date and anticipates an additional $70.50 for costs related to this motion and the final accounting declaration, bringing the total to $5,385.45. Of this total, $3,020.50 is specifically allocated to the PAGA claim. (Fitzpatrick Decl. ¶ 12, Ex. B.) Although the total PAGA-related litigation costs exceed the requested amount, Plaintiff's Counsel is seeking only $2,500.00, absorbing the $520.50 difference between the actual costs and the allocated amount, as outlined in the settlement terms. As such, the requested costs should be awarded as fair and reasonable. (*Id.*)

H. The Settlement Administrator's Fees Should be Approved

The Parties have agreed to an estimated payment of $1,500.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. (Settlement Agreement ¶ 33-35.) Phoenix Settlement Administrators is a well-recognized class action settlement administrator and submitted the lowest bid of the two potential settlement administrators solicited by Plaintiff's Counsel. (Franklin Decl. ¶ 42.) The total settlement administration cost of $1,500—equating to $93.75 per aggrieved employee—is reasonable and appropriate given the size and nature of this case. (Franklin Decl. ¶ 43.) While the per-person cost is higher than in large-scale class actions, this is expected in a representative PAGA action with only 16 aggrieved employees, where fixed administrative tasks (including notice preparation with Spanish translation, payment distribution, tracking, and reporting) do not scale proportionally with group size. (*Ibid.*) The selected administrator's fee is within the standard range for small-group wage and hour settlements in California and reflects a fair and efficient use of settlement funds under the circumstances. Accordingly, the Parties believe that the administration fee is reasonable and should be approved. (Franklin Decl. ¶ 42.)

I. Notice to the LWDA Has Been Provided

Plaintiff uploaded the instant motion, the Settlement Agreement, and Proposed Order to the LWDA's portal. (Franklin Decl. ¶ 44.)

V. CONCLUSION

Based on the above, Plaintiff and Defendant mutually request that this Court grant approval to the PAGA settlement in this matter. The terms of the PAGA settlement completely comply with the requirements of the Labor Code, and are fair, reasonable and adequate.

As such, in accordance with PAGA and the relevant case law, including the seminal case of *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties respectfully request that this Court grant approval to the joint stipulation regarding the settlement.

Dated: July 9, 2025

FITZPATRICK & SWANSTON

By: */s/ B. James Fitzpatrick*
B. James Fitzpatrick
Laura L. Franklin
Attorneys for Plaintiff,
Maria Guadalupe Mendez, on behalf of herself and all similarly aggrieved employees

PROOF OF SERVICE

I am employed in the County of Monterey, State of California. I am over the age of 18 and not a party to the within action; my business address is FITZPATRICK & SWANSTON, 555 S. Main Street, Salinas, California 93901.

On the date written below, I served the foregoing document(s), described as

MOTION TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT

on the interested parties in this action as indicated below and by the following means:

Sharilyn R. Payne, Esq. SBN: 203700
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xx________________ **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served, addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 9, 2025, at Salinas, California.

/s/ Josie Favila
Josie Favila