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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

FIDENCIO MARTINEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

DELICATO VINEYARDS, LLC, a limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2024-5241

Assigned to the Honorable George J. Abdallah
in Department 10A

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO APPROVE PAGA
SETTLEMENT**

*[Filed with (1) the Declaration of Kane
Moon, (2) the Declaration of Jodey
Lawrence, (3) [Proposed] Order, and (4)
[Proposed] Judgment]*

PAGA APPROVAL HEARING:

Date: May 27, 2025
May 28, 2025
May 29, 2025
May 30, 2025
June 2, 2025

Time: 9:00 a.m.
Dept.: 10A

Action Filed: April 30, 2024
Trial Date: Not Set

1 **TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on _____, 2025, at 9:00 a.m. in Department 10A of
3 this Court located at 180 E. Weber Avenue Stockton, California 95202, Plaintiff Fidencio Martinez
4 (“Plaintiff”) will move the Court, pursuant to California Labor Code sections 2698, *et seq.*, for an
5 Order:

6 1. Approving the settlement of this representative action in the form agreed to by
7 Plaintiff and Defendant Delicato Vineyards, LLC in the PAGA Settlement Agreement (the “PAGA
8 Settlement”);

9 2. Appointing Plaintiff’s Counsel Moon Law Group, PC as PAGA Counsel, for
10 settlement purposes only, and approving PAGA Counsel’s application for attorneys’ fees and
11 litigation costs;

12 3. Appointing Phoenix Class Action Administration Solutions as the Administrator,
13 and approving payment for administration costs;

14 4. Approving the release of PAGA claims by Plaintiff and the Aggrieved Employees
15 in exchange for the settlement payments;

16 5. Directing consummation of the PAGA Settlement pursuant to its terms and
17 provisions;

18 6. Dismissing this action with prejudice;

19 7. Entering Judgment approving the PAGA Settlement; and

20 8. Without affecting the finality of the Judgment, retaining exclusive and continuing
21 equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms,
22 conditions, intents, and obligations of the PAGA Settlement.

23 This Motion will be based upon this notice, the attached Memorandum of Points and
24 Authorities, the supporting declarations, and exhibits thereto filed concurrently herewith, the records
25 and files in this action, and any other further evidence or argument that the Court may properly
26 receive at or before the hearing.

1 Dated: April 25, 2025

Respectfully submitted,

2 **MOON LAW GROUP, PC**

3
4 By: /s/ Lilit Ter-Astvatsatryan

Kane Moon

Lilit Ter-Astvatsatryan

5 Michael Citrin

6 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Fidencio Martinez (“Plaintiff”) seeks approval of a proposed non-reversionary
4 \$540,000.00 gross settlement of claims alleged against Defendant Delicato Vineyards, LLD
5 (“Defendant”) (together with Plaintiff, the “Parties”) for civil penalties pursuant to the California
6 Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). After a full day of
7 mediation with experienced neutral mediator Steven Rottman, Esq., the Parties reached a
8 settlement and thereafter executed a PAGA Settlement Agreement (the “PAGA Settlement” or
9 “Settlement”). (A true and correct copy of the PAGA Settlement is attached as Exhibit 1 to the
10 Declaration of Kane Moon in Support of Plaintiff’s Motion to Approve PAGA Settlement
11 [hereinafter “Moon Decl.”] submitted concurrently herewith.) Pursuant to Labor Code section
12 2699, subdivision (1)(2), Plaintiff now files this unopposed motion, seeking an order approving
13 the proposed PAGA Settlement.

14 The proposed Settlement resolves the PAGA claim alleged in this action which was based
15 on Defendant’s alleged failure to pay all minimum and overtime wages, failure to provide meal
16 and rest breaks, failure to indemnify necessary business expenses, failure to pay all wages owed
17 at the time of termination, and failure to provide accurate wage statements. The Settlement
18 resolves these claims on behalf of Plaintiff, the California Labor and Workforce Development
19 Agency (the “LWDA”), and all individuals who are or previously were employed by Defendant
20 in the State of California and classified as non-exempt or hourly-paid employees at any time during
21 the period from April 30, 2023 through the date of the approval of the Settlement (“Aggrieved
22 Employees”).

23 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
24 statute, which states that the “court shall review and approve any penalties sought as part of a
25 proposed settlement agreement pursuant to this part.” (Lab. Code § 2699(1)(2).) In deciding
26 whether to grant approval of the proposed Settlement, the primary issues to be decided is whether
27 the Settlement is fair, adequate, and reasonable. Specifically, the issues are whether the PAGA
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1 penalties to which the parties have agreed provide “genuine and meaningful” relief, “consistent
2 with the underlying purpose of the statute to benefit the public,” and whether the penalties are
3 reasonable in light of the potential verdict value in this case. (*Villalobos v. Calandri Sunrise Farm*
4 *LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709, at *5; *see also*
5 *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

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

12 The value achieved by the Settlement may be gleaned from the fact that the LWDA and
13 estimated **921** Aggrieved Employees will receive no less than **\$326,313.25**, which, pursuant to the
14 operative statute, shall be allocated as “75% to the [LWDA] and 25% to the aggrieved employees.”
15 (Lab. Code § 2699(i).¹) This is a significant recovery, not only because further litigation may have
16 resulted in a net-zero recovery based on the facts of the case and defenses asserted by Defendant,
17 the discretionary nature of awarding PAGA penalties, and the risk of not being able to proceed on
18 a representative basis at all due to the potential manageability issues and the current state of the
19 law. For these reasons, as set forth more fully herein, Plaintiff respectfully requests this Court
20 enter the proposed order and judgment submitted herewith.

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25 ¹ On July 1, 2024, new legislation was enacted to amend PAGA in several respects,
26 including as to the recovery split for civil penalties. (Stats. 2024, ch. 44 (Assem. Bill No. 2288),
27 § 1, eff. Jul. 1, 2024).) As amended, PAGA now provides for a 65%-LWDA/45%-aggrieved
28 employee split. (Lab. Code § 2699(m).) However, because Plaintiffs’ respective PAGA matters
were initiated prior to June 19, 2024, any civil penalties recovered in this action will be split 75%
to the LWDA and 25% to Aggrieved Employees as the recent PAGA amendments do not apply
retroactively. (Lab. Code § 2699(v)(1).)

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims and Procedural Background

Defendant is a winery with vineyards throughout California. (Moon Decl., ¶ 3.) Plaintiff worked for Defendant as a material handler from approximately January 2019 to March 2024 and was classified as non-exempt throughout his employment. (*Id.*) Plaintiff contends both he and his former coworkers were subjected to the same unlawful labor practices during their employment by Defendant, including failure to pay wages for all hours worked. (*Id.*)

Plaintiff's claim for unpaid wages stems is based on allegations of Defendant's pattern and practice of 1) underpaying employees due to its rounding practice, 2) not incorporating all remuneration in the regular rate of pay for purposes of paying overtime and sick pay, and 3) requiring employees to work off-the-clock without compensation. (*Id.* at ¶ 4.) Plaintiff's meal and rest period claims are based on allegations that due to the nature of their work and Defendant's employment practices, Plaintiff and other employees regularly experienced missed, untimely, or interrupted lunches and breaks. (*Id.*) Plaintiff also alleges he and Aggrieved Employers were required to use their personal cellphones for work purposes without reimbursement from Defendant. (*Id.*) Moreover, Plaintiff alleges he and Aggrieved Employees did not receive all wages owed at the time of termination and did not receive accurate itemized wage statements. Accordingly, Plaintiff alleges Defendant is liable for civil penalties under PAGA. (*Id.*)

On April 28, 2024, Plaintiff submitted a PAGA notice of alleged Labor Code violations to Defendant and the LWDA. (*Id.* at ¶ 5, Exh. 2.) Because of Defendant's alleged violations of various provisions of the Labor Code, Plaintiff filed a class action on April 30, 2024, which alleges Defendant systematically: (1) failed to pay minimum wages, (2) failed to pay overtime compensation, (3) failed to provide meal periods, (4) failed to authorize and permit rest periods, (5) failed to indemnify necessary business expenses; (6) failed to timely pay final wages at termination, (7) failed to provide accurate itemized wage statements, and (8) engaged in unfair business practices. (*Id.* at ¶ 5.)

1 On July 8, 2024, Plaintiff filed a First Amended Representative Action Complaint (the
2 “Operative Complaint”), adding a cause of action against Defendant for civil penalties pursuant under
3 the PAGA. (*Id.* at ¶ 6.) Plaintiff’s administrative exhaustion period expired without the LWDA
4 indicating its intent to investigate Plaintiff’s allegations. (*Id.*) In compliance with Labor Code section
5 2699 (I)(1), Plaintiff submitted to the LWDA a file-stamped copy of the Operative Complaint. (*Id.*)

6 Due to an arbitration agreement between Plaintiff and Defendant, the Parties stipulated to
7 submit Plaintiff’s individual claims to binding and final arbitration and for the Court to retain
8 jurisdiction over Plaintiff’s representative PAGA claim. (*Id.* at ¶ 7.) On August 1, 2024, the Court
9 entered an Order pursuant to the Parties’ stipulation. (*Id.*)

10 Defendant denies the allegations in the Operative Complaint, denies any failure to comply
11 with the laws identified in the Operative Complaint, and denies liability for any of the causes of
12 action alleged. (*Id.* at ¶ 8.)

13 **B. Discovery and Investigation**

14 Following the filing of Plaintiff’s complaint, the Parties met and conferred regarding an
15 agreement to mediate the action and further agreed to a protocol for an informal exchange of
16 documents and information before the mediation. (*Id.* at ¶ 9.) Prior to mediation, the Parties
17 engaged in informal discovery, including an exchange of sample data and demographic
18 information which allowed the Parties to meaningfully mediate this matter. (*Id.*) Specifically, prior
19 to mediation, Defendant provided the approximate number of Aggrieved Employees and pay
20 periods within the relevant period, documents regarding Defendant’s written employment policies,
21 Plaintiff’s personnel file and his time and payroll records, and a statistically significant sample of
22 time and payroll records of the Aggrieved Employees. (*Id.*)

23 After reviewing and analyzing documents regarding Defendant’s wage and hour policies
24 and practices, the sample time and pay records, and other information provided by Defendant and
25 Plaintiff, Plaintiff’s Counsel was able to evaluate the probability of success on the merits and
26 Defendant’s maximum and risk-adjusted monetary exposure. (*Id.* at ¶ 10.) Plaintiff’s Counsel
27 retained an expert to analyze the sample records produced and prepare a damage analysis prior to
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mediation. (*Id.*) The sample of time and pay records contained 3,544 pay periods that employees worked during the PAGA Period (representing approximately 14% of total pay periods worked in the PAGA Period), which allowed the expert to prepare an analysis with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation, Plaintiff's Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff's and Plaintiff's Counsel's familiarity with the facts of the case and the legal issues raised by the pleadings allowed them to act intelligently in negotiating the PAGA Settlement. (*Id.*)

C. Settlement Negotiations

On March 4, 2025, the Parties participated in private mediation with Steven Rottman, Esq., an experienced, professional, neutral, class action and PAGA mediator. (*Id.* at ¶ 11.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) Specifically, Defendant asserted that it properly paid its employees for all wages, that it does not allow its employees to work off-the-clock, that it did not fail to incorporate any remuneration into the regular rate as such remunerations were discretionary, that its rounding policy was neutral on its face, that many meal periods and rest breaks were taken, and where a violation appears, it was a result of an employee voluntarily choosing to forego a meal period or rest break, that it reimbursed its employees for all necessary business expenses incurred, and that Plaintiff's allegations are not representative but require individual proof. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a settlement, the material terms of which are encompassed within the PAGA Settlement. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) Plaintiff and his counsel considered the risk and uncertainty of the

1 outcome inherent in any litigation when determining whether this PAGA Settlement was the correct
2 option. (*Id.*)

3 **D. Key Terms of the Proposed PAGA Settlement**

4 Under the Settlement, Defendant will pay an all-inclusive, non-reversionary amount of
5 at least \$540,000.00 to resolve this litigation. (PAGA Settlement, ¶ 10.) In compliance with
6 California Labor Code section 2699, subdivision (l)(2), Plaintiff's Counsel submitted to the
7 LWDA a notice of settlement, a copy of the proposed PAGA Settlement, and the instant moving
8 papers. (*Id.* at ¶ 13, Exh. 3.) The Settlement's key terms include:

- 9 1. Aggrieved Employee: means all individuals who are or previously were employed
10 by Defendant in the State of California and classified as non-exempt or hourly-paid
11 employees at any time during the PAGA Period. (*Id.* at ¶ 2.)
- 12 2. PAGA Period: means the period from April 30, 2023 through the date of the
13 approval of the Settlement. (*Id.* at ¶ 9.)
- 14 3. Attorneys' Fees and Costs: One Hundred Seventy Eight Thousand, Two Hundred
15 Dollars (\$178,200), plus the reimbursement of all out-of-pocket costs and expenses
16 associated with Plaintiff's Counsel's litigation and settlement of the Action
17 (including expert/consultant fees, investigations costs, etc.), not to exceed Thirty
18 Thousand Dollars (\$30,000), both of which will be paid from the Gross Settlement
19 Amount. (*Id.* at ¶ 12.) Any portion of the Attorney's Fees and Costs not awarded to
20 Plaintiff's Counsel will be added to the PAGA Penalties Fund. (*Id.*) At this time,
21 Plaintiff's Counsel's costs are \$26,736.75. (*Id.*; Moon Decl., ¶ 19, Exh. 4.)
- 22 4. Settlement Administration Costs: The PAGA Settlement provides the Administrator
23 will be paid Settlement Administration Costs not to exceed \$8,750.00 for its fees
24 and expenses in administering this Settlement. (*Id.* at ¶ 13.) The Parties jointly
25 appoint Phoenix Class Action Administration Solutions ("Phoenix") as the neutral
26 entity to administer this PAGA Settlement based on its bid of \$8,750.00. (*Id.*) The
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proposed Administrator, Phoenix provided an estimate of \$8,750.00 for its costs. (Moon Decl., ¶ 20, Exh. 5.)

5. PAGA Penalties Fund: means the Gross Settlement Amount less the Attorneys' Fees and Costs, and Settlement Administrator Costs. (*Id.* at ¶ 6.) The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. (*Id.* at ¶ 11.) Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees. (*Id.*)
6. Individual PAGA Payments: Aggrieved Employees will be paid based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period in proportion to the total number of pay periods worked by all Aggrieved Employees. (*Id.* at ¶ 11(b).).
7. Tax Treatment: All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued. (*Id.* at ¶ 17.)
8. Escalator Clause: Defendant estimates that there are approximately Twenty-Five Thousand, Five Hundred (25,500) Pay Periods during the PAGA Period. If that number is incorrect by more than Ten Percent (10%), then the Gross Settlement Amount will be increased proportionately. (*Id.* at ¶ 11(c).) For example, if the number is eleven percent (11%) higher, then the Gross Settlement Amount will be increased by one percent (1%). (*Id.*) In the alternative, Defendant may elect to advance the end date of the PAGA Period to correspond to the last date on which the total number of Pay Periods was not in excess of Twenty-Eight Thousand and Fifty (28,050). (*Id.*)
9. Unclaimed Funds: Checks will remain negotiable for 180 days. (*Id.* at ¶ 17.) The

1 funds represented by un-cashed checks which remain outstanding 180 days after
2 the mailing of the Settlement checks by the Settlement Administrator will be
3 tendered to the California Department of Industrial Relations Unpaid Wage Fund
4 in the name of the Aggrieved Employees who did not cash their checks. (*Id.*)

5 10. Funding: Within thirty (30) calendar days after entry of the Order and Judgment,
6 Defendant will deposit the Gross Settlement Amount into the qualified settlement
7 fund to be established by the Settlement Administrator. (*Id.* at ¶ 16.)

8 After reviewing the facts, strengths, and weaknesses of the case, the risks and delays posed
9 by further litigation, and Plaintiff’s Counsel’s own prior litigation experience, Plaintiff’s Counsel
10 believe the proposed recovery for each Aggrieved Employee is fair, reasonable, and adequate, taking
11 into consideration the amounts received in other PAGA actions, the risks inherent in litigation of
12 this genre, and the reasonable tailoring of each Aggrieved Employee’s claim to the settlement award
13 he or she will receive. (Moon Decl., ¶¶ 24–34.) Defendant vigorously contested liability and
14 damages. (*Id.* at ¶¶ 8, 25.) Further, based on the settlement negotiations, which were hard-fought
15 and conducted in good faith and at arms’ length between attorneys with substantial experience
16 litigating class and representative actions, the Settlement was the product of a non-collusive
17 settlement process in which the Parties were forced to make significant compromises in the interest
18 of reaching a full and complete settlement of the lawsuit. (*Id.* at ¶ 11.)

19 **III. DISCUSSION**

20 **A. Availability of Civil Penalties**

21 The LWDA and its constituent departments and divisions are authorized to assess and
22 collect civil penalties for specified violations of the Labor Code committed by an employer.
23 With a stated goal of improving enforcement of existing Labor Code obligations, the California
24 Legislature adopted the Labor Code Private Attorneys General Act of 2004, permitting, as an
25 alternative, an aggrieved employee to initiate a private civil action “on behalf of himself or
26 herself and other current or former employees . . .” (Lab. Code § 2699(a).) The penalties
27 collected in these private civil actions are to be distributed 75 percent to the LWDA and 25
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1 percent to the aggrieved employees. (*Id.* at § 2699(i).) However, before an employee may file
2 an action seeking to recover civil penalties for violations of any of the Labor Code provisions
3 enumerated in Labor Code section 2699.5, he or she must comply with the Act’s administrative
4 procedures as set forth in Labor Code section 2699.3, subdivision (a), which include providing
5 notice to the LWDA and the employer of the alleged Labor Code violations, and then waiting
6 a prescribed period of time to permit the LWDA to investigate and to decide whether to cite
7 the employer for the alleged violations. (*Id.* at §§ 2699.3, 2699.5; *Caliber Bodyworks, Inc. v.*
8 *Superior Court* (2005) 134 Cal.App.4th 365, 370; *see also Dunlap v. Superior Court* (2006)
9 142 Cal.App.4th 330.)

10 Here, in compliance with Labor Code section 2699.3, Plaintiff provided notice to the
11 LWDA on April 28, 2024. (Moon Decl., ¶ 5, Exh. 2.) Plaintiff’s administrative exhaustion
12 period has since expired, and the LWDA did not indicate its intent to investigate Plaintiff’s
13 allegations. (*Id.*) Accordingly, Plaintiff may proceed with his PAGA representative action.

14 **B. The Settlement Warrants Approval**

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

17 **1. The Dual Statutory Purposes of Deterrence and Punishment**

18 As a result of this litigation, Defendant has had to hire legal counsel, engage in informal
19 discovery, and participate in mediation. Defendant is also now having to pay civil penalties to
20 the LWDA pursuant to the terms of the PAGA Settlement. Not including its own attorneys’
21 fees and costs, Defendant is paying \$540,000.00 to resolve this matter, and the release obtained
22 as a result of this Settlement does not preclude the Aggrieved Employees from seeking remedies
23 based on any individual claims they may have against Defendant or the other Released Parties.
24 (*See* PAGA Settlement, ¶ 19.)

25 **2. The Relief is Genuine, Meaningful, and Consistent with the**
26 **Underlying Purpose of the Statute to Benefit the Public**

27 The provisions of the California Labor Code triggering PAGA penalties in this case
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1 include Labor Code sections 203 and 226(a). (Moon Decl., ¶¶ 4–5, Exh. 2; Lab. Code §§ 203,
2 226(a).) PAGA penalties are not mandatory, but rather, permissive. (Lab. Code § 2699(e).)
3 Labor Code section 2699(e)(2) states, “a court may award a lesser amount than the maximum
4 civil penalty amount specified by this part if, based on the facts and circumstances of the
5 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
6 or confiscatory.” (Lab. Code § 2699(e)(2).) Accordingly, it is entirely possible that even if
7 Plaintiff would be successful at trial, assuming he is able to defeat the manageability issues
8 presented by the number of Aggrieved Employees in this action, Plaintiff may still be awarded
9 less than what was obtained through this Settlement.

10 Plaintiff’s Counsel have conducted a thorough investigation into the facts of this case.
11 (*Id.* at ¶ 32.) Based on the foregoing discovery and on their own independent investigation and
12 evaluation, Plaintiff’s Counsel are of the opinion that the Settlement is fair, reasonable, and
13 adequate. (*Id.*) Furthermore, in light of all known facts and circumstances, the risk of significant
14 delay, trial risk, appellate risk, the defenses that could be asserted by Defendant on the merits,
15 the PAGA Settlement is in the best interests of the Aggrieved Employees. (*Id.*) The PAGA
16 Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.*
17 at ¶ 34.) Although the Parties have engaged in a significant amount of investigation, informal
18 discovery, and employee data analysis, they have not participated in depositions and expert
19 discovery. (*Id.*) Moreover, preparation for trial would remain for the Parties as well as the
20 prospect of appeals. (*Id.*) As a result, the Parties would incur considerably more attorneys’ fees
21 and costs through trial. (*Id.*)

22 Based on Plaintiff’s Counsel’s analysis of the time, payroll, and additional records and
23 information provided by Defendant, on Plaintiff’s expert’s analysis of the sample time and
24 payroll records provided by Defendant, and on information from Plaintiff, Plaintiff’s Counsel
25 evaluated Defendant’s maximum and risk-adjusted potential exposure. (*Id.* at ¶ 24.) Although
26 Plaintiff’s expert’s analysis revealed that the time and payroll records supported several
27 violations by Defendant, the records themselves did not provide overwhelming evidence to
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1 support the case on a representative basis. (*Id.*)

2 Defendant estimates there are approximately 25,500 Pay Periods during the PAGA
3 Period. (*Id.* at ¶ 11(c).) At the time of the mediation, there were an estimated 921 Aggrieved
4 Employees. (*Id.* at ¶ 25.) Prior to mediation, Plaintiff's expert analyzed the sample time and
5 payroll records Defendant had produced and accordingly, was able to confirm Plaintiff's
6 allegations. (*Id.*) Plaintiff's expert found 4,608 unique meal period violations (33,083 when
7 extrapolated to all Aggrieved Employees) demonstrated by a review of the records, resulting in
8 an 19% violation rate. (*Id.*) Plaintiff's expert also found that 30.3% of pay periods contained
9 payments for overtime and additional compensation. (*Id.*) However, the expert's analysis also
10 revealed that certain claims were not as strong as originally believed. (*Id.*) For example,
11 Plaintiff's expert found that after accounting for meal break waivers, there were only 24,855
12 unique meal break violations when extrapolated to all Aggrieved Employees, resulting in an
13 14.1% violation rate. (*Id.*) Plaintiff's expert also found that only 5.3% of pay periods contained
14 payments for meal premiums and additional compensation, and only 0.03% of pay periods
15 contained payments for sick pay and additional compensation. (*Id.*) Moreover, many of
16 Plaintiff's allegations, such as the off-the-clock and reimbursement claims, would largely need
17 to be supported by declarations from Aggrieved Employees, and obtaining such declarations
18 potentially would reveal that each Aggrieved Employee had a different experience. (*Id.*) The
19 individualized nature of employees' employment experience and the numerosity of employees
20 affected present significant risk with manageability and proof on the merits. (*Id.*)

21 Assuming a \$100 civil penalty per pay period (total 25,500 estimated pay periods),
22 Defendant's maximum potential exposure in this Action for civil penalties under PAGA is
23 estimated to be \$2,550,000.00. (*Id.* at ¶ 26.) Although Plaintiff's Counsel believe there is merit
24 to Plaintiff's allegations, we acknowledge a legitimate controversy exists as to each allegation.
25 In other words, based on Plaintiff's Counsel's investigation and analysis, the maximum
26 exposure did not comport with the reasonable exposure that Defendant faced. (*Id.*) Specifically,
27 Defendant argued that it did not allow its employees to work off-the-clock and that it did not
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1 fail to compensate any employee for any off-the-clock work. (*Id.*) Plaintiffs’ expert also found
2 that Defendant’s exposure due to its alleged rounding policy was minimal as it was estimated
3 that only 0.4 minutes were underpaid per shift. (*Id.*) Defendant also argued that it reimbursed
4 its employees for any necessary business expenses incurred and that personal cellphone use
5 was not required for work purposes. (*Id.*) Defendant maintains its compliance with all its meal
6 and rest period obligations, and that any missed lunches or breaks was solely the result of
7 employees’ voluntary choice. (*Id.*) Defendant also argued that many Aggrieved Employees
8 waived their meal breaks and to the extent there were any violations, Defendants paid meal
9 premium payments. (*Id.*) To the employees who received wage statements that were allegedly
10 inaccurate, Defendant asserts they suffered no actual damage or harm as a result. (*Id.*) Based
11 on the foregoing and in consideration of the Due Process concerns related to penalizing
12 Defendant disproportionately to the amount of damages at issue, and the discretionary nature
13 of awarding penalties, it is reasonable to assume for resolution purposes, that a violation
14 occurred in approximately one-third of all pay periods resulting in a **realistic (risk-adjusted)**
15 **exposure of \$850,000.00** (\$2,550,000.00 / 3). (*Id.* at ¶ 29.)

16 The **\$540,000.00** settlement is an excellent result and amounts to “genuine and meaningful”
17 relief “consistent with the underlying purpose of the statute to benefit the public” **as it represents**
18 **approximately 64% of Defendant’s realistic recovery.** (*Id.* at ¶ 30; *Villalobos v. Calandri*
19 *Sonrise Farm LP* (C.D. Cal., July 22, 2015, No. CV 12-2615 PSG (JEMx)) 2015 WL 12732709,
20 at *5; *see also O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110,
21 1135.) This is an excellent result, particularly because, under the PAGA Settlement, Aggrieved
22 Employees will receive timely, guaranteed relief and will avoid the risk of not being able to
23 recover anything. (Moon Decl., ¶ 30.)

24 After the Settlement Administration Costs, Attorneys’ Fees and Costs to Plaintiff’s
25 Counsel, the amount estimated as the PAGA Penalties Fund for the LWDA and Aggrieved
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Employees is at least **\$326,313.25**.² (*Id.* at ¶ 31.) The PAGA Penalties Fund will be split with 75% going to the LWDA and 25% going to Aggrieved Employees on a pro rata basis in Individual PAGA Payments. (PAGA Settlement, ¶ 11.) Each Aggrieved Employee will receive payment directly proportional to the number of PAGA Pay Periods the Aggrieved Employee worked within the PAGA Period. (*Id.* at ¶ 11(b).) Accordingly, at least **\$244,735.94** (75% * \$326,313.25) will be available to the LWDA and **\$81,578.31** (25% * \$326,313.25) will be available to the estimated 921 Aggrieved Employees, which results in an average Individual Settlement Share of **\$88.48** (\$81,578.31 / 921 Aggrieved Employees) and a Pay Period value of **\$3.20** (\$81,578.31 / 25,500 Pay Periods) for each of the 25,500 estimated Pay Periods. (Moon Decl., ¶ 31.)

C. The Requested Attorney's Fees and Cost Award Should Be Approved

Under the PAGA Settlement, subject to the Court's approval, Defendant agree to pay Plaintiff's Counsel's reasonable attorneys' fees of \$178,200.00 (approximately 33% of the Gross Settlement Amount). (PAGA Settlement, ¶ 12.) Additionally, Defendant agrees to pay Plaintiff's Counsel's actual litigation costs up to \$30,000.00. (*Id.*) To date, Plaintiff's Counsel have incurred \$26,736.75 in actual litigation costs. (Moon Decl., ¶ 19, Exh. 4.)

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

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

² The PAGA Penalties Fund amount is \$540,000.00 minus: \$26,736.75 for Plaintiff's Counsel's litigation costs, \$178,200.00 for Plaintiff's Counsel's attorneys' fees, and \$8,750.00 for administration costs. (PAGA Settlement, ¶ 6.)

Plaintiff's Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. (Moon Decl., ¶ 56.) The purpose of this approach is to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of Cal.* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons[] are entitled to share." (*Id.* at pp. 110–11 [pincite omitted].) The reasons for applying the common fund doctrine include:

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

(*Id.* at p. 111.):

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

This court is compelled to ask, "Is this process necessary?" Under a cost-benefit analysis, the answer would be a resounding, "No!" Not only do the *Lindy* and *Kerr-Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but, in fact, it may be to the detriment of the class members.

(*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar

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

7 **2. The Requested Fee Is in Line with Typical Cases**

8 According to a leading treatise on class actions: “No general rule can be articulated on
9 what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on
10 a reasonable fee award from a common fund in order to assure that the fees do not consume a
11 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
12 are not unprecedented.” (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys’
13 fees that are 50% of the fund are typically considered the upper limit, with 30–40% commonly
14 awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic*
15 *Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases where 30–50% was
16 awarded involved “smaller” settlement funds of under \$10 million].)

17 Here, Plaintiff requests attorneys’ fees equal to 33% of the Gross Settlement Amount,
18 which is in line with the prevailing guidelines established under California case law and in
19 academic literature and is consistent with awards in California. (*Compare* PAGA Settlement, ¶
20 12, *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show
21 that, regardless whether the percentage method or the lodestar method is used, fee awards in
22 class actions average around one-third of the recovery.”].) Accordingly, Plaintiff respectfully
23 requests that the Court approve attorneys’ fees as negotiated by the Parties.

24 **3. The Matter Involves a Fee Shifting Provision**

25 Labor Code section 2699 provides for the recovery reasonable attorney’s fees as well as
26 costs of suit. (Lab. Code § 2699(g)(1).) Under this provision, Plaintiff would be permitted to
27 recover his actual attorneys’ fees, even if those fees were larger than the total recovery for the
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1 Aggrieved Employees at the conclusion of this case. (*Id.*)

2 This PAGA Settlement is beneficial in that it limits the risk of continued expenses and
3 consumption of time, energy, and resources facing Defendant while at the same time rewarding
4 Plaintiff's Counsel for their decision to assume risk by taking on this matter. In fact, prosecution
5 of this action involved significant financial risk for Plaintiff's Counsel. (Moon Decl., ¶¶ 60–
6 65.) Plaintiff's Counsel undertook this matter solely on a contingent basis, with no guarantee
7 of recovery. (*Id.*) Once Counsel undertook this litigation on behalf of the Aggrieved Employees,
8 they committed to pursue it to its conclusion, placing their fiduciary duty to the Aggrieved
9 Employees ahead of all other concerns. (*Id.* at ¶ 62.)

10 **4. The Experience, Reputation, and Ability of Plaintiff's Counsel**

11 **Support the Requested Fee Award**

12 As demonstrated by their past experience in pursuing class and representative actions
13 on behalf of employees, Plaintiff's Counsel possess considerable expertise in litigating class
14 action and representative matters. (*Id.* at ¶¶ 36–53.) Plaintiff's Counsel have been involved as
15 lead counsel or co-counsel in a multitude of class and representative actions resulting in
16 beneficial results to class members and aggrieved employees in California. (*Id.*) Because it is
17 reasonable to compensate Plaintiff's Counsel commensurate with their skill, reputation, and
18 experience, Plaintiff's Counsel's requested fee award is supported here.

19 Plaintiff's Counsel's experience in wage and hour class and representative actions was
20 integral in evaluating the strengths and weaknesses of the case against Defendant and the
21 reasonableness of this Settlement. (*Id.* at ¶ 54.) Practice in the narrow field of wage and hour
22 litigation requires skill and knowledge concerning the rapidly evolving substantive law (state
23 and federal), as well as the procedural law of representative action litigation. (*Id.* at ¶ 52.) Based
24 on these and other factors, Plaintiff's Counsel have frequently received fee awards of this
25 percentage from the gross recovery for aggrieved employees. (*See id.* at ¶¶ 40, 46.) Therefore,
26 the requested fee award is reasonable and fair.

1 **5. While the Lodestar Method is Not Necessary in Common Fund**
2 **Cases, the Court May Perform a Cross-Check to Award Fees**

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

18 Although California Courts support the common fund doctrine, the lodestar method can
19 be used to cross-check fee awards. “It may be appropriate in some cases, assuming the class
20 benefit can be monetized with a reasonable degree of certainty, to ‘cross-check’ or adjust the
21 lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
22 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
23 litigation.” (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao*,
24 *supra*, 82 Cal.App.4th at pp. 49–50].)

25 Applying the lodestar method is a two-step process. The first step is to multiply the
26 number of hours reasonably expended by a reasonable hourly rate, and the second step is to
27 apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) “The purpose of
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1 such adjustment is to fix a fee at the fair market value for the particular action. In effect, the
2 court determines, retrospectively, whether the litigation involved a contingent risk or required
3 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to
4 approximate the fair market rate for such services.” (*Id.*) “Under certain circumstances, a
5 lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.*
6 at pp. 556–57.) Further, “California case law permits fee awards in the absence of detailed time
7 sheets.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255.)

8 Moreover, the use of a multiplier is permitted in a PAGA action. PAGA provides that
9 “[a]ny employee who prevails in any action shall be entitled to an award of reasonable
10 attorney’s fees and costs.” (Lab. Code § 2699(g)(1).) Although, PAGA does not provide a
11 specific standard for evaluating attorneys’ fees in connection with a settlement of PAGA
12 claims, California Courts have employed a lodestar analysis and use of multipliers for this
13 purpose. “Where a settlement produces a common fund for the benefit of the entire class, courts
14 have discretion to employ either the lodestar method or the percentage-of-recovery method. . .
15 . To guard against an unreasonable result, the Ninth Circuit encourages district courts to “cross-
16 check[] their calculations against a second method. . . . Accordingly, the Court calculates
17 attorneys’ fees in the instant case using the percentage-of-recovery method and then cross-
18 checks its calculations against the lodestar method.” (*Hermosillo v. Davey Tree Surgery Co.*
19 (N.D. Cal. July 7, 2021, No. 18-CV-00393-LHK) 2021 WL 2826697, at *1 [quoting *In re*
20 *Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 942, 944–45].)

21 Here, Plaintiff’s Counsel’s current lodestar is *no less than* **\$98,370.00**, which is based
22 on approximately **124.4 hours** of attorney time at their customary hourly rates. (Moon Decl., ¶
23 57.) Accordingly, the fee request represents **a multiplier of roughly 1.81**. (*Id.* at ¶ 60(c).)
24 Additionally, Plaintiff’s Counsel estimate they will devote no less than 10 hours, although
25 likely more time, to additional tasks, which are hours not included in the foregoing lodestar
26 total. (*Id.* at ¶ 58.) These additional hours will include time spent to obtain and monitor approval
27 of the PAGA Settlement and requested awards, oversee the settlement administration process
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1 and distribution of funds, respond to inquiries, and communicate with Plaintiff regarding the
2 case. (*Id.*) The amount of fees requested under the Settlement is warranted based on the
3 contingent risk that Counsel incurred, the difficulty of the questions involved, the substantial
4 benefit conferred on the Aggrieved Employees and State of California as a result of the
5 Settlement, and the skill displayed by Plaintiff's Counsel. Thus, the request for attorneys' fees
6 satisfies a lodestar check.

7 **6. Plaintiff's Counsel's Costs Are Reasonable**

8 Plaintiff's Counsel are entitled to recover the out-of-pocket costs and litigation expenses
9 they reasonably incurred in investigating, prosecuting, and settling this case. (*Staton v. Boeing*
10 *Co.* (9th Cir. 2003) 327 F.3d 938, 974.) Under the proposed PAGA Settlement, Plaintiff's
11 Counsel may request reimbursement of costs up to \$30,000.00. (PAGA Settlement, ¶ 17.) As
12 of the drafting of this motion, Plaintiff's Counsel have incurred \$26,736.75 in actual costs.
13 (Moon Decl., ¶ 64, Exh. 4.) These expenses were reasonably necessary to the litigation and
14 were actually incurred by Plaintiff's Counsel and are below the maximum amount allowed
15 under the Settlement. (*Id.* at ¶ 64.) Therefore, the expenses should be reimbursed in full. (*Id.*)

16 **IV. CONCLUSION**

17 For the foregoing reasons, Plaintiff respectfully requests that the Court grant approval
18 of the proposed settlement and sign the proposed order and proposed judgment submitted
19 herewith.

20 Dated: April 25, 2025

Respectfully submitted,

21 **MOON LAW GROUP, PC**

22 By: /s/ Lilit Ter-Astvatsatryan

23 Kane Moon
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