

1 **POTTER HANDY, LLP**

2 JAMES M. TREGLIO, SBN 228077

3 JimT@potterhandy.com

4 100 Pine St., Ste 1250

5 San Francisco, CA 94111

6 Telephone: (858) 375.7385

7 Facsimile: (888) 422-5191

8 *Attorney for Plaintiff Jenny Hines, in her capacity as Private Attorney General Representative*

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 JENNY HINES, an individual, on behalf of
12 the State of California, as a private attorney
13 general, and on behalf of all aggrieved
14 employees,

15 Plaintiff,

16 v.

17 FIELD AGENT, INC., a Delaware
18 corporation; and DOES 1 to 100, inclusive

19 Defendants.

CASE NO: 20STCV24579

Hon. Kenneth R. Freeman / Dept. 14

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF
SETTLEMENT AND ENTRY OF
JUDGMENT; DECLARATION OF JAMES
M. TREGLIO; [PROPOSED] JUDGMENT**

Hearing:

Date: November 28, 2023

Time: 8:30 a.m.

Dept.: 14

20 TO THE COURT, THE PARTIES, AND THEIR ATTORNIES OF RECORD

21 Please take notice that on November 28, 2023 at 8:30 a.m. or as soon thereafter as counsel
22 may be heard in Department 14 of the above-entitled Court, Plaintiff Jenny Hines ("Plaintiff") will
23 move for an Order granting final approval of settlement.

24 This Application is made on the grounds set forth in the accompanying materials. This
25 Application will be based upon this notice, the points and authorities set forth below, the attached
26 declaration, and the complete files and records in this action. A proposed judgment is lodged
27 concurrently herewith.

1 Dated: November 3, 2023

POTTER HANDY, LLP

2
3 /s/ James M. Treglio

4 By: _____
5 James M. Treglio

6 *Attorney for Plaintiff Jenny Hines, in her capacity*
7 *as Private Attorney General Representative*
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Contents

TABLE OF AUTHORITIES.....	II
I. INTRODUCTION.....	1
II. THE GOALS OF PAGA AND ITS REQUIREMENTS	2
III. BECAUSE THE EMPLOYEES HAVE NO SUBSTANTIVE CLAIMS, TRADITIONAL NOTICE IS NOT REQUIRED	5
IV. RELEVANT ISSUES IN THE CURRENT LITIGATION AND INVESTIGATION AND DISCOVERY REGARDING DEFENDANT’S LABOR PRACTICES, AND RISKS ASSOCIATED WITH LITIGATION.....	6
V. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES.....	7
A. Summary of Settlement Terms	7
B. Payment and the Notice.....	7
C. Settlement Allocation to the PAGA Settlement Group Members.....	8
D. The Release	8
VI. THE SETTLEMENT IS FAIR AND REASONABLE AND WARRANTS COURT APPROVAL	9
A. Evaluation of the PAGA Settlement.....	9
B. Discounting Penalties for Purposes of Settlement.....	11
VII. PHENOMENAL RESULTS FOR THE STATE AND THE PAGA GROUP MEMBERS.....	ERROR! BOOKMARK NOT DEFINED.
VIII. THE ATTORNEY’S FEES AND COSTS SHOULD BE AWARDED	12
IX. THE REPRESENTATIVE AWARD SHOULD BE GRANTED.....	ERROR! BOOKMARK NOT DEFINED.
X. SUBMISSION TO THE LWDA.....	12
XI. THE SETTLEMENT ADMINISTRATOR	12
XII. CONCLUSION	13

Table of Authorities

Cases

<i>Amalgamated Transit Union, Local 1756 v. Superior Court</i> (2009) 46 Cal.4th 993, 1003	2, 3
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591, 613-17 (1997)	2
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969, 986	2, 4, 5, 8
<i>Baumann v. Chase Investment Services Corp.</i> , 747 F.3d 1117, 1123-24 (9th Cir. 2014).....	3, 5
<i>Caliber Bodyworks, Inc. v. Super. Ct.</i> , 134 Cal.App.4th 365 (2005)	3
<i>Casida v. Sears Holding Corp</i> , 2012 WL 253217, at*3 (E.D.Cal. Jan. 26, 2012).....	4
<i>Concepcion</i> , 131 S.Ct. at 1751-52.....	5
<i>Doe v. Google, et al.</i> , Case No. CGC-16-556034	13, 14
<i>Dunk v. Ford Motor Company</i> (1996) 48 Cal.App. 4th 1794, 1802	10
<i>Franco v. Athens Disposal Co.</i> , 171 Cal.App.4th 1277 (2009).....	3
<i>In re Marriage of Biddle</i> (1997) 52 Cal.App.4th 396, 399	4
<i>Iskanian v. CLS Transportation</i> , 59 Cal.4th 348 (2014)	2, 3, 4
<i>Libby v. Psycare Associates, Inc., et al.</i> , Case No. 37-2019-00030656-CU-OE-CTL	14
<i>Mallick v. Superior Court</i> (1979) 89 Cal.App. 3d. 434.....	10
<i>Officers of Justice v. Civil Service Com’n of City and County of San Francisco</i> (9th Cir. 1995) 688 F.2d. 615, 624	10
<i>Ortiz v. Fibreboard Corp.</i> , 527 U.S. 815, 832- 33 (1999)	2
<i>Pedroza v. Petsmart, Inc.</i> , at*15 (C.D. Cal. Jan. 28, 2013)	4
<i>Ricci v. HSS</i> , Yuba County Superior Court No. CVCV17-00967.....	12
<i>Sakkab v. Luxottica Retail North America, Inc.</i> , 803 F.3d 425, 435-436 (9th Cir. 2015).....	2, 3, 5
<i>Sample v. Big Lots Stores, Inc.</i> , No. C 10-03276 SBA, 2010 WL 4939992 at *3 (N.D. Cal. Nov. 30, 2010).....	3
<i>Sanders v. Pacific Gas & Elec. CO.</i> (1975) 53 Cal.App.3d 661, 671	3
<i>Thomas v. Aetna Health of Cal. Inc.</i> , 2011 WL 2173715, at *11 (E.D. Cal. June 2, 2011)	4

Statutes

Cal. Lab.Code § 2699(g)(l)	2
Cal. Labor Code Section 2698 et seq.	1
California Lab. Code §2698(l)	1, 5
Fed.R.Civ.P. 23	2
Labor Code § 2802	2, 7
Labor Code §226	11
Labor Code §2699(1)(2).....	4, 9, 14
Labor Code §2699(f)(2)	4
Labor Code §2699(i)	4
Rule 23.....	3
Rule 23(a)	5
Rule 23(c)(2)	5
Rules 23(a)(4) and (g)	5

I. Introduction

This is a PAGA action involving secret shoppers and others who performed task-based market research (“Agents”) for the Defendant, Field Agent, Inc., which classified Agents as independent contractors while Defendant was continuing its California operations. In this case involving wage and hour claims on behalf of Agents i.e., the aggrieved employees, Plaintiff Jenny Hines (“Plaintiff”), individually and serving as the representative for the State of California, and her counsel sought civil penalties against Defendant. While Ms. Hines’ claims are substantial, the vast majority of the Allegedly Aggrieved Employees worked less than 1 hour per workweek as Agents.

This motion seeks approval of non-reversionary settlement for \$135,000 in an action alleging certain Labor Code violations, which Plaintiff brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”) on behalf of all current and former Agents in the State of California at any time from March 10, 2019 up to and including the date the Court approves the Settlement between Plaintiff and Defendants (“Allegedly Aggrieved Employees”). Based on the latest information provided by Defendants, the number of Agents (Allegedly Aggrieved Employees) for mediation purposes was estimated at approximately 9,464, although only 60% of Agents completed 5 or fewer shopping assignments over the course of 3.5 years. Reflecting the fact that Agents performed one-off tasks and worked only sporadically, each Agent earned, on average, \$83.00 over the course of an entire year. Only 1% of the total Allegedly Aggrieved Employees figure will get the lion’s share of the settlement. PAGA is codified at Cal. Labor Code Section 2698 et seq. and provides:

The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

California Lab. Code §2698(l).

1 On or about March 10, 2020, Plaintiff sent notice to the LWDA, exhausting administrative
2 remedies under the PAGA for misclassification as independent contractors, failure pay for all
3 hours worked, failure to pay overtime wages, failure to provide accurate wage statements and
4 maintain accurate records, failure to provide meal periods or pay premiums in lieu thereof, failure
5 to provide rest periods, pay for rest periods, or pay premiums in lieu thereof, and improper
6 deductions from wages and failure to reimburse. The LWDA did not respond to the notice within
7 the statutorily required time frame and, as such, Plaintiff became authorized to act as Private
8 Attorneys General on all alleged PAGA claims.

9 After exhausting administrative remedies, Plaintiff filed a Complaint on June 26, 2020, in
10 Los Angeles County Superior Court on behalf of herself and the Allegedly Aggrieved Employees
11 for claims alleged in the March 10, 2020 notice to the LWDA. In his Complaint, Plaintiff contends
12 that Defendants violated California law by misclassifying Plaintiff and the Allegedly Aggrieved
13 Employees as independent contractors, failing to pay for all hours worked, failing to pay overtime
14 wages, failing to provide accurate wage statements and maintain accurate records, failing to
15 provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay
16 premiums in lieu thereof, and making improper deductions from wages and failure to reimburse.

17 The settlement reached by the parties is intended to resolve the entirety of this matter on
18 behalf of Plaintiff and all current and former Agents in the State of California from March 10,
19 2019 up to and including the date the Court approves the Settlement between Plaintiff and
20 Defendant.

21 II. The Goals of PAGA and Its Requirements

22 In 2003, the Legislature passed the PAGA, recognizing the historic underfunding of the
23 LWDA and its Division of Labor Standards & Enforcement (“DLSE”).

24 The goals of PAGA as set forth in decisions of California courts and the Ninth Circuit are
25 met in this Settlement Agreement. PAGA was enacted to obtain broader compliance with the
26 State’s labor laws. While procedurally a PAGA claim may be filed as a class action, a PAGA
27 claim is really an enforcement action pursued on behalf of the California Labor and Workforce
28 Development Agency which is the real party in interest. *Arias v. Superior Court* (2009) 46 Cal.4th

1 969, 986. The aggrieved employees have no substantive claims that may be asserted under PAGA.
2 *Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993, 1003.

3 The differences between a traditional class action and a PAGA suit are well summarized in
4 *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 435-436 (9th Cir. 2015) en banc
5 review denied (2016). Following the California Supreme Court's decision in *Iskanian v. CLS*
6 *Transportation*, 59 Cal.4th 348 (2014), the Ninth Circuit explained:

7 The class action is a procedural device for resolving the claims of absent parties
8 on a representative basis. See Fed.R.Civ.P. 23; *Ortiz v. Fibreboard Corp.*, 527
9 U.S. 815, 832- 33 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-17
10 (1997). By contrast, a PAGA action is a statutory action in which the penalties
11 available are measured by the number of Labor Code violations committed by the
12 employer. An employee bringing a PAGA action does so "as the proxy or agent of
13 the state's labor law enforcement agencies," *Iskanian*, 59 Cal.4th at 380 (quoting
14 *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009)), who are the real parties in
15 interest, see *id.* at 382. As the state's proxy, an employee-plaintiff may obtain civil
16 penalties for violations committed against absent employees, Cal. Lab.Code §
2699(g)(1), just as the state could if it brought an enforcement action directly.
However, by obtaining such penalties, the employee-plaintiff does not vindicate
absent employees' claims, for the PAGA does not give absent employees any
substantive right to bring their "own" PAGA claims. See *Amalgamated Transit*
Union. Local 1756, AFL-CIO v. Superior Court, 46 Cal .4th 993. 1003 (2009);
see also *Iskanian*, 59 Cal.4th at 381 (explaining that "[t]he civil penalties
recovered on behalf of the state under the PAGA are distinct from the statutory
damages to which employees may be entitled in their individual capacities").

17 *Sakkab*, *supra* at 435-436.

18 The approval process is different in a PAGA case as compared to a traditional class action.
19 While the aggrieved employees are to receive 25% of the penalties collected by the State, this is
20 not a substantive right they hold. Rather it is merely a sum to incentivize the bringing of a suit on
21 behalf of the State:

22 The nature of PAGA penalties is also markedly different than damages sought in
23 Rule 23 class actions. In class actions, damages are typically restitution for
24 wrongs done to class members. But PAGA actions instead primarily seek to
25 vindicate the public interest in enforcement of California's labor law. See *Sample*
26 *v. Big Lots Stores, Inc.*, No. C 10-03276 SBA, 2010 WL 4939992 at *3 (N.D. Cal.
27 Nov. 30, 2010); *Franco v. Athens Disposal Co.*, 171 Cal.App.4th 1277 (2009).
28 The bulk of any recovery goes to the LWDA, not to aggrieved employees. And,
the twenty-five percent portion of the penalty awarded to the aggrieved employee
does not reduce any other claim that the employee may have against the employer
– in this case, for example, for withheld overtime pay. See *Caliber Bodyworks,*
Inc. v. Super. Ct., 134 Cal.App.4th 365 (2005). The employee's recovery is thus

1 an incentive to perform a service to the state, not restitution for wrongs done to
2 members of the class.

3 In the end, Rule 23 and PAGA are more dissimilar than alike. A PAGA action is
4 at heart a civil enforcement action filed on behalf of and for the benefit of the
5 state, not a claim for class relief.

6 *Baumann v. Chase Investment Services Corp.*, 747 F.3d 1117, 1123-24 (9th Cir. 2014). That the 25
7 percent does not make the employees real parties in interest is clear from *Iskanian*:

8 A PAGA representative action is therefore a type of qui tam action.
9 “Traditionally, the requirements for enforcement by a citizen in a qui tam action
10 have been (1) that the statute exacts a penalty; (2) that part of the penalty be paid
11 to the informer; and (3) that, in some way, the informer be authorized to bring suit
12 to recover the penalty.” (*Sanders v. Pacific Gas & Elec. CO.* (1975) 53
13 Cal.App.3d 661, 671 (*Sanders*). The PAGA conforms to these traditional criteria,
except that a portion of the penalty goes not only to the citizen bringing the suit
but to all employees affected by the Labor Code violation. The government entity
on whose behalf the plaintiff files suit is always the real party in interest in the
suit. (See *In re Marriage of Biddle* (1997) 52 Cal.App.4th 396, 399.)

14 *Iskanian*, supra at 382.

15 The settlement of a PAGA claim requires court approval pursuant to Labor Code
16 §2699(1)(2) (“the superior court shall review and approve any settlement of any civil action
17 pursuant to this part”). However, “[a] PAGA claim asserted on a non-class representative
18 basis...is not considered a class action but a law enforcement action.” One does not have to meet
19 the requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at*3
20 (E.D.Cal. Jan. 26, 2012); *Thomas v. Aetna Health of Cal. Inc.*, 2011 WL 2173715, at *11 (E.D.
21 Cal. June 2, 2011); *Arias v. Superior Court*. 46 Cal.4th 969. 980-88 (affirming the lower court’s
22 holding that “plaintiff need not satisfy class action requirements” to assert a PAGA claim).
23 *Pedroza v. Petsmart, Inc.*, at*15 (C.D. Cal. Jan. 28, 2013)

24 PAGA provides that aggrieved employees may bring actions to recover civil penalties.
25 Those civil penalties are generally \$100 per employee per pay period for an initial violation and
26 \$200 per employee per pay period for subsequent violations. Labor Code §2699(f)(2). Of any civil
27 penalties collected, 75 percent belongs to the LWDA and 25 percent belongs to the aggrieved
28

1 employees. Labor Code §2699(i).

2 The appropriate focus of the Court’s review in the case at bar should be on whether the
3 settlement enhances the State’s enforcement of its wage orders and whether it does so by a
4 meaningful civil penalty paid to the LWDA. It is submitted that the monetary aspect of this
5 settlement clearly meets this standard. While the total settlement of \$135,000.00 for approximately
6 9,464 Agents equates to an approximate \$1.61 per Allegedly Aggrieved Employee, 60% of Agents
7 completed 5 or fewer shopping assignments over the course of 3.5 years. Reflecting the fact that
8 Agents performed one-off tasks and worked only sporadically, each Agent earned, on average,
9 \$83.00 over the course of an entire year. Only 1% of the total Allegedly Aggrieved Employees
10 figure will get the lion’s share of the settlement. After payment of administration costs and
11 requested attorneys’ fees and costs, the proposed settlement will provide approximately \$61,000,
12 from which 75% (\$45,750) will be paid to the LWDA and 25% (\$15,250) will be distributed
13 among the Allegedly Aggrieved Employees on a pro rata basis depending on how many
14 shopping/market research related tasks each Allegedly Aggrieved Employee performed during the
15 PAGA Period. (Declaration of James M. Treglio (“Treglio Decl.”) ¶9).

16 **III. Because the Allegedly Aggrieved Employees have no Substantive Claims, Traditional**
17 **Notice is not Required**

18 This is not the case in a PAGA action where the real party in interest is the LWDA and the
19 employees are nominal parties. See *Urbino v. Orkin Services of California*, 726 F.3d 1118, 1122-
20 23 (9th Cir. 2013). The LWDA, as the real party in interest has, of course, received formal notice
21 of the terms of the settlement as required by Labor Code §2698(l). But the Allegedly Aggrieved
22 Employees do not receive the traditional class notice:

23 Because a PAGA action is a statutory action for penalties brought as a proxy for
24 the state, rather than a procedure for resolving the claims of other employees,
25 there is no need to protect absent employees’ due process rights in PAGA
26 arbitrations. Compare *Concepcion*, 131 S.Ct. at 1751-52 (observing “it is...odd to
27 think that an arbitrator would be entrusted with ensuring that third parties’ due
process rights are satisfied”), with *Arias*, 46 Cal.4th at 984-87, 95 Cal.Rptr.3d
588, 209 P.3d 023. PAGA arbitrations therefore do not require the formal
procedures of class arbitrations. See *Baumann*, 747 F.3d at 1123.

28 Unlike Rule 23(c)(2), PAGA has no notice requirements for unnamed aggrieved

employees, nor may such employees opt out of a PAGA action. In a PAGA action, the court does not inquire into the named plaintiff's and class counsel's ability to fairly and adequately represent unnamed employees – critical requirements in federal class actions under Rules 23(a)(4) and (g)...Moreover, unlike Rule 23(a), PAGA contains no requirements of numerosity, commonality, or typicality *Id.* at 1122-23 (citations omitted).

Sakkab (supra at 436).

IV. Relevant Issues in the Current Litigation and Investigation and Discovery Regarding Defendant's Labor Practices, and Risks Associated with Litigation

A PAGA Notice was filed by Plaintiff against Defendant for Defendant's alleged violation of the California Private Attorney Generals Act of 2004, Labor Code §2698, et seq. The LWDA did not notify Plaintiff that it intended to further investigate or pursue these allegations within sixty-five (65) days of the postmark date of the PAGA letter.

Plaintiff filed a Complaint on June 26, 2020, in Los Angeles County Superior Court on behalf of himself and the Allegedly Aggrieved Employees for claims alleged in the March 10, 2020 notice to the LWDA. In his Complaint, Plaintiff contends that Defendant violated California law by misclassifying Plaintiff and the Allegedly Aggrieved Employees as independent contractors, failing to pay for all hours worked, failing to pay overtime wages, failing to provide accurate wage statements and maintain accurate records, failing to provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums in lieu thereof, and making improper deductions from wages and failure to reimburse.

Defendant at all times disputed and denied, and continues to dispute and deny, that it was ever liable to Plaintiff, or any other person, for any of the claims asserted in the Complaint, including the claims for penalties under PAGA. Defendant contends that there were approximately 9,464 agents from March 10, 2019 through December 31, 2021.

In connection with the Parties' agreement to mediate, Plaintiff obtained relevant records and policies to assist in the review and analysis of the claims at issue. On August 9, 2022, Plaintiff and Defendant participated in a full day mediation with private mediator Steven J. Rottman, Esq. As a result of the mediation and further negotiations of the Parties, a global settlement was reached resolving all claims in this lawsuit.

After several months of further negotiations, the parties reached an agreement in principle and fully executed a settlement agreement on December 14, 2022. (Treglio Decl. ¶5)

V. The Settlement and Distribution of PAGA Penalties

A. Summary of Settlement Terms

The proposed Settlement Agreement (Treglio Decl., Exhibit 1) involves the formation of a non-reversionary fund totaling \$135,000.00 (“Gross Settlement Fund”). The \$135,000.00 fund that is created will be used to pay attorney fees and litigation costs (not to exceed \$40,500.00 in fees plus \$5,000 in costs) and settlement administration costs subject to Court approval) to Simpluris, Inc. The Settlement Fund is thus \$61,000.00. Seventy-five percent (75%) of the remaining Settlement Fund (i.e. (\$45,750.00) will be distributed to the California Labor & Workforce Development Agency (“LWDA”) as required by the PAGA and the remaining twenty-five percent (25%) (i.e. approx. \$15,250.00) will be distributed to all Allegedly Aggrieved Employees on a pro rata basis depending on how many shopping/market research related tasks each Allegedly Aggrieved Employee performed during the PAGA Period. (Treglio Decl. ¶8).

	Settlement Amount
Settlement Amount	\$135,000.00
Attorney’s Fees and Costs	\$45,500.00
Administrator	\$28,500.00 Subject to Court approval
Total PAGA Penalties:	\$61,000.00
75% to LWDA	\$45,750.00
25% to Allegedly Aggrieved Employees Members	\$15,250.00

B. Payment and the Notice

Defendant will fund the Gross Settlement Amount in a Qualified Settlement Fund (“QSF”) established by the Settlement Administrator in three (3) installment payments. (Settlement Agreement ¶28). Within fifteen (15) business days of deposit of the third and final installment

1 payment, the Settlement Administrator will issue to each Allegedly Aggrieved Employee a check
2 for his/her/their Individual PAGA Payment at his/her/their last known home address along with an
3 explanatory letter, attached as Exhibit A. Checks will remain negotiable for 180 days. Any checks
4 returned as non-deliverable on or before the check cashing deadline will be sent promptly via
5 regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is
6 provided, for those settlement checks returned as undeliverable and those settlement checks
7 remaining un-cashed for more than 180 days after issuance, the Settlement Administrator shall
8 escheat those checks to the State Controller's Office, Unclaimed Property Division, in the name of
9 the Allegedly Aggrieved Employee. (Settlement Agreement ¶41) (Treglio Decl. ¶10).

10 **C. Settlement Allocation to the Allegedly Aggrieved Employees**

11 As noted, twenty-five percent (25%) of the PAGA penalties will be allocated to the Allegedly
12 Aggrieved Employees. The portion to each of the Allegedly Aggrieved Employee will be treated as
13 non-wages since these are civil penalties and reported by the Settlement Administrator by law. The
14 amount of the payments will be based on the number of shopping/market research tasks performed
15 by the Allegedly Aggrieved Employee during the PAGA Period.

16 **D. The Release**

17 The California Supreme Court has explained that a judgment in "a representative action
18 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
19 2004...is binding not only on the named employee plaintiff but also on government agencies and
20 any aggrieved employee not a party to the proceeding." *Arias*, 46 Cal. 4th at 985-986.

21 The release in the Settlement Agreement narrowly binds the PAGA Settlement Group
22 Members for civil penalty claims brought in the Action, as follows:

23 31. "PAGA Released Claims" means in her capacity as a private attorney
24 general "aggrieved employee" acting on behalf of herself, the State of California,
25 and the Allegedly Aggrieved Employees, and in consideration of the PAGA
26 Payment, upon entry of the Judgment and Final Order and funding of the Gross
27 Settlement Amount in full, Plaintiff and the Allegedly Aggrieved Employees will
28 fully release and discharge Released Parties from all claims for civil penalties
under PAGA, California Labor Code sections 2698, *et seq.*, that were alleged or
reasonably could have been alleged in the Action, including without limitation,
California Labor Code §§ 201, 202, 203, 204, 210, 222, 223, 226, 226.2, 226.3,
226.7, 226.8, 401-410, 432.7, 510, 512, 558, 1024.5, 1182.11, 1194, 1194.2,
1197, 1197.1, 1198, 1199, 2802, and Industrial Welfare Commission Wage Order

Nos. 1-2001, 4-2001, and 9-2001 and including all claims for civil penalties under PAGA related to alleged unpaid wages and overtime, meal periods and meal period premiums, rest periods and rest period premiums, wage statements, and business expense reimbursement, interest, attorneys' fees, costs arising therefrom, that accrued during the PAGA Period.

The release in the Settlement Agreement is narrowly related to the claims alleged in the Complaint. The release is therefore proper and reasonable.

VI. The Settlement is Fair and Reasonable and Warrants Court Approval

In 2016, PAGA was amended to require the Court to "review and approve any settlement of any civil action filed pursuant to this part." (Labor Code §2699(1)(2).) The amendment also required that the "proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." As such, the Settlement and this Motion have been concurrently submitted to the LWDA in accordance with this section. (Treglio Decl. ¶11.)

A. Evaluation of the PAGA Settlement

Although PAGA and the legislative history do not require a Court to analyze a PAGA settlement in comparison to the "value" of the claims, the penalties obtained are not only reasonable but serve as an overwhelmingly successful resolution in favor of the PAGA Settlement Group Members and the State of California.

A representative settlement is presumed fair where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) (and) counsel is experienced in similar litigation. *Dunk v. Ford Motor Company* (1996) 48 Cal.App. 4th 1794, 1802. A court may also consider relevant factors such as the strength of the plaintiffs' 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, the experience and views of counsel, [and] the presence of a governmental participant. *Officers of Justice v. Civil Service Com'n of City and County of San Francisco* (9th Cir. 1995) 688 F.2d. 615, 624. "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, supra, 48 Cal.App.4th at 1801. Moreover, the trial court has broad powers to determine whether a proposed [representative action] settlement is

1 fair. *Mallick v. Superior Court* (1979) 89 Cal.App. 3d. 434.

2 Plaintiff's theory centers around Defendant's numerous violations against Plaintiff and the
3 Allegedly Aggrieved Employees including misclassifying Plaintiff and the Allegedly Aggrieved
4 Employees as independent contractors, failing to pay for all hours worked, failing to pay overtime
5 wages, failing to provide accurate wage statements and maintain accurate records, failing to provide
6 meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums in
7 lieu thereof, and making improper deductions from wages and failure to reimburse. Defendant
8 maintains data for all approximate 9,464 Allegedly Aggrieved Employees, this particular action is
9 somewhat unique in that it the vast majority of the Allegedly Aggrieved Employees —60% of
10 Agents completed 5 or fewer shopping assignments over the course of 3.5 years. Reflecting the fact
11 that Agents performed one-off tasks and worked only sporadically, each Agent earned, on average,
12 \$83.00 over the course of an entire year. Only 1% of the total Allegedly Aggrieved Employees
13 figure will get the lion's share of the settlement. (Treglio Decl. ¶12).

14 Plaintiff sought PAGA penalties alleging that Defendant failed to comply with or provide
15 the Allegedly Aggrieved Employees with compensation or penalties as required by state law,
16 including claims and potential claims for penalties recoverable under PAGA concerning wages,
17 including misclassifying Plaintiff and the Allegedly Aggrieved Employees as independent
18 contractors, failing to pay for all hours worked, failing to pay overtime wages, failing to provide
19 accurate wage statements and maintain accurate records, failing to provide meal periods or pay
20 premiums in lieu thereof, failing to provide rest periods or pay premiums in lieu thereof, and
21 making improper deductions from wages and failure to reimburse. Defendant vehemently opposed
22 the claims, arguing that Plaintiff and the Allegedly Aggrieved Employees were properly
23 compensated. Moreover, Defendant argued that it had shut down its California operations, and that
24 the vast majority of the Allegedly Aggrieved Employees completed 5 or fewer shopping
25 assignments over the course of 3.5 years, with most working just a few weeks. Based on these
26 arguments, Plaintiff believed the Court would likely reduce the value of the claims to just those 1%
27 of the total Allegedly Aggrieved Employees figure. Thus, Plaintiff valued the PAGA claims at
28

1 \$400,000. (Treglio Decl. ¶13).

2 Therefore, collectively, Plaintiff estimated that the likely value of the PAGA claims at trial
3 is \$400,000. The Settlement Amount under the terms of this Settlement is \$135,000.00, which
4 represents 27% recovery of the realistic total maximum exposure. It is common knowledge that a
5 20-30% recovery of the total realistic maximum exposure in representative actions is generally
6 deemed a good result; 40-50% is overwhelming, successful and somewhat rare, and anything above
7 50% serves as a phenomenal result that is noteworthy. The proposed Settlement represents 27%
8 recovery for the State and PAGA Group Settlement Members. (Treglio Decl. ¶14).

9 This result is positive and favorable to the State, which will receive \$45,750 and for the
10 Allegedly Aggrieved Employees, who will collectively receive \$15,250. The Allegedly Aggrieved
11 Employees will receive, on average \$1.61 per aggrieved employee, with Allegedly Aggrieved
12 Employees who performed more tasks during the PAGA Period receiving a greater share, which is
13 similar to but in most instances better than a settlement/judgment on a class-wide basis. (Treglio
14 Decl. ¶15).

15 **B. Discounting Penalties for Purposes of Settlement**

16 First, Defendant has always disputed that Plaintiff would prevail on liability claiming that
17 Plaintiff and the Allegedly Aggrieved Employees were properly compensated. Defendants deny any
18 wrongdoing and liability arising from the claims alleged.

19 The impact that the novel COVID-19 virus has had on businesses across the country is
20 apparent and is on virtually every news channel in America. Unemployment rates have skyrocketed
21 to levels similar to the Great Depression and most economists believe that Americans have not yet
22 felt the true impact of COVID-19 on Americans. Defendant has suffered a great degree of economic
23 harm as with most businesses.

24 This is a take it or leave it case – the Court could rule that Plaintiff and the Allegedly
25 Aggrieved Employees were properly compensated. Under these circumstances although very
26 unlikely to impossible, Plaintiff and the Allegedly Aggrieved Employees would not recover
27 anything. The downside risk is apparent, and any judgment obtained through litigation would
28

1 require not only substantial investment in attorney time and litigation costs but also the risk of
2 serious and lengthy appeals, which Plaintiff's counsel weighed greatly when negotiating a
3 resolution of this claim.

4 Moreover, it is likely the Court would discount penalties due to the financial status of the
5 Defendant. In mediation, it was disclosed that Defendant had ended all California operations, and
6 had limited ability to pay a settlement on a broader scale. (Treglio Decl. ¶16). Coupled with the
7 nature of the Defendant's operations – where the vast majority of Allegedly Aggrieved Employees
8 worked 5 or fewer shopping assignments over the course of 3.5 years. Reflecting the fact that
9 Agents performed one-off tasks and worked only sporadically, each Agent earned, on average,
10 \$83.00 over the course of an entire year. (Treglio Decl. ¶17). Like Plaintiff, the Court would likely
11 be more concerned about the 1% of the total Allegedly Aggrieved Employees figure who worked
12 regularly for Defendant. (Treglio Decl. ¶18).

13 **VII. The Attorney's Fees and Costs should be Awarded**

14 For the efforts and the risk undertaken in obtaining a common fund non-reversionary
15 settlement that benefits the LWDA and the Allegedly Aggrieved Employees, the Parties allocated
16 \$40,500.00 or 33% of the Settlement Amount to Plaintiff's Counsel for reasonable attorney's fees
17 and \$5,000.00 costs and expenses subject to the Court's approval. The fees are warranted by law
18 and are well within reason given the extraordinary results.

19 **VIII. Submission to the LWDA**

20 As set forth in the Treglio Decl. at ¶12, the settlement and this motion are concurrently
21 being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic
22 submission is attached as Exhibit "2" to the Treglio Declaration.

23 **IX. The Settlement Administrator**

24 Simpluris, Inc. will serve as the Settlement Administrator, and will be responsible for
25 processing the settlement payments and providing notice to the Allegedly Aggrieved Employees.
26 The Settlement Agreement authorized the payment administration costs subject to Court approval
27
28

1 (Settlement Agreement ¶ 30(d)).

2 **X. Conclusion**

3 In light of the foregoing, Plaintiff respectfully requests that the Court approve the parties
4 Settlement Agreement attached as Exhibit 1 to the Treglio Declaration so that Simpluris, Inc. may
5 begin administering the settlement in accordance with the terms of the Agreement.

6 Dated: November 3, 2023

Respectfully,

7 POTTER HANDY, LLP

8
9 /s/ James M. Treglio

10 By: _____
James M. Treglio

11 *Attorneys for Plaintiff Jenny Hines, in his*
12 *capacity as Private Attorney General*
13 *Representative*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
HINES V. FIELD AGENT, INC., ET AL.
Case No.: 20STCV24579

I, the undersigned, am over the age of eighteen years and am resident of San Diego County, California; I am not a party to the above-entitled action; my business address is 100 Pine St., Ste 1250, San Francisco, CA 94111.

On November 3, 2023, I served the following document(s):

1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT;**
2. **DECLARATION OF JAMES M. TREGLIO; and**
3. **[PROPOSED] JUDGMENT.**

Addressed to:

CALL & JENSEN

John Thomas Egley, Esq.
jegley@calljensen.com
610 Newport Center Dr. Ste 700,
Newport Beach, CA 92660-6498

- ☐ BY USPS MAIL: I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at San Diego, California.
- ☐ BY FACSIMILE: In addition to the service by mail as set forth above, I forwarded a copy of said documents via facsimile to the listed facsimile number.
- ☐ BY OVERNITE EXPRESS: I caused such envelope with postage thereon fully prepaid to be placed in the Designated Overnight Express drop box at San Diego, California.
- ☐ BY PERSONAL SERVICE: I caused said documents to be personally served on all listed recipients via Ace Attorney Services.
- X BY ELECTRONIC MAIL TRANSMISSION: I caused the listed documents to be electronically filed and subsequently emailed to the recipient(s).

Executed on November 3, 2023 from San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ James M. Treglio
James M. Treglio