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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **FOR THE COUNTY OF NAPA**

18 OBED ROMO RAMOS, AND ON BEHALF
19 OF ALL AGGRIEVED EMPLOYEES,

20 Plaintiffs,

21 vs.

22 MEADOWOOD RESORT, LLC, PAN
23 ATLANTIC CONSULTANTS, INC. and DOES
24 1 through 10,

25 Defendants.

CASE NO. 20CV000685

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT OF
PLAINTIFF'S CLAIM FOR PENALTIES
UNDER CALIFORNIA LABOR CODE
SECTION 2698, ET SEQ.**

Hearing Date: April 15, 2022
Hearing Time: 8:30 a.m.
Dept.: Civil, Courtroom B

Complaint Filed: July 23, 2020
Trial Date: ---vacated---

Hon. Scott R.L. Young

NOTICE OF MOTION

TO EACH PARTY AND TO COUNSEL FOR EACH PARTY OF RECORD:

PLEASE TAKE NOTICE that on April 15, 2022, at 8:30 a.m. or as soon thereafter as counsel may be heard, Plaintiff Obed Romo Ramos (hereinafter “Plaintiff”) will move and hereby does move for an order granting approval of the settlement reached by him and Defendant Meadowood Resorts, LLC regarding Plaintiff’s Complaint for civil penalties pursuant to the Private Attorneys General Act, California Labor Code §§ 2698 et seq.

This motion will be made and based upon: (1) this notice of motion; (2) the memorandum of points and authorities in support thereof; (3) the declaration of Arlo Garcia Uriarte and the exhibits attached thereto; and, (4) Declaration of Obed Romo Ramos, all of which are filed and served concurrently herewith; as well as (5) the records, pleadings, and papers on file in this action, and upon such other matters as may be presented at the time of hearing on this motion.

Dated: March 9, 2022



Arlo Garcia Uriarte
Liberation Law Group, P.C.
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Labor Code § 2699(1)(2),¹ Plaintiff Obed Romo Ramos (hereinafter “Plaintiff”) seeks the Court’s approval of the instantly proposed \$55,000 PAGA² settlement reached between him and Defendant Meadowood Resort, LLC (hereinafter “Defendant”). The proposed settlement involves one hundred seventy (170) PAGA Group Members.³ Defendant is being penalized by way of this settlement the amount of \$323 per employee, for wage and hour violations that occurred during limited period of July 2021 to July 2022. After substantial discovery and investigation, including interviews with the PAGA Group Members, Plaintiff and his attorneys understood that the main issue affecting the group centered on the afternoon rest breaks that they sometimes did not receive. Defendant was sometimes too busy and the workers did not receive compensation for when they had to forego their breaks. With summary judgment and trial looming, the parties were able to reach a decent compromise that furthered PAGA’s goals.

This action, purely for civil penalties under PAGA, was commenced on July 23, 2020. Plaintiff filed his notice to the LWDA; it claims various violations of the California Labor Code stemming from Defendant’s alleged failure to consistently provide meal and rest periods to its employees. The lawsuit was filed after an exhaustion of PAGA’s administrative remedies by Plaintiff; specifically, pursuant to Labor Code § 2699.3, Plaintiff sent a letter-notice of violations to the Labor and Workforce Development Agency (“LWDA”). Plaintiff’s notice to the LWDA mirrors the allegations contained in his Complaint. The LWDA did not respond to Plaintiff’s letter, and did not express any intent to investigate Plaintiff’s claims.

The parties engaged in extensive discovery and investigation, including depositions, a Bel-

¹ “The superior court shall review and approve any settlement of any civil action filed pursuant to [The Private Attorneys General Act]. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.”

² Private Attorneys General Act or “PAGA” is codified as California Labor Code §§ 2698 et seq.

³ The Parties define the PAGA Group as: “all non-exempt kitchen, banquette, and restaurant employees of Meadowood Resort, LLC from July 23, 2019 to July 23, 2020.” AGR ¶ 1.01(a).

1 Aire⁴ notice period and interviews with the group of 170 PAGA members, written discovery and
2 exchange of data. The discovery included the production of 170 timekeeping and wage payment
3 data. On November 3, 2021, the Parties reached a settlement. The parties then negotiated the terms
4 of the settlement which is now being submitted for approval by this honorable Court.

5 II. BACKGROUND

6 A. FACTS THAT CAUSED PLAINTIFF TO COME FORWARD

7 Defendant Meadowood is a California limited liability company. Meadowood Resort is
8 located in St. Helena. Defendant Pan Atlantic was dismissed after they filed their summary
9 judgment motion. From discovery, it was learned that Pan Atlantic was not a proper defendant.

10 Mr. Obed Romo Ramos was employed at Meadowood Resort between December 4, 2018,
11 and July 11, 2019. He was a 40-hour a week, regular full-time employee at Meadowood with a pay
12 rate of \$16 per hour. As part of the training/internship team, Mr. Obed Romo Ramos was paid \$16
13 per hour compared to the regular staff's rate of \$18 per hour. He worked a Monday through Friday
14 schedule, typically from 7 am to 3:30 pm, but sometimes worked evening shifts from 1 pm to 9:30
15 pm. On December 4, 2018, Mr. Obed Romo Ramos submitted an Application for Employment to
16 Meadowood Napa Valley for the position of line cook. On December 18, 2018, his work status was
17 changed from Temporary/Seasonal to a Regular Full-Time employee. *Declaration of Plaintiff*
18 *Romo Ramos*, ¶ 2.

19 On May 6, 2019, in an email exchange between HR representative Bob Shimmer and Mr.
20 Obed Romo Ramos, Mr. Obed Romo Ramos expressed concerns regarding his work tasks assigned
21 to him for being outside of what was outlined in his training program. *Romo Ramos Dec.* ¶ 3.

22 On May 29, 2019, Mr. Obed Romo Ramos sustained a work-related knee injury. On June
23 1, 2019, he received emergency treatment at Alameda Hospital for a work-related injury of the
24 knee. Mr. Obed Romo Ramos was given a knee immobilizer and ordered to take 1 tab of ibuprofen
25 three times daily. He was also ordered to notify his employer of his injury in order to receive follow-

26 ⁴ Procedure used wherein an employer provides names and contact information of all current and
27 former employees after an adopted proposed notice to those individuals that would have required
28 them to object in writing in order to prevent information about them from being disclosed. The
Court of Appeal held that opt-out notice adequately protected privacy rights of current and former
employees. *Belaire-W. Landscape, Inc. v. Superior Ct.* (2007) 149 Cal. App. 4th 554.

1 up care. *Romo Ramos Dec.* ¶ 4.

2 On June 2, 2019, Mr. Obed Romo Ramos sent an email to Bob Shimer, Libby Lauze, and
3 Chef Victoria Acosta informing them of his knee injury that he sustained at work on May 29, 2019.
4 After being placed on restricted duty, Mr. Obed Romo Ramos was transferred to the grilling station,
5 then transferred him to the security department. *Romo Ramos Dec.* ¶ 5.

6 On or about July 12, 2019, Mr. Obed Romo Ramos received a letter in the mail from
7 Meadowood Resort indicating that he voluntarily quit on July 11, 2019. He shortly thereafter
8 received a phone call from Mr. Shimer informing him that he did not need to return, sign, or
9 acknowledge the letter as his termination was final. *Romo Ramos Dec.* ¶ 6.

10 Plaintiff did not find a replacement job until October 2019. *Romo Ramos Dec.* ¶ 7.

11 Mr. Obed Romo Ramos presented himself to this law firm interested in his perceived
12 wrongful termination, or in his words, the manner by which he was let go. It did not seem to him
13 correct that he was terminated or let go while he was still recuperating from his leg injury. He also
14 believed that banquet and kitchen employees of Meadowood worked hard but was not compensated
15 for all of the missed meal periods and rest breaks. *Romo Ramos Dec.* ¶¶ 8-10.

16 Mr. Obed Romo Ramos entered this country on a J Visa, which is a cultural and social
17 exchange program meant for short term employment. He was recruited in Mexico, where he was
18 a Sous Chef. He recounted that when he arrived at Meadowood, it seemed to him that he was
19 inundated with menial, or work duties, that were more in the nature of a dishwasher or server. He
20 felt this was not the way the J Visa Program was “sold” to him. In short, he was not satisfied with
21 his experience at Meadowood. *Romo Ramos Dec.* ¶ 9.

22 During Mr. Obed Romo Ramos’ work shifts, his supervisor, chef Alejandro Ayala, would
23 advise him and the rest of the kitchen staff to clock out before the end of their 5th work hour, but
24 they would not take their meal break at that time. Staff would usually take their meal breaks when
25 work was slow, typically around 2 pm. Due to the heavy workload, Mr. Obed Romo Ramos was
26 also not able to take proper rest breaks. He felt he was not properly compensated for the late or
27 missed meal and rest breaks. *Romo Ramos Dec.* ¶ 10.

28 On December 6, 2019, we requested employment records from Meadowood for our client

1 Mr. Obed Romo Ramos. His records were received and analyzed. Along with the facts that Mr.
2 Obed Romo Ramos recounted about his day-to-day duties and responsibilities at Meadowood, we
3 began to call his witnesses, co-workers both folks that he used to work with and others who also
4 worked at Meadowood.

5 On January 30, 2020, we requested Mr. Obed Romo Ramos' personnel file from Pan
6 Atlantic Consultants, Inc. From our understanding, Pan Atlantic Consultants helped place Mr. Obed
7 Romo Ramos at Meadowood Resort.

8 Mr. Obed Romo Ramos provided us with his training/internship placement plan from Pan
9 Atlantic, medical records, earning statements, screenshots of email exchanges, and the Meadowood
10 Resort Staff Member Handbook for review.

11 On February 26, 2020, we requested additional employment records from Meadowood
12 Resort, specifically earning statements and his full arbitration agreement.

13 **B. PROCEDURAL POSTURE**

14 On July 23, 2020, we filed the PAGA only Complaint in Napa County Superior Court.

15 On July 28, 2020, Meadowood Resort, LLC was served copies of a Summons, Complaint,
16 and Notice of Case Management Conference by a substituted service. The documents were left in
17 the presence of Director of Human Resources, Bob Shimer.

18 On July 28, 2020, Pan Atlantic Consultants, Inc. was served copies of a Summons,
19 Complaint, and Notice of Case Management Conference by a substituted service. The documents
20 were left in the presence of Director of Human Resources, Bob Shimer.

21 On August 4, 2020, we submitted a Proof of Service of Summons to Napa Superior Court
22 for Defendants Meadowood Resort, LLC and Pan Atlantic Consultants, Inc.

23 On August 17, 2020, we served Pan Atlantic Consultants, Inc. copies of the Summons,
24 Complaint, Notice of Case Management Conference, and Notice and Acknowledgement of Receipt
25 via mail. We received a Notice and Acknowledgment of Receipt back via mail, dated September
26 4, 2020.

27 Without notice, Pan Atlantic filed for summary judgment alleging it was the wrong party
28

1 and not an employer of Plaintiff. After reviewing the documentation provided and researching the
2 issues, Plaintiff agreed with Pan Atlantic.

3 On November 20, 2020, we submitted a Request for Dismissal to Napa Superior Court to
4 dismiss all causes of action against Defendant Pan Atlantic Consultants, Inc.

5 On January 6, 2021, at the case management conference, Honorable Judge Victoria Wood
6 calendared the matter for trial, scheduled for August 23, 2021.

7 On April 28, 2021, the parties submitted, which the Court signed thereafter, a stipulation
8 rescheduling the trial to January 10, 2022.

9 On September 20, 2021, the Court signed a stipulation and order allowing Meadowood to
10 file Summary Judgment by October 25, 2021, with a motion hearing set for December 7, 2021.

11 On November 10, 2021, we submitted a Notice of Settlement of Entire Case to Napa
12 Superior Court and served a copy to Jennifer Douglas.

13 On November 15, 2021, Napa Superior Court served us a notice of an Order to Show Cause
14 hearing regarding dismissal of the case, scheduled for April 15, 2022, at 8:30 am. The trial and
15 other related dates were vacated.
16
17

18 **C. PAGA NOTICE AND THE PAGA ONLY COMPLAINT**

19 Plaintiff filed and served a PAGA notice to the LWDA on May 14, 2020. The PAGA
20 notice, which is the basis for the PAGA only complaint, indicated that Plaintiff not only worked as
21 a line cook often but was also assigned to work as a food server, food preparer, banquet attendant
22 and dish washer.

23 The PAGA notice and complaint alleged that Plaintiff typically worked shifts lasting more
24 than five (5) hours without adequate meal periods or rest periods. This occurred because Plaintiff
25 was constantly busy preparing and serving food to Defendants' restaurant guests. Additionally,
26 Plaintiff was instructed by Defendants to prioritize Defendants' business needs over any meal or
27 rest periods. Thus, Plaintiff had to either skip or take late meal periods and rest breaks.
28

1 Defendants also instructed Plaintiff to timely clock in and out for meal periods regardless
2 of whether he took them or not. Defendants, then, deducted the meal periods recorded from the
3 pay of Plaintiff. As a result, Plaintiff was not paid for all his hours worked including overtime
4 hours.

5 Further, it was alleged that Defendants failed to compensate Plaintiff premium pay for each
6 time Plaintiff was not provided with proper meal periods or rest breaks.

7 The allegations also included a failure to issue accurate, itemized wage statements to
8 Plaintiff. The wage statements provide by Defendants have not been accurate in that they do not
9 reflect Plaintiff's exact hours worked and break premiums owed.
10

11 Finally, Plaintiff is owed waiting time penalties because upon his separation, Plaintiff was
12 not paid all the money and compensations owed to him.

13 Pursuant to Labor Code § 2699, Plaintiff, on behalf of themselves and all current and former
14 aggrieved employees of Defendants, sought to recover civil penalties against Defendants for Labor
15 Code violations pursuant to:

16 ➤ Failure to Provide Meal and Rest Break Claim⁵
17

18 • Defendants violated Labor Code §§ 226.7(a) and 512, and sections 11 and 12 of the
19 Industrial Welfare Commission Wage Order 5, by failing to authorize and provide Plaintiff
20 with proper meal and rest breaks and then failing to provide Plaintiff the required one-hour
21 compensation when meal and rest breaks are not properly provided.

22 • Violations to Labor Code § 226.7(a) – penalties pursuant to § 2699(f); violations to
23 Labor Code § 512 - penalties pursuant to §§ 558 and 2699(f); violations to § 11 and § 12 of
24 IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.
25

26
27 ⁵ Of the claims in the PAGA notice, after discovery, and interviews with PAGA Group Members, only the
28 rest break component of this first bullet point remained viable and supported by the PAGA group.
Uriarte Dec. ¶ 5; Romo Dec. ¶ 13.

- 1 ➤ Minimum Wage, Overtime – Unpaid Hours Related to Meal Period Claim – working
2 while clocked out for Meal Periods:
- 3 • § 204 by failing to pay Plaintiff all wages due on the designated days of pay–
4 penalties pursuant to §§ 210 and 2699(f);
 - 5 • §§ 1194 and 1197 by failure to pay for all hours worked - penalties pursuant to §§
6 1197.1, 558, 2699(f);
 - 7 • section 4 of the Industrial Welfare Commission Wage Order 5 by failing to pay all
8 hours worked at least at the minimum wage rate – penalties § 20 of Wage Order 5;
 - 9 • By requiring Plaintiff to work during meal periods and not properly compensating
10 him for overtime hours worked, Defendants violated Labor Code §§ 223, 510 and 1194(a),
11 Defendants violated Labor Code §§ 510 and 1194, and section 3 of the Industrial Welfare
12 Commission Wage Order 5 by failing to pay Plaintiff for all overtime hours worked at one
13 and one half times his regular rate of pay and double time rates for hours worked more than
14 twelve hours in one shift.
 - 15 • Violations to Labor Code § 223 – penalties pursuant to Labor Code §§ 225.5 and
16 2699(f); violations to Labor Code § 510 – penalties pursuant to Labor Code §§ 558 and
17 2699(f); violations to Labor Code § 1194 – penalties pursuant to Labor Code §2699(f);
18 violations to Wage Order 5 section 3 – penalties § 20 of Wage Order 5.
- 19 ➤ Failure to Provide Accurate Wage Statements – related to Unpaid Hours – Off-the-Clock
20 during Meal Periods Claim
- 21 • Defendants violated Labor Code § 226(a) and Wage Order 5 section 7 by failing to
22 provide Plaintiff with accurate itemized wage statements providing at least the following
23 required information: (1) gross wages earned, (2) total actual hours worked by the
24 employee, (3) net wages earned, and (4) all applicable hourly rates in effect during the pay
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period and the corresponding number of hours worked at each hourly rate by the employees.

- Violations to Labor Code § 226(a) – penalties pursuant to §§ 226(e), 226.3, and 2699(f); violations to IWC Order 5 section 7 – penalties § 20 of IWC Order 5.

➤ Waittime Time Claim related to Unpaid Hours – Off-the-Clock during Meal Periods

- Defendants violated Labor Code §§ 201 through 203 by failing to pay Plaintiff all wages and compensation owed within their separation date -Violations to Labor Code §§ 201 through 203 - penalties pursuant to Labor Code section 2699(f).

D. DISCOVERY AND INVESTIGATION: SCOPE OF PAGA GROUP & PAGA PAY PERIODS

Both parties served written discovery. Defendant produced relevant policy documents applicable to the PAGA period and group. In addition, timekeeping records and wage statements for all PAGA aggrieved employees who did not opt out were also produced for analysis. In sum, Plaintiff's counsel reviewed and analyzed over 4,000 pages of documents from Defendant. *Uriarte Dec.* ¶ 7.

We took the deposition of Alejandro Ayala, chef and supervisor of Plaintiff as well as that of the person most knowledgeable, Meadowood Director of Human Resources Robert Shimer. Plaintiff was also deposed. *Uriarte Dec.* ¶¶ 9-10.

We engaged in a Bel-Aire procedure where we sent notice to 194 potential PAGA aggrieved employees. Twenty-four of these employees opted out. The scope of the PAGA representative group of aggrieved employees was a subject of substantial contention between the parties. As late as April 2021, Defendant's position was that only 54 employees were part of the group of employees who should be included into the PAGA group. By May 12, 2021, the parties agreed on a much larger group of 194 possible aggrieved employees. We then used and paid for an administrator to contract the 194 people and inquire as to whether they would allow Plaintiff's counsel to have their contact information. *Uriarte Dec.* ¶ 4.

1 Bel-Aire notices went out and we received the contact information for a possible 170 PAGA
2 aggrieved employees. Our office contacted everyone and was able to speak to about 60 current and
3 ex-employees. The result of these conversations was that it was only the afternoon rest break claim
4 that seemed viable. The extent of the violations for rest breaks was also not uniform and occurred
5 sporadically. Many of the PAGA group members indicated that the meal period policy had been
6 beefed up and that the new human resources manager did make an effort to ensure their meal
7 periods were actually provided, including the availability of premiums. While not perfect, the
8 missteps were seldom. *Uriarte Dec. ¶ 5.*

9
10 Time records and wage statements for these group of 170 employees were provided to
11 Plaintiff's counsel for review and analysis. Our data analyst did note that during the PAGA period,
12 the meal period violation rate was very small, less than 1%. Also, a review of the records did
13 indicate a practice of payment of meal period premiums. During the PAGA period, 248 meal period
14 premiums were paid (or \$4,604.95). Plaintiff did receive 4 meal period premium payments. *Uriarte*
15 *Dec. ¶ 6.*

16
17 In sum and in contrast to other investigations we have conducted, this group of PAGA
18 members were not over ecstatic about being compensated for some past wrong practice. Instead,
19 many of those we spoke with reiterated a real attempt by Defendant to be compliant with their meal
20 period obligations. We were left with a rest break claim that we felt Defendant should compensate
21 the State for and for them to improve their practices. We communicated this to the Defendant.
22 *Uriarte Dec. ¶¶ 7-8.*

III. SETTLEMENT TERMS

The Parties have agreed to a \$55,000 all-in settlement (the “Settlement Agreement,” [abbreviated “AGR”] is attached as *Exhibit “A” to Uriarte Dec.*) for the period of July 23, 2019 to July 23, 2020 only. The settlement only covers the kitchen, banquette and restaurant employees of Meadowood from where Defendant warrants that there are 170 people in this PAGA group. The settlement is non-reversionary because the entire amount, minus the requested deductions requiring Court approval detailed below, is to be distributed to the LWDA and to PAGA Group Members.

Defendant has agreed to fund the settlement in its entirety within fifteen (15) calendar days after Court approval. AGR ¶ 3.04(a).

Plaintiff requests these deductions for himself, his counsel, and the settlement administrator:

- An Enhancement Award to Plaintiff in the amount of \$5,000;
- Attorney’s Fees equaling \$18,331.50 (33.33% of the gross settlement fund) for Plaintiff’s Counsel, Arlo Uriarte of Liberation Law Group, P.C.;
- Reimbursement of accrued litigation costs to Plaintiff’s Counsel in the amount of \$3,065.85;
- A Settlement Administration Fee of up to \$3,000 to Simpluris, Inc.

The remaining amount, \$25,602.65 or the “Net Settlement Amount,” is to be distributed as required by law: seventy-five percent to the LWDA and twenty-five percent to PAGA Group Members. Cal. Lab. Code § 2699(i). Meaning that the LWDA will receive \$19,201.99, and the PAGA Group will receive a total of \$6,400.66. This amount is to be distributed to the PAGA Group of 170 people pro rata based on the number of workweeks worked during the PAGA Period. AGR ¶ 3.04(b). In other words, twenty-five percent of the Net Settlement Amount is to be divided by the number of PAGA Group Members which consist of approximately one hundred twenty-two (170) people. On the average, each Member who worked the whole 22 pay periods will receive about \$37.65. More importantly, it serves the purpose of PAGA in that for a 52-week period involving 170 aggrieved employees – Defendant is being penalized for \$323 per employee. Such an effect must be the mitigating effect PAGA is designed to do – so that Defendants pay attention to their rest break policies and practice.

1 There will be no need to make claims as the Agreement calls for a checks-mailed approach.
2 Meaning, notice will be provided to the PAGA Group members after 15 days of Court approval
3 along with their checks. Defendant will provide the Settlement administrator with contact
4 information for these aggrieved employees. If PAGA Group Members fail to negotiate their checks
5 after 180 days, the funds will go to the La Raza Centro Legal. AGR ¶ 3.03(2).

6 Plaintiff recommends La Raza Centro Legal as an appropriate and worthy cy pres designee.
7 “La Raza Centro Legal is a community-based legal organization dedicated to empowering Latino,
8 immigrant and low-income communities of San Francisco to advocate for their civil and human
9 rights. We combine legal services and advocacy to build grassroots power and alliances towards
10 creating a movement for a just society. See <https://lrcl.org/who-we-are/mission-values>.

11 Plaintiff and PAGA Group Members will be bound by the following narrower release
12 (AGR ¶ 5.01):

13 “Released Claims” means any and all claims and/or causes of action under the
14 California Private Attorneys General Act alleged in the Action, or which could have
15 been alleged in the Action based on the facts and claims alleged therein, including
16 but not limited to the following alleged violations: failing to provide meal and rest
 periods or premium compensation in lieu thereof, failing to issue accurate wage
 statements, failing to pay all wages including overtime compensation, and failing
 to timely pay wages due at separation of employment.

17 Additionally, Plaintiff himself will be bound by a more general release:

18 Plaintiff and Defendant agree that this Agreement includes a general release for any
19 and all individual claims of Plaintiff Obed Romo Ramos. Upon the Effective Date,
20 and subject to Defendant’s full payment of the Settlement Sum, Plaintiff fully
21 releases and discharges the Released Parties from any and all charges, complaints,
22 claims, causes of action, debts, sums of money, controversies, agreements,
23 promises, damages and liabilities of any kind or nature whatsoever, both at law and
24 equity, known or unknown, suspected or unsuspected, arising from conduct
25 occurring on or before full execution of this Agreement, that Plaintiff now has or
26 claims to have, or which Plaintiff at any time heretofore had or claimed to have, or
27 which Plaintiff at any time hereafter may have or claim to have, arising out of or
28 related to any act, omission, event, fact or other thing that existed or occurred
 through execution of this Agreement and subject to the approval of the Agreement
 as required by the Court and other conditions set forth herein. Without limiting the
 generality of the foregoing, and in addition to the foregoing, Plaintiff specifically
 and expressly releases to the maximum extent permitted by law any claims against
 the Released Parties, including, but not limited to any claims under the California
 Fair Employment and Housing Act; Title VII of the Civil Rights Act of 1964; the
 federal Family and Medical Leave Act; the California Family Rights Act; the
 Americans With Disabilities Act; the National Labor Relations Act; the Equal Pay

1 Act; the Employee Retirement Income Security Act of 1974; as well as Claims
2 arising out of or related to violations of the provisions of the California Labor Code;
3 the California Government Code; the California Business & Professions Code,
4 including Business & Professions Code Section 17200 et seq.; state and federal
5 wage and hour laws; breach of contract; fraud; misrepresentation; common counts;
6 unfair competition; unfair business practices; negligence; defamation; infliction of
7 emotional distress; invasion of privacy; assault; battery; false imprisonment;
8 wrongful termination; and any other state or federal law, rule, or regulation.
9 Plaintiff's settlement and release of claims shall be in accordance with the terms of
10 this Agreement. This release by Plaintiff includes a waiver of his rights under Civil
11 Code Section 1542, which states: "**A GENERAL RELEASE DOES NOT
12 EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY
13 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
14 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
15 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
16 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**" Plaintiff
17 will not seek any further compensation for any other claimed damages, costs,
18 attorneys' fees or other amounts in connection with the matters encompassed in this
19 Agreement or released by Plaintiff, except that Plaintiff's counsel may seek
20 attorneys' fees and costs for the resolution of claims as set forth herein.

13 **IV. DECLARATION OF BOB SHIMER⁶: HOW COVID AND THE GLASS FIRE** 14 **TRAGEDY AFFECTED THE FINANCIAL CONDITION OF MEADOWOOD**

15 Bob Shimer is the Director of Human Resources for Defendant for the last eight years. He
16 was deposed for this action as Defendant's person most knowledgeable. He declared that COVID
17 caused Meadowood Resorts to shut down in March 2020 which resulted to the majority of its
18 employees to be laid off. While Defendant was able to reopen in July 2020, it was operating at a
19 limited capacity.
20

21 In October 2020, Glass Fire severely damaged Defendant's resort property. The
22 restaurant where Plaintiff worked was completely burned down. As a result, the Glass Fire
23 caused another shut down to the end of the year. Mr. Shimer confirms in his declaration that
24 Defendant's financial situation was negatively impacted by both COVID and the Glass Fire.
25
26
27

28 ⁶ *Ex. C to Uriarte Dec.*

V. LEGAL ANALYSIS

E. THE PAGA REPRESENTATIVE ACTION & THE COURT APPROVAL PROCESS

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of any penalties recovered go to the LWDA, leaving the remaining twenty-five percent for the employees. *Id.* PAGA is intended “to augment the limited enforcement capability of [the LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.” *Id.* at 59 Cal. 4th 383.) A judgment [or Court-approved settlement] in a PAGA action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. *Id.* at 381.

Labor Code § 2699(1)(2) provides that “[t]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to” PAGA. The California Supreme Court has said in this context that “any negotiated resolution [must be] fair to those affected.” *Williams v. Superior Ct.* (2017) 3 Cal. 5th 531, 549, 398 P.3d 69, 81.

1. Court Has Discretion to Lower the PAGA Penalties Awarded

Fundamentally, “a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer.” (*Sakkab v. Luxottica Retail* (9th Cir. 2015) 803 F.3d 425, 435).

PAGA penalties may be substantially discounted given that courts often exercise their discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at trial. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1213, 78 Cal. Rptr. 3d 572, 617 (“Section 2699, subdivision (e)(2) provides that in an action by an aggrieved employee to recover PAGA penalties, the court ‘may award a lesser amount than the maximum civil penalty amount specified by this part 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.’”) *See also, Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 787, 224 Cal. Rptr. 3d 1, 11 (recognizing

1 the trial court's discretion to reduce PAGA penalties).

2 **2. The Settlement Fulfill PAGA's Underlying Purpose to Deter Future**
3 **Violations and Have Meaningful Changes in the Workplace**

4 The California legislature enacted PAGA to “augment the limited enforcement capability
5 of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the
6 Agency.” (*Iskanian, supra*, at 383.) This statute authorizes an employee to bring an action for
7 “civil penalties on behalf of the state against his or her employer for Labor Code violations
8 committed against the employee and fellow employees...” (*Id.* at 360.) The goal of a PAGA
9 enforcement action is to impose civil penalties for Labor Code violations “significant enough to
10 deter violations.” (*Id.* at 379.)

11 The PAGA statute distinguishes and preserves the rights of employees to separately (or
12 concurrently) pursue their own individual causes of action against their employers and to recover
13 other available federal and state remedies. (Labor Code § 2699(g)(1); *see Baumann v. Chase Inv.*
14 *Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 (explaining the differences between the finality
15 in class action judgments and the limited res judicata effect of PAGA judgments).) “Unlike a class
16 action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to
17 incentivize private parties to recover civil penalties *for the government* that otherwise may not
18 have been assessed and collected by overburdened state enforcement agencies.” (*McKenzie v.*
Federal Express Corp. (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1233 (emphasis added).)

19 **3. Different From Class Actions – No Class Procedures**

20 The PAGA statute does not require the two-step process utilized in class actions. (see
21 *Salazar v. Sysco Central Cal.*, No. 15-01758-DAD, 2017 WL1135801, *2 (E.D. Cal. Feb. 2,
22 2017) (rejecting the application of class action settlement rules and procedures for PAGA
23 settlement approval); *see also Mendoza v. Nordstrom, Inc.* (2017) 2 Cal. 5th 1074 (“PAGA
24 authorizes a representative action without the need for class certification.”); *Baumann v. Chase*
25 *Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1123 (“a PAGA suit is fundamentally different
26 than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees,
27
28

nor may such employees opt-out of a PAGA action.”.)

4. The LWDA (Labor Commissioner) Can Weigh In and Must Be Noticed

Labor Code § 2999(1)(2) requires notice to the LWDA is done at the same time that a proposed settlement is submitted to the Court. Such notice will be done here and proof filed with the Court. The LWDA can weigh in on the proposed settlement. They did so in the Uber litigation from a few years back. There, the LWDA explained that when trial courts review PAGA settlements, they should consider whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public.” (*O’Connor v. Uber Techs, Inc.* (N.D. Cal. Aug. 18, 2016) 13-03826-EMC, 201 F. Supp. 3d 1110, 1133.) That being said, nothing in PAGA changes the strong judicial preference in support of approving settlements. (See, e.g., *Osumi v. Sutton* (2007) 151 Cal. App. 4th 1355, 1357 (confirming the “strong public policy in favor of the settlement of civil cases.”).)

Such caution is appropriate given that Judge Chen’s disapproval of the proposed settlement in Uber, based on the PAGA allocation may have resulted in PAGA or LWDA eventually receiving less than the proposed settlement there. But Judge Chen did note that because in the Uber settlement the underlying purpose of PAGA was not resolved, leaving the determination of driver status in limbo, the meager settlement of 0.1% did not serve the purpose of PAGA. *O’Connor v. Uber Techs, Inc.* at 1134-1135.

5. Fair, Reasonable & Adequate

Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. (Id., at 64.) The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]” (Id., at 64-65.)

6. The Explanatory Notice to the Aggrieved Employees.

Although PAGA “has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action,” the Settlement outlines an explanatory letter to be sent out to the aggrieved employees. (See, Ex. A, to Ex. 1.) The aforementioned letter which will be in

Spanish an English advises the Aggrieved Employees of the instant action, why they are receiving a check for their share of the PAGA penalties, and to contact either Plaintiffs' counsel or defense counsel for more information.

F. PLAINTIFF'S RATIONALE FOR ACCEPTING THIS PAGA SETTLEMENT

Plaintiff's underlying allegations here relate exclusively to Defendant's meal and rest period compliance. Achieving a positive liability determination regarding these allegations is challenging for at least two significant reasons. Plaintiff and his counsel seriously considered these challenges, plus the Court's discretion to reduce PAGA penalties based on the nature of the violations, when deciding whether to accept the instant settlement.

Plaintiff's chief concerns are: (1) investigation, discovery, interviews with PAGA Group Members revealed that it was the rest break claim for afternoon work that was most viable and could be properly proceed to trial; (2) Defendant only needs to *provide*⁷ break opportunities to its employees, not ensure that breaks are taken, making Plaintiff's burden of proof here difficult to overcome in the scheduled Summary Judgment Hearing; and (3) Defendant could successfully argue that a PAGA trial in this instance is unmanageable considering the different employee positions and numerous managers/supervisors at hand. *See, Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746, 283 Cal. Rptr. 3d 846, 860 (2021), reh'g denied (Sept. 27, 2021), review filed (Oct. 19, 2021) ("Given that PAGA actions involve comparable or greater manageability concerns than other representative claims, we hold that trial courts may similarly exercise their inherent authority to ensure the manageability of PAGA claims and, if necessary, may preclude the use of this procedural device.").

1. Breaks Need only be Provided and Employees May Choose to Forego Breaks

The *provide* standard is particularly problematic for Plaintiff in this representative action setting because it is not sufficient to establish that he was forced to work through breaks. He must establish that this was the reality for his co-workers as well, and they did not elect to forego breaks. *See, Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58, 67, 481 P.3d 661, 668 (2021) ("There is no meal

⁷ *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1034-1035 (2012) ("an employer must relieve the employee of all duty for the designated period but need not ensure that the employee does not work.")

1 period violation if an employee voluntarily chooses to work during a meal period after the employer
2 has relieved the employee of all duty.”)

3 It is plausible, and Defendant would almost certainly argue this point, that PAGA Group
4 Members were provided break opportunities but sometimes voluntarily kept working for their own
5 benefit. The PAGA Group Members interviewed by Plaintiff’s counsel stated that they had no
6 problem with meal periods, that many skip afternoon breaks, while other did skip afternoon breaks
7 because they chose to. *Uriarte Dec.* ¶ 5.

8 Moreover, Defendant’s written policies regarding meal and rest periods do not explicitly
9 violate the Labor Code. *Uriarte Dec.* ¶ 7. Plaintiff would therefore need the right testimony from
10 PAGA Group Members regarding why they were not provided breaks to establish violations. The
11 severity of Defendant’s alleged violations is also an issue for Plaintiff. The Court may reduce per
12 pay period penalties based on the fact that Plaintiff only suffered periodic break violations.

13 **2. Manageability Concerns**

14 Plaintiff understands that this is not a class action but still realizes that should litigation
15 proceed, it would be his task to show the Court that any proposed PAGA trial plan is manageable.
16 *See, Williams v. Superior Ct.*, 3 Cal. 5th 531, 559, 398 P.3d 69, 88 (2017) (acknowledging that
17 manageability is a concern for PAGA actions as well); *Wesson* 283 Cal. Rptr. 3d at 860 (a trial
18 court’s inherent authority to ensure the manageability of an action extends to PAGA cases).

19 On September 9, 2021, the Court of Appeal decided the issue whether trial courts could
20 strike down a PAGA claim if the claim was “unmanageable.” (*Wesson v. Staples the Office*
21 *Superstore, LLC* (2021) 68 Cal.App.5th 746.) *Wesson* answered this question in the affirmative
22 when it stated, “[g]iven that PAGA actions involve comparable or greater manageability concerns
23 than other representative claims, we hold that trial courts may similarly exercise their inherent
24 authority to ensure the manageability of PAGA claims and, if necessary, may preclude the use of
25 this procedural device.” (*Id.* at 766-767.)

26 The plaintiff in *Wesson* petitioned the California Supreme Court for review of the decision
27 as well as concurrently requested an order for depublication. On December 22, 2021, both the
28 petition for review and the request for depublication were denied. (*Wesson v. Staples the Office*

1 Superstore, LLC (Dec. 22, 2021, No. S271378) ___Cal.5th___ [2021 Cal. LEXIS 8805, at *1].)
2 While the Plaintiffs believe any attempt by Defendant to strike down Plaintiffs’ entire PAGA claim
3 would fail, Plaintiffs’ did take into account that certain claims were more susceptible to being
4 stricken than others, which factored into the analysis in reaching settlement. Another manageability
5 issue would be that there were several supervisors for the different shifts and job classifications.

6 Plaintiff’s manageability concerns are significant because there is no common, written
7 policy regarding the providing of breaks that Plaintiff can identify as unlawful. Plaintiff’s best
8 approach would likely be to identify a flawed practice that interfered with the providing of break
9 opportunities. He would likely have to establish the universal adoption of this flawed practice across
10 different departments by different managers/supervisors. In other words, it would be necessary to
11 seek representative testimony from PAGA Group Members in order to establish whether they felt
12 the same pressure to skip breaks as Plaintiff.

13 Furthermore, it would be unreliable to get this testimony from a single representative group
14 of workers. There are various types of workers in the PAGA Group (kitchen, banquet and
15 restaurant).

16 **3. Maximum Possible Penalties**

17 While no reported case has addressed what constitutes an “initial” versus “subsequent”
18 violation, it has been held under PAGA that there must have been a prior notification to the
19 employer that the statute had been violated for the higher penalty for subsequent violations to apply.
20 (Amaral, supra, at 1209.) Other courts have “held that employers are not subject to heightened
21 penalties for subsequent violations unless and until a court or commissioner notifies the employer
22 that it is in violation of the Labor Code.” (See e.g. Amalgamated Transit v. Laidlaw Transit Service,
23 (S.D. Cal. Aug. 10, 2009) 2009 U.S. Dist. LEXIS 69842, 2009 WL 2448430, at *9; see also Trang
24 v. Turbine Engine Components Technologies Corp., (C.D. Cal. Dec. 19, 2012) No. CV 12-07658
25 DDP (RZx), 2012 WL 6618854.).)

26 In order to assess Defendant’s maximum possible penalties under PAGA, we must
27 understand that:

- 28 • there are 170 PAGA Group members;

- and the penalty for not providing a rest break is \$100 for each aggrieved employee per pay period for the initial violation. *Labor Code § 2699(f)*; and,
- there are a total of 22 pay periods.

Therefore, there is a maximum penalty of \$374,000. Not all aggrieved employees suffered a rest break violation every pay period. Meaning that of the people working each pay period, not all had to forego an afternoon break.

Then, Plaintiff determined the applicable penalty categories pursuant to his allegations. In addition to penalties for rest break violations, Plaintiff included ancillary penalty claims for wage statement violations and for failure to provide waiting time pay; these are more speculative⁸ than his core-claim penalties. These ancillary claims would not be available if Plaintiff only pursued the rest break claim. Plaintiff submits that a recovery of \$55,000 is an acceptable proportion of potential maximum penalties.

4. Drastic Reductions Are a Norm

Indeed, some Courts take drastic reductions. (*See Carrington v. Starbucks* (2018) 30 Cal. App. 5th 504, 517 (approving award of 0.21% of what Plaintiffs requested).) In *Carrington*, the plaintiff requested PAGA penalties in the amount of approximately \$70 Million dollars. (*Carrington supra*, at 517.) The trial court instead awarded only \$150,000.00 – or 0.21% of the maximum – and stated that this reduction was warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’ “good faith attempts” to comply with meal period obligations, and because the court found the violations “were minimal.” (*Id.*) The Court of Appeal affirmed the lower court’s reduced award of a \$150,000.00 penalty under PAGA. (*Id.* at 529.) A similar reduction here would have resulted only in an award of \$74,223.87.

⁸ Whether a failure to include meal and rest period premiums on wage statements entitles an aggrieved employee to statutory penalties for wage statement violations or whether a failure to pay such premiums can serve as a predicate for waiting time penalties is an open question that is currently trending away from Plaintiff’s favor. *See, Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474, 253 Cal. Rptr. 3d 248, 270 (2019), as modified on denial of reh’g (Oct. 10, 2019) (“Accordingly, we hold that section 226.7 actions do not entitle employees to pursue the derivative penalties in sections 203 and 226.”)

1 Likewise, in *Fleming v. Covidien*, the Court reduced the potential penalties by over 82%,
2 awarding \$500,000.00 instead of maximum penalties of \$2.8 Million. (*Fleming v. Covidien* (C.D.
3 Cal. Aug. 12, 2001) 2011 WL 7563047 at *4; *see also Aguirre v. Genesis Logistics* (C.D. Cal.
4 Dec. 30, 2013) 2013 WL 10936035, at *3 (reducing the original penalty of \$1.8 Million by 72%
5 to \$500,000.00, noting among other reasons the maximum penalty would be punitive without
6 evidence that the employer intentionally violated the wage order); *Makabi v. Gedalia* (Cal. Ct.
7 App. Mar. 2, 2016) 2016 WL 815937, at *2 & n.3 (unpublished) (noting that the trial court invoked
8 § 2699(e)(2) and declined to apply any PAGA penalties, despite finding that defendants violated
9 PAGA).)

10 Hence, the calculation of an exact exposure number for the PAGA claim is of limited utility
11 and is inherently speculative because, unlike class claims, the Court has discretion to reduce a
12 PAGA penalty on grounds that it is “unjust” or “oppressive.” (See Lab. Code § 2699(e)(2).)
13 Therefore, after calculating Defendants’ maximum exposure under PAGA, Plaintiffs discounted
14 that exposure for settlement purposes to account for the risks of continued litigation, including: (1)
15 the strength of Defendants’ defenses on the merits; (2) the risk of losing at trial; (3) the risk that
16 the Court would exercise its discretion under PAGA to significantly reduce the maximum civil
17 penalties available under the statute; (4) the risk of having PAGA claims struck down in the
18 upcoming Summary Judgement Hearing as “unmanageable;” (5) the risk of having to expend
19 thousands upon thousands in appellate fees for inevitable appeals; (6) the chances of a favorable
20 verdict being reversed on appeal; and (7) the risk that Defendants would not be able to pay any
21 significant award because of its financial condition.

22 Considering the issues, defenses, and the aforementioned discount factors, is a decent
23 recovery.⁹ Moreover, Plaintiffs’ Counsel are skilled and experienced in the area of representative

24
25 ⁹ The result achieved in this case, and the monetary recovery provided by the instant PAGA
26 Settlement, far exceeds the range of an acceptable settlement under the circumstances, especially
27 when compared to the settlement of PAGA claims in other cases. (See, e.g., *Garcia v. Gordon*
28 *Trucking, Inc.* (E.D. Cal., Oct. 31, 2012) 2012 WL 5364575, at *3 (approving \$10,000.00 out of \$
3.7 million toward settlement of PAGA claims); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal.,
Feb. 16, 2011) 2011 WL672645, at *1 (approving \$10,000.00 out of \$6.9 Million toward
settlement of PAGA claims); *Franco v. Ruiz Food Products, Inc.* (E.D. Cal., Nov. 27, 2012) 2012
(continued).

litigation, and believe this PAGA Settlement is fair and just and furthers PAGA objectives based on sufficient discovery, interviews and investigation. *Uriarte Decl.* ¶ 14.

G. PLAINTIFF’S REQUESTED ENHANCEMENT AWARDS IS REASONABLE

Courts have held that named plaintiffs in PAGA actions can request service awards, which are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize plaintiffs’ willingness to act as private attorneys general. (*Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.) Indeed, the Ninth Circuit has consistently recognized incentive awards are “fairly typical” way to “compensate class representatives for work done on behalf of the class” or “to make up for financial or reputational risk undertaken in bringing the action.” (*Id.*)

Criteria courts consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. (*In re Cellphone Fee Termination Cases* 1395 (2010) 186 Cal.App.4th 1380, 1394-95.)

Here, Plaintiff is requesting an enhancement of \$5,000. Plaintiff has had his deposition taken, and has spent significant amounts of time participating in this case and has exposed himself to significant reputational and professional risks by tying his name to a lawsuit against her former employer. Plaintiff Romo Ramos signed a broader release because of his circumstances at Defendant. It was important for Defendant to have a peace of mind, and that was taken into consideration. *Uriarte Dec.* ¶ 12.

Representative enhancement awards are important because they are multi-purposed: they serve to (1) reward the named plaintiff for work done on behalf of an aggrieved group, and (2) ameliorate any potential financial or reputational risks undertaken by bringing the action. Case law has recognized that representative or incentive awards are appropriate “if it is necessary to induce

WL 5941801, at *14 (approving the amount of \$10,000.00 out of \$ 2.5 Million toward settlement of PAGA claims).)

1 an individual to participate in the suit...” *Clark v. American Residential Services LLC* (2009) 175
2 Cal.App.4th 785, 804, citing *Cook v. Niedert* (7th Cir.1998) 142 F.3d 1004, 1016.

3 The above is especially pertinent in a PAGA representative action because the LWDA is
4 entitled to such a large percentage of the recovered civil penalties. Plaintiff submits that his
5 requested enhancement award is appropriate because of his leadership and time expended working
6 with counsel.

7 Plaintiff expended considerable time and effort advocating on behalf of PAGA Group
8 Members, and his role in achieving the settlement was indispensable. *Uriarte Dec.* ¶ 12. His
9 deposition was the impetus to increase the PAGA group size. He initially sought counsel in part
10 because he was frustrated by the way he was terminated and for his meal and rest breaks. Counsel
11 suggested a PAGA representative action as an option considering the arbitration agreement, the
12 nature of his claims, and Plaintiff wanted to fight on behalf of the state and his co-workers because
13 he felt Defendant’s violations were systemic. He could have just asked his counsel to bring an
14 individual case but elected a group action, hoping to achieve a greater justice. *Uriarte Dec.* ¶¶ 12
15 & 13.

16 Plaintiff completed a detailed intake process with his counsel. *Uriarte Dec.* ¶ 12. He
17 provided key factual details along with witness names and phone numbers. *Id.* His participation
18 here allowed Plaintiff’s counsel to confirm his allegations by speaking with his co-workers. *Id.*
19 Plaintiff’s efforts allowed his counsel to ask for the right pieces of discovery both formally and
20 informally so that he could negotiate from a position of strength and knowledge. *Uriarte Dec.* ¶ 13.
21 He also helped counsel assess Defendant’s various offers, and gave his approval of the final amount
22 attained. *Id.*

23 **H. THE REQUESTED ATTORNEY’S FEES AND COSTS ARE ALSO REASONABLE**

24 **1. Legal Standard for Attorneys’ Fee Awards in Representative Actions**

25 PAGA allows a prevailing plaintiff to obtain attorneys’ fees and costs. Cal. Lab. Code §
26 2699(g). The U.S. Supreme Court has recognized that “a lawyer who recovers a common fund for
27 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
28 the fund as a whole.” *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord, Serrano*

1 v. *Priest* [Serrano III] (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys’
2 fees and costs when a litigation proceeding in a representative capacity secures a substantial
3 benefit). The purpose of the “common fund doctrine” is not only to reward effective legal advocacy
4 but to “spread litigation costs proportionally among all of the beneficiaries” preventing unjust
5 enrichment. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Both state and
6 federal courts in California have embraced the common fund doctrine. *E.g., Roos v. Honeywell*
7 *Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1490.

8 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court “join[ed] the
9 overwhelming majority of federal and state courts in holding that when class action litigation
10 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
11 powers awards class counsel a fee out of that fund, the court may determine the amount of a
12 reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte v. Robert Half*
13 *Internat., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff submits that this guidance should equally apply
14 to representative actions under PAGA.

15 The Supreme Court highlighted some of the many advantages of the percentage method:
16 “relative ease of calculation, alignment of incentives between counsel and the class, a better
17 approximation of market conditions in a contingency case, and the encouragement it provides
18 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.* In
19 addition to its apparent endorsement of the percentage fee method, the *Laffitte* Court clarified that
20 it does not “perceive an abuse of discretion in [a] court’s decision to double check the
21 reasonableness of the percentage fee through a lodestar calculation.” *Id.* at 504. The *Laffitte* Court
22 regards the lodestar cross-check as “a mechanism for bringing an objective measure of the work
23 performed into the calculation of a reasonable attorney fee.” *Id.*

24 In Plaintiff’s view, *Laffitte* stands for the proposition that a trial judge may rely on his or her
25 discretion and utilize either the percentage method, the lodestar method, or both to calculate a
26 reasonable attorney’s fee. Furthermore, should a lodestar crosscheck be elected, the trial court does
27 not abuse its discretion whether it chooses to “perform[] the cross-check using counsel declarations
28 summarizing overall time spent” or opts to do a more detailed analysis of daily time sheets. *Id.* at

1 505. Indeed, “[t]he choice of a fee calculation method is generally one within the discretion of the
2 trial court, the goal...being the award of a reasonable fee to compensate counsel for their efforts.”
3 *Id.* at 504.

4 *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the fund. *Laffitte. Id.* at 506.
5 And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the Court
6 held, only when the multiplier is “extraordinarily high or low [should] the trial court [] consider
7 whether the percentage method should be adjusted so as to bring the imputed multiplier within a
8 justifiable range.” *Id.* at 505.

9 In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 557, the court examined the
10 two different methodologies – lodestar-adjustment and percentage of the fund – in the context of a
11 “clear sailing” fee settlement (i.e., a class settlement specifying a set amount for the class and
12 agreeing not to oppose a fee of up to a specified amount, to be paid in addition to the class recovery;
13 see 175 CA4th at 553). The Court summarized the California rule as follows: “Regardless of
14 whether attorney fees are determined using the lodestar method or awarded based on a “percentage-
15 of-the-benefit” analysis under the common fund doctrine, ‘[t]he ultimate goal.....is the award of a
16 ‘reasonable’ fee to compensate counsel for their efforts, irrespective of the method of calculation...
17 It is not an abuse of discretion to choose one method over another....” (175 Cal.App.4th at 557
18 (internal citations omitted).)

19 **2. 33.33% of the Maximum Settlement Fund and the Requested Costs**
20 **Reimbursement are Appropriate and Should be Awarded**

21 The requested percentage fee is reasonable and should be awarded as confirmed by relevant
22 case law and when compared with counsel’s lodestar. Plaintiff’s counsel and his team have worked
23 229.5 hours on this matter and have accrued a lodestar of \$69,438. *Uriarte Dec.* ¶ 15 and *Exhibit*
24 *D.* This is significantly more than the requested fee. Considering the guidance provided by our
25 state’s Supreme Court, the positive result achieved by Plaintiff, and the fact that counsel undertook
26 this matter on pure contingency, Plaintiff submits that the fee request should be granted. *Id.*

27 **3. Costs Are Recoverable Under PAGA**

28 PAGA permits litigants to recover costs incurred in the prosecution of an action. (Cal.

1 Labor Code § 2699(g)(1).) “There is no doubt that an attorney who has created a common fund for
2 the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that
3 fund.” (West v. Circle K Stores, Inc. (E.D. Cal. Oct. 19, 2006), 2006 U.S. LEXIS 76558, at *25.)
4 In California, attorneys are reimbursed for out-of-pocket expenses “such as ‘1) meals, hotels, and
5 transportation; 2) photocopies; 3) postage, telephone, and fax; 4) filing fees; 5) messenger and
6 overnight delivery; 6) online legal research; 7) class action notices; 8) experts, consultants, and
7 investigators; and 9) mediation fees.’” (Johnson v. General Mills, Inc. (C.D. Cal. June 17, 2013)
8 2013 U.S. Dist. LEXIS 90338, *20-*21.)

9 Plaintiff’s counsel’s cost reimbursement request in the amount of \$3,072.75 is also
10 reasonable. As set forth by declaration, the requested were all directly incurred in the prosecution
11 of this action (See, Exhibit “C” attached to Uriarte Dec.). Uriarte Dec. ¶ 15. As such, the requested
12 costs should be awarded as fair and reasonable.

13 VI. NOTICE TO THE LWDA

14 CITE Concurrent with this filing, Plaintiff uploaded the instant motion and all
15 accompanying documents, including the Settlement Agreement and the proposed order, to the
16 LWDA’s website. A proof of service will be filed accordingly. Uriarte Dec. ¶ 16.

17 VII. CONCLUSION & REQUEST FOR APPROVAL

18 This action has resulted in Defendant having to re-examine its wage and hour practices to
19 avoid future exposure and liabilities. Plaintiff respectfully requests that the Court grant this motion
20 for PAGA settlement approval, including his requested deductions, because he believes he has
21 successfully vindicated the civil penalties provisions of the Labor Code in favor of the LWDA and
22 allegedly aggrieved employees.

23 Dated: March 18, 2022

Respectfully Submitted,

24 

25 _____
26 Arlo Garcia Uriarte
27 Liberation Law Group, P.C.
28 Attorneys for Plaintiff