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

DANIEL RODRIGUEZ, individually, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiff,

v.

MEANS ENGINEERING, INC., a California
corporation; DAVID WILLIAM MEANS, an
individual; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2020-00024397-CU-OE-CTL

Honorable Katherine Bacal
Department C-69

**PLAINTIFF'S AMENDED NOTICE OF
MOTION AND MOTION FOR
APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE §§ 2698, *ET SEQ.*) SETTLEMENT
AGREEMENT AND ATTORNEYS'
FEES AWARD, LITIGATION COSTS
AWARD, AND ENHANCEMENT
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Amended Declaration of Counsel (Douglas
Han); Amended Declaration of Plaintiff
(Daniel Rodriguez); and Amended [Proposed]
Order and Judgment filed concurrently
herewith]

Hearing Date: April 1, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department C-69

Complaint Filed: July 15, 2020
FAC Filed: September 21, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 1, 2022 at 1:30 p.m., or as soon as thereafter as
2 the matter may be heard, before the Honorable Katherine Bacal in Department C-69 of the San
3 Diego Superior Court (Hall of Justice), located at 330 W. Broadway, San Diego, California 92101,
4 Plaintiff Daniel Rodriguez (“Plaintiff”) will and hereby does move for entry of the following
5 orders:

- 6 1. Granting approval, pursuant to Labor Code section 2699(1), of the proposed settlement
7 between Plaintiff and Defendants Means Engineering, Inc. and David William Means
8 (“Defendants”) of the claims brought pursuant to the Private Attorneys General Act of
9 2004 (“PAGA”) as set forth in the Confidential Settlement Agreement and Release
10 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
11 Declaration of Douglas Han;
- 12 2. Approving the PAGA Penalties Fund available for payment of PAGA penalties that is
13 estimated to be \$158,897.12, seventy-five percent (75%) of which (\$119,172.84) will
14 be paid to the California Labor and Workforce Development Agency (“LWDA”)
15 (“LWDA Payment”) and twenty-five percent (25%) of which (\$39,724.28) will be paid
16 to the Settlement Group Members (“Net Settlement Amount” and “Individual
17 Settlement Awards”);
- 18 3. Directing Defendants to transfer the Gross Settlement Amount to the Settlement
19 Administrator in accordance with the Settlement Agreement;
- 20 4. Directing the mailing of the Individual Settlement Awards accompanied by an
21 explanatory letter providing notice of PAGA settlement to Settlement Group Members;
- 22 5. Awarding \$5,000 to Plaintiff as the Enhancement Payment; and
- 23 6. Awarding Settlement Administration Costs to the Settlement Administrator in an
24 amount not to exceed \$5,000;
- 25 7. Awarding to Plaintiff’s Counsel, Justice Law Corporation, an Attorneys’ Fees Award
26 in the amount of \$111,150 as compensation for reasonable attorneys’ fees and
27 Litigation Costs Award in the amount of \$12,452.88 as reimbursement for litigation
28

1 costs and expenses incurred in litigating the PAGA claim, pursuant to Labor Code
2 section 2699(g)(1) and Code of Civil Procedure section 1021.5;

3 This motion will be based upon the following Amended Memorandum of Points and
4 Authorities, the Settlement Agreement, the Amended Declaration of Plaintiff's Counsel (Douglas
5 Han), the Amended Declaration of Plaintiff (Daniel Rodriguez) in support thereof, the pleadings
6 and other records on file with the Court in this matter, and such evidence and oral argument as
7 may be presented at the hearing on this motion.

8
9 Dated: March 25, 2022

JUSTICE LAW CORPORATION

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11 By: 
12 Douglas Han
13 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Under Labor Code section 2699(1)(2), Plaintiff seeks approval of the Agreement. Plaintiff
4 entered the Agreement on behalf of himself and all current and former hourly-paid employees of
5 Defendants who worked for Defendants at any time from May 1, 2019, through December 9, 2021
6 (“Settlement Group,” “Settlement Group Members,” and “Settlement Period”).

7 Subject to Court approval, the Parties have agreed to resolve this case brought for a Gross
8 Settlement Amount of \$292,500 that is inclusive of: (1) the amount allocated for the LWDA that
9 will be distributed in accordance with Labor Code section 2699(i); (2) the Attorneys’ Fees Award
10 and the Litigation Costs Award, pursuant to Labor Code section 2699(g)(1); (3) the Enhancement
11 Payment; and (4) the Settlement Administration Costs.

12 Plaintiff submits the Settlement is fair, adequate, and reasonable and meets requirements
13 for Court approval. Thus, Plaintiff respectfully requests that this Court approve the Settlement.

14 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

15 On May 1, 2020, Plaintiff served a notice letter to the LWDA and Defendants. Afterwards,
16 on July 15, 2020, Plaintiff filed this representative PAGA action.¹

17 Plaintiff’s allegations are Defendants: (1) failed to pay minimum and overtime wages; (2)
18 failed to provide compliant meal and rest breaks; (3) failed to timely pay wages; (4) failed to
19 provide compliant wage statements; and (5) failed to reimburse necessary business expenses.²

20 After conducting significant investigation, the Parties’ counsel engaged in extensive
21 negotiations to try to resolve the entire matter. The Parties participated in private mediation on
22 December 9, 2021 before Lynn Frank that ultimately resulted in the settlement of this case.³

23 Plaintiff now moves for an order granting approval of the Settlement, pursuant to Labor
24 Code section 2699(1)(2).

25 ¹ (Amended Declaration of Douglas Han In Support of Plaintiff’s Motion for Approval of
26 Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Han Dec.”),
27 ¶ 10.)

28 ² (Han Dec., *supra*, at ¶ 21.)

³ (*Id.* at ¶¶ 15-16.)

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

2 **A. Distribution of the Gross Settlement Amount**

3 Defendants will pay a Gross Settlement Amount of \$292,500. The PAGA Penalties Fund
4 will be the Gross Settlement Amount less the following: (1) the Attorneys' Fees Award of
5 \$111,150; (2) the Litigation Costs Award of \$12,452.88; (3) the Enhancement Payment of \$5,000;
6 and (4) the Settlement Administration Costs of \$5,000.⁴ Twenty-five percent (25%) of the PAGA
7 Penalties Fund will be distributed to each Settlement Group Member on a pro rata basis ("Net
8 Settlement Amount"), and the remaining seventy-five percent (75%) of the PAGA Penalties Fund
9 will be transmitted to the LWDA ("LWDA Payment"), pursuant to Labor Code section 2699(i).⁵

10 **B. Distribution of the PAGA Penalties Fund**

11 Within five (5) business days after the Effective Date of the Agreement, but no earlier than
12 April 1, 2022, Defendants shall deposit with the Settlement Administrator the full Gross
13 Settlement Amount. Within fourteen (14) calendar days of the funding, Settlement Administrator
14 will issue the payments required by the Agreement to the appropriate entities or persons.⁶

15 Any Individual Settlement Award checks that are not cashed, deposited, or negotiated after
16 the Check Stale Date will be void and the amount of those checks will be directed to the California
17 State Controller for the deposit in the Unclaimed Property Fund in the name of the employee.⁷

18 **C. The Scope of the Release in the Settlement Agreement**

19 The Released Claims are based on or arising out of violations of Labor Code sections
20 alleged in this case and claims that could have been asserted in this case based upon facts alleged
21 in Plaintiff's complaint through the end of the Settlement Period ("Released Claims").⁸

22 ///

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24 ⁴ (Settlement Agreement, *supra*, at §§ 7.a., 7.b.i., 7.b.ii, 7.b.iii., 7.b.iv., 7.b.v.)

25 ⁵ (*Id.* at §§ 7.b.v.A, 7.b.v.B.)

26 ⁶ (*Id.* at §§ 8.a., 8.b.)

27 ⁷ (*Id.* at § 8.c.ii.)

28 ⁸ (*Id.* at § 9.a.)

1 **D. No Right to Object to or Opt Out of the Settlement**

2 “[A] PAGA action is a statutory action for penalties brought as a proxy for the state, rather
3 than a procedure for resolving the claims of other employees, there is no need to protect absent
4 employees’ due process rights[.]” *Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 546. “Unnamed
5 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of
6 the representative PAGA claim.” *Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2,
7 2010), 2010 WL 1340777, at p. *5. A representative PAGA action need not satisfy class action
8 requirements, and no due process concern arises from the fact that there are “nonparty aggrieved
9 employees who are not given notice of, and an opportunity to be heard in, a representative action
10 that is not brought as a class action.” *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 984. “PAGA does
11 not make other potentially aggrieved employees parties” to the action and no “due process
12 concerns arise under PAGA because absent employees do not own a personal claim for PAGA
13 civil penalties and whatever personal claims the absent employees might have for relief are not at
14 stake.” *Williams, supra*, at 546-547 (internal references omitted, citing *Amalgamated Transit*
15 *Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46th Cal.4th 993, 1003 and *Iskanian v. CLS Trans.*
16 *Los Angeles, LLC*, (2014) 58 Cal.4th 348, 381.)

17 “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
18 *Williams* at 548 (internal references omitted, citing *Arias, supra*, 980-981; *Fireside Bank v. Sup.*
19 *Ct.* (2007) 40 Cal.4th 1069, 1074 and *Richmond v. Dart Indus., Inc.* (1981) 29 Cal, 3d 462, 474.)

20 As such, consistent with the law, the Settlement does not provide for a procedure for
21 Settlement Group Members to opt out or otherwise exclude themselves the Settlement.

22 **IV. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

23 The PAGA allows an “aggrieved employee” to bring a civil action on behalf of himself or
24 herself and on behalf of other aggrieved employees and the State to recover civil penalties which
25 are specifically established by the PAGA with respect to provisions of the Labor Code that do not
26 otherwise provide for civil penalties (Lab. Code § 2699(g)), and also, civil penalties which,
27 outside of PAGA, only the LWDA can assess upon and collect from an employer (Lab. Code §
28 2699(a)). Before bringing a civil action under PAGA, an employee must comply with Labor Code

1 section 2699.3. See Lab. Code § 2699(a).

2 The settlement of a PAGA claim requires court approval. See Lab. Code § 2699(l)(2)
3 (“The superior court shall review and approve any settlement of any civil action pursuant to this
4 part.”). However, “[a] PAGA claim asserted on a non-class representative basis . . . is not
5 considered a class action but a law enforcement action” and, therefore, does not have to meet the
6 requirements of a class action. *Casida v. Sears Holdings Corp.* (E.D. Cal. Jan. 26, 2012) 2012 WL
7 253217, at *3; *Thomas v. Aetna Health of Cal., Inc.* (E.D. Cal. June 2, 2011) 2011 WL 2173715,
8 at *11; *Arias, supra*, 46 Cal.4th at 980-88 (affirming lower court’s holding that “plaintiff need not
9 satisfy class action requirements” to assert a PAGA claim); *Pedroza v. PetSmart, Inc.* (C.D. Cal.
10 Jan. 28, 2013) 2013 WL 1490667, at *15. As such, a court’s review of a PAGA settlement involves
11 analysis of several unique features that render the approval process distinct from approval of a
12 class action settlement. A court reviewing a PAGA settlement need only “ensur[e] that a
13 negotiated resolution is fair to those affected.” *Williams, supra*, 549 (citing Lab. Code §
14 2699(l)(2)). Although Labor Code section 2699(l) does not set forth the criteria on which a PAGA
15 settlement is to be judged, courts have approved settlements of PAGA claims.⁹

16 In a PAGA case, the Court’s focus is not the amount which “aggrieved employees” are to
17 receive, but instead, whether the total settlement amount achieves PAGA’s objectives. The
18 purpose of PAGA is “to incentivize private parties to recover civil penalties for the government
19 that otherwise may not have been assessed and collected by overburdened state enforcement
20 agencies.” See *Ochoa-Hernandez, supra*, 2010 WL 1340777, at *4 (citing *Arias, supra*, 46 Cal.4th
21 at 986). Penalties recovered under the PAGA are, in part, to “be distributed to the [LWDA] for
22 enforcement of labor laws . . . and for education of employers and employees about their rights
23 and responsibilities under this code, to be continuously appropriated to supplement and not
24 supplant the funding to the agency for those purposes.” See Lab. Code § 2699(j). The recovery of

25 ⁹ (See also See, e.g., *Resendez v. Bridgestone Retail Operations, LLC*, Los Angeles Sup.
26 Ct., Case No. BC596892 (June 2016), *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct.,
27 Case No. JCCP4833 (May 2017); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL
28 5364575, at *3; *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) 2012 WL 2117001, at
*14; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1; *Franco v.*
Ruiz Food Prods. (E.D. Cal Nov. 27, 2012) 2012 WL 5941801, at *14; *Nordstrom Commissions*
Case (2010) 186 Cal.App. 4th 576, 589.)

penalties on behalf of the state, by way of a PAGA claim, is essentially a law enforcement action. *See Amalgamated, supra*, 46 Cal.4th at 1003 (stating that the PAGA is mechanism for “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies”); *see also Iskanian, supra*, at 381.

V. THE PROPOSED SETTLEMENT IS FAIR AND SHOULD BE APPROVED.

A. The Factors Giving Rise to a Presumption of Fairness Exist.

The Parties reached the Settlement through arms’-length negotiations through experienced counsel and a mediator at a full-day mediation.¹⁰ A settlement agreement that is “the product of extensive and hard-fought adversarial negotiations between the parties” is entitled to a presumption of fairness. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.

The Settlement is presumptively fair because: (1) it is the product of non-collusive, arms’-length negotiations; (2) it was negotiated by counsel with significant experience in similar wage-and-hour litigation; and (3) it occurred after Parties’ counsel engaged in significant investigation the strengths of this case and the risks of continued litigation. During all settlement discussions, Parties conducted their negotiations at arms’ length from an adversarial position.¹¹

The Parties have agreed this matter is well-suited for settlement given the strengths and weaknesses of the PAGA claim, and Plaintiff’s Counsel believe the Settlement is a fair, adequate, and reasonable resolution of this matter.¹² Plaintiff’s Counsel have extensive experience in representative and class action wage-and-hour litigation and used that experience to achieve an exceptional result.¹³ Therefore, the Court should give considerable weight to the competency, experience, and opinion of counsel and the involvement of a neutral mediator in assuring that the Settlement is a product of hard-fought negotiations that was entered without collusion. *See Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F.Supp. 446, 451 (opinion of experienced counsel is entitled to considerable weight); *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 616-

¹⁰ (Han Dec., *supra*, at ¶¶ 14-16.)

¹¹ (*Id.* at ¶¶ 14-15.)

¹² (*Id.* at ¶¶ 24, 40.)

¹³ (*Id.* at ¶¶ 2-8; Exhibit 1.)

1 17, 622 (recommendations of plaintiffs’ counsel should be given a presumption of
2 reasonableness); see also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007) 2007 WL
3 1114010, at *4 (stating that the “assistance of an experienced mediator in the settlement process
4 confirms that the settlement is non-collusive”).

5 **B. The Relative Strength of the PAGA Claim and the Range of Possible Outcomes**
6 **in the Litigation Strongly Favor Approval of the Settlement.**

7 For Plaintiff to recover civil penalties, he would have to prove the underlying Labor Code
8 violations, demonstrate that Settlement Group Members suffered, and demonstrate Defendant’s
9 conduct gave rise to penalties. See, e.g., *Elliot v. Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572
10 F.Supp.2d 1169, 1181-82 (“Plaintiffs’ claim under [PAGA] is wholly dependent upon her other
11 claims. Because all of Plaintiffs’ other claims fail as a matter of law, so does her PAGA claim.”).

12 Although wage-and-hour actions are amenable to resolution as to a group of employees,¹⁴
13 some courts have also found that, for various reasons, the issues raised here – non-compliant meal
14 break, non-compliant rest breaks, and off-the-clock work – raise individualized issues and/or are
15 unmanageable, and, thus, are not suitable for adjudication as to a group of employees.¹⁵
16 Defendants contended that courts have found that due process to Defendants requires that the
17 adjudication of a PAGA claim meet a “manageability” requirement. See, e.g., *Liuy v. Merrill*
18 *Lynch & Co.* (C.D.Cal. Nov. 10, 2014) No. CV-14-0425-PA, WL 5904904 at **3-4 (Court
19 dismissed the PAGA claim because a multitude of individualized assessments would be necessary,
20 making the PAGA claim unmanageable).

21 Defendants asserted several defenses. For instance, Defendants maintained they had
22 legally compliant employment policies and practices throughout the statutory period. Defendants
23 also denied they ever violated any provision of the Labor Code. Next, Defendants denied that this
24 case is appropriate for representative treatment for any purpose other than the Settlement.¹⁶

25 ¹⁴ (See, e.g., *Martinez vs. Joe’s Crab Shack Holdings, et al.* (2014) 231 Cal.App.4th 362,
26 383-84, *modified on other grounds by Martinez v. Joe’s Crab Shack Holdings, et al.* (Dec. 3, 2014
27 B242807) 2014 Cal.App. LEXIS 1102, *1-2.)

28 ¹⁵ (See, e.g., *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 25, 29, 31, and 34-35.)

¹⁶ (Han Dec., *supra*, at ¶ 22.)

1 Finally, Defendants may challenge Plaintiff's standing as a Settlement Group Member and deny
2 that Defendants' other employees, whom Plaintiff sought to represent, were aggrieved.¹⁷

3 Defendants argued the Court was unlikely to assess cumulative penalties for the maximum
4 numbers of possible separate Labor Code violations because it would be unjust, arbitrary,
5 oppressive, and/or confiscatory. Thus, Plaintiff and Plaintiff's Counsel considered the strengths
6 and weaknesses of each side's position and the uncertainty of how the case might have ended.¹⁸

7 The provisions of the Labor Code potentially triggering PAGA penalties in this case
8 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
9 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. Defendants assert
10 that, regardless of the results of the underlying causes of action, PAGA penalties are not
11 mandatory but permissive and discretionary. Defendants also maintain they had a strong argument
12 that it would be unjust to award maximum PAGA penalties given the law's unsettled state.
13 (*Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112 [reducing penalties by
14 30% under this authority].) Defendants argued that without stacking and limited to the initial
15 violation, the PAGA penalties would be **\$12,900** (129 employees x \$100 initial violations) on the
16 low end and **\$77,400** (129 employees x \$100 x 6 theories of recovery) on the high end.¹⁹

17 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
18 Many of the causes of action brought were cumulative for which the Court may or may not stack
19 the violations. Thus, a Gross Settlement Amount of \$292,500 for PAGA civil penalties was
20 reasonable and significant. When PAGA penalties are negotiated in good faith and "there is no
21 indication that [the] amount was the result of self-interest at the expense of other Class Members,"
22 such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-
23 00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com.*
24 *Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving
25 a settlement which does not allocate any damages to the PAGA claims."). Plaintiff's Counsel

26 ¹⁷ (Han Dec., *supra*, at ¶ 23.)

27 ¹⁸ (*Id.* at ¶ 24.)

28 ¹⁹ (*Id.* at ¶¶ 25-29.)

1 negotiated that about an average of **\$20.56** in penalties per aggrieved pay period would be fair and
2 reasonable [$\$292,500 \div 14,223$ pay periods in PAGA Period date range = **\$20.56**]. Considering
3 the recent cases justifying \$5 per pay period, *see e.g., Carrington v. Starbucks Corp.* 30
4 Cal.App.5th 504 (2018), **\$20.56** per pay period is great result.²⁰

5 **C. The Settlement Avoids Risky, Complex, and Lengthy Further Litigation.**

6 Courts favor the voluntary conciliation and settlement of complex litigation. *Class*
7 *Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. Generally, “unless the settlement
8 is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive
9 litigation with uncertain results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. Jan.
10 5, 2004) 221 F.R.D. 523, 526 (citation omitted).

11 Both sides used the pre-mediation time to investigate the veracity, strength, and scope of
12 the PAGA claim. The Parties engaged in discovery and exchanged documents and data relevant
13 to Plaintiff’s claim and Defendants’ defenses to determine the potential value and strength of the
14 PAGA claim. The Parties’ Counsel undertook significant investigation and invested time
15 reviewing and analyzing relevant documents and data to evaluate Plaintiff’s claims, including
16 Plaintiff’s Counsel’s calculation of the potential penalties recoverable under the PAGA.²¹

17 **D. The Settlement Is Fair, Adequate, and Reasonable.**

18 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an
19 abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1981) 688
20 F.2d 615, 624. “The proposed settlement is not to be judged against a hypothetical or speculative
21 measure of what might have been achieved by the negotiators.” *Id.* at 625.

22 The Settlement provides a significant monetary benefit to the LWDA and Settlement
23 Group Members and falls well within the range of acceptable settlement under the circumstances.
24 Under the Agreement, Defendants have agreed to pay a Gross Settlement Amount of \$292,500.
25 The PAGA Penalties Fund is currently estimated to be \$158,897.12. The proposed plan of
26 allocation of the Net Settlement Amount fully complies with Labor Code section 2699(i).

27 _____
28 ²⁰ (Han Decl., *supra*, at ¶ 30.)

²¹ (*Id.* at ¶¶ 13-14, 24.)

1 Plaintiff and Plaintiff's Counsel recognize the expense, length, and risk of continued
2 proceedings necessary to litigate the disputes. They are aware of the burdens of proof necessary
3 to establish liability and the difficulties in establishing Defendant's liability for penalties on behalf
4 of Plaintiff and the Settlement Group. Finally, they have considered Defendant's agreement to
5 enter a settlement that confers significant relief. Collectively, they have determined the Settlement
6 represents a fair, adequate, and reasonable resolution of the PAGA claim.²²

7 Therefore, the results achieved, and the PAGA allocation provided by the Settlement, is
8 within the range of acceptable settlement under the circumstances.²³

9 **E. The Experience and Views of Plaintiff's Counsel Favor Settlement Approval.**

10 Plaintiff's Counsel are experienced in complex representative and class action wage-and-
11 hour litigation.²⁴ Plaintiff's Counsel believe the benefit conferred by the Settlement is eminently
12 fair and reasonable and in the best interests of the LWDA and Settlement Group Members.²⁵

13 **VI. APPROVAL OF THE REQUESTED ATTORNEYS' FEES.**

14 **A. A Fee Award of Percentage of the Entire Fund is Appropriate.**

15 The Settlement provides for Plaintiff's Counsel to apply to the Court for an Attorneys'
16 Fees Award of up to thirty-eight percent (38%) of the Gross Settlement Amount, which is
17 \$111,150. The requested attorneys' fees are commensurate with: (1) the risk Plaintiff's Counsel
18 undertook; (2) the time, effort and expense dedicated; (3) the skills and determination Plaintiff's

19
20 ²² (Han Dec., *supra*, at ¶¶ 21, 24, 49.)

21 ²³ (See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Sup. Ct., Case No. JCCP4833
22 (May 2017) (approving \$15,000 out of \$4 million toward settlement of PAGA claims); *Garcia*,
23 *supra*, 2012 WL 5364575, at *3 (approving \$10,000 out of \$3.7 million toward settlement of
24 PAGA claims); *Schiller*, *supra*, 2012 WL 2117001, at *14 (approving \$10,000 out of \$518,245
25 toward settlement of PAGA claims); *Chu*, *supra*, 2011 WL 672645, at *1 (approving \$10,000 out
26 of \$6.9 million toward settlement of PAGA claims); *Franco*, *supra*, 2012 WL 5941801, at *14
27 (approving \$10,000 out of \$2.5 million toward settlement of PAGA claims); *Nordstrom*
28 *Commissions Case*, *supra*, at 589 (finding no abuse of discretion by the trial court in approving a
settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the
lawsuit).)

²⁴ (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.)

²⁵ (*Id.* at ¶ 49.)

Counsel have shown; (4) the value that Plaintiff's Counsel have achieved; and (5) the other cases Plaintiff's Counsel could not pursue to devote its time and efforts to this matter.

Plaintiff's Counsel are entitled to recover reasonable attorneys' fees and costs as a matter of right under the PAGA. See Lab. Code § 2699(g)(1). Plaintiff's Counsel is also entitled to fees and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition "for the benefit" of others and has secured monetary awards for a large number of Settlement Group Members, as well as the LWDA.²⁶

Furthermore, the payment to the LWDA will also benefit the agency in enforcing labor laws and educating "employers and employees about their rights and responsibilities under [the Labor Code]." Lab. Code § 2699(i).

Plaintiff's Counsel investigated and litigated this case for over a year before mediation, with the real possibility of an unsuccessful outcome and no fee recovery.²⁷ The ongoing work has been extensive and successful in achieving a settlement resolution. Plaintiff's Counsel has borne all the risks and costs of litigation and will not receive any compensation until recovery. They are also experienced in representative and class action wage-and-hour litigation. Thus, the requested Attorneys' Fees Award and Litigation Costs Award are reasonable and should be awarded.²⁸

B. The Requested Attorneys' Fees Award is Reasonable Based on the Factors Considered in Determination of Fee Awards.

The factors which courts consider in determining whether fee awards are reasonable, support the fee award requested by Plaintiff's Counsel: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the requisite skills to perform the legal services; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed; (8) the amount involved and results obtained; (9) the

²⁶ (See *Estrada v. FedEx Ground Package Sys. Inc.* (2007) 154 Cal.App4th 1, 16-17 (recognizing that recovery obtained on behalf of 209 individual satisfies the "significant benefit," "public interest," and "large class of persons" requirements of Code of Civil Procedure section 1021.5, regardless of plaintiff's personal motivation).)

²⁷ (Han Dec., *supra* at ¶¶ 11-13.)

²⁸ (*Id.* at ¶ 45.)

1 experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the
2 nature and length of the professional relationship; and (12) awards in similar cases. *Camden I*
3 *Condo. Ass'n, Inc. v. Dunkel* (11th Cir. 1991) 946 F. 2d 768, 772.

4 It should be highlighted the percentage award sought is commensurate with: (1) the results
5 obtained; (2) the extraordinary risks taken by Plaintiff's Counsel; (3) the novelty and difficulty of
6 this case; and (4) the skills displayed and the quality of work, which are addressed below.

7 **1. The Results Obtained**

8 The results attorneys obtain for their clients is an important factor when determining the
9 reasonability of a percentage-based fee. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
10 489. Law firms that obtain exceptional results for clients expect them to be reflected in their fees.

11 The results obtained in here are exceptional as Plaintiff's Counsel obtained a settlement in
12 the sum of \$292,500 without the need for extended litigation. If this case went to trial, there was
13 no guarantee the trial would have been short or either party would prevail. Even if the Parties
14 reached a similar settlement at the later stages, it would have been undercut by additional expenses
15 incurred. Resolution of this dispute at this stage is preferred as the Parties were moving to the
16 phase where significant time and money would inevitably have to be spent to prepare for trial.

17 Consequently, by agreeing to settle this case prior to trial, Plaintiff's Counsel used their
18 skills and experience to obtain a fair result for the Settlement Group at far less expense. By
19 avoiding the uncertainties associated with conducting trial and Defendant's responses to
20 Plaintiff's allegations, Plaintiff's Counsel obtained those results more quickly and surely than if
21 the matter had been litigated to final resolution. Under California law, this factor also supports the
22 requested fee. *See Lealao v. Beneficial Cal., Inc.*, (2000) 82 Cal. App. 4th 19, 51.

23 **2. The Extraordinary Risk Taken by Plaintiff's Counsel**

24 Whether or not representation is provided on a contingency basis is an important factor:

25 A contingent fee must be higher than a fee for the same legal services paid as they are
26 performed [and] [...] compensates the lawyer not only for the legal services he renders but
27 for the loan of those services. A lawyer who both bears the risk of not being paid and
28 provides legal services is not receiving the fair market value of his work if he is paid only
for the second of these functions. If he is paid no more, competent counsel will be reluctant
to accept fee award cases. (internal quotes and citations omitted)

1 *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823.

2 Plaintiff executed a contingent fee agreement. This meant no recovery would have equated
3 no compensation for Plaintiff's Counsel for 376.6 hours of work already completed over the span
4 of almost one and one-half (1.5) years and \$12,452.88 litigation costs incurred.²⁹

5 Finally, several factors made this case tricky. This included: (1) the size of the Settlement
6 Group; (2) the difficulties in pinning down job responsibilities, wages paid, meal and rest breaks
7 taken; (3) the number of documents that had to be analyzed; (4) the shifting wage-and-hour laws;
8 (5) Defendants' different business locations; and (6) Defendant's firm resistance to the relief.

9 **3. The Novelty and Difficulty of the Litigation**

10 The myriad of difficulties addressed above made this case more complex and difficult than
11 the average lawsuit. Plaintiff's Counsel overcame them by obtaining a settlement that is fair,
12 adequate, and reasonable. The fact that Plaintiff's Counsel were able to obtain a great settlement
13 despite these obstacles speaks volumes of their skills. *See Lealao*, 82 Cal.App.4th at 42 (counsel's
14 "special skill and experience of counsel" a relevant factor when determining fee award).

15 The Task & Time Chart, attached as **Exhibit 4** to the Declaration of Douglas Han, set forth
16 substantial number of hours devoted to this case, allocating the total time to the tasks that were
17 required to bring this matter to its successful conclusion. The chart is thorough, comprehensive,
18 and demonstrates the effort to diligently manage this case.³⁰

19 As stated in the previous section, this was not a clear-cut case, and Plaintiff's Counsel had
20 to overcome several roadblocks and obstacles before they could reach a reasonable settlement.
21 The fact that this case has been litigated for almost a one and one-half (1.5) years speaks volumes
22 of the novelty and difficulty of this case that Plaintiff's Counsel had to deal with and overcome.

23 **4. The Skill Displayed and Quality of Work**

24 The level of skill displayed here and the excellent quality of work it produced also justify
25 the requested fee. Plaintiff's Counsel are skilled and experienced representative and class action
26 wage-and-hour litigators. The Task & Time Chart further illustrates this assertion.

27 _____
28 ²⁹ (Han Dec., *supra*, at ¶¶ 41, 45.)

³⁰ (*Id.* at ¶ 41; Exhibit 4.)

1 Plaintiff's Counsel conducted investigations and discovery into the facts of the case. This
2 included, among other things: (1) case strategy and analysis; (2) drafting, reviewing, and revising
3 documents; (3) preparing for and appearing for court proceedings; (4) undertaking calculations of
4 the claims; and (5) preparing for and attending the mediation and settlement negotiations.³¹

5 In addition to determining scope of the Settlement Group, Plaintiff's Counsel undertook
6 the time-consuming task of locating and interviewing Settlement Group Members to verify if
7 Plaintiff's claims raised any individualized issues. Plaintiff's Counsel used their experience in
8 representative and class action wage-and-hour litigation to obtain a substantial settlement.

9 Thus, Plaintiff's Counsel's accumulated skills and expertise contributed to the settlement
10 in this case, which supports the requested attorneys' fees. *See Lealao*, 82 Cal.App.4th at 51.

11 **C. The Lodestar Methodology Also Justifies Approval of the Requested Fees.**

12 Plaintiff's Counsel spent 376.6 hours litigating this matter. Plaintiff's Counsel's hourly
13 rates are supported by the 2020 Real Rate Report that was compiled by Wolter Kluwer that
14 surveyed the hourly rates charged in 2019 by hundreds of attorneys in California. Likewise,
15 Plaintiff Counsel's hourly rates are also in line with the Laffey Matrix.³²

16 Plaintiff's Counsel documented lodestar is calculated to be \$213,542.50. When cross-
17 checked with the requested Attorneys' Fees Award of \$111,150, it results in a negative multiplier
18 of 0.52. The hours spent are fully documented and consistent with those that would be expected
19 in a matter of this duration, complexity, and amounts at stake.³³

20 ***1. Plaintiff's Counsel Performed Work for a Reasonable Number of Hours.***

21 The case involved, among other things, gathering and analyzing data from Defendants and
22 the Settlement Group. Class Counsel also undertook intense preparation to attempt to resolve the
23 entire matter through mediation. These intense preparations ranged from locating and
24 interviewing several putative settlement group members, reviewing a myriad of documents,
25 determining the scope of the Settlement Group, verifying the strengths of Plaintiff's claims, etc.

26 ³¹ (Han Dec., *supra*, at ¶ 13.)

27 ³² (*Id.* at ¶ 43; Exhibits 5-6.)

28 ³³ (*Id.* at ¶¶ 42, 44.)

1 The Task & Time Chart evidence the numerous tasks that were performed to seek all
2 necessary information.³⁴ Thus, Plaintiff's Counsel spent a reasonable number of hours working
3 on this case, and their application for Attorneys' Fees Award is within the range of reasonableness.

4 ***2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation.***

5 Class Counsel's hourly rates are well within the range of rates charged by comparably
6 qualified attorneys in California and the legal profession in general for comparably complex work.
7 By extension, Plaintiff's Counsel's hourly rates are also in line with the Laffey Matrix.³⁵

8 Plaintiff's Counsel's hourly rates are reasonable for the following reasons: (1) comparable
9 hourly rates for similar services have been deemed to be reasonable in several cases in California;
10 and (2) several surveys of legal rates have supported Plaintiff Counsel's hourly rates. Based on
11 the attorney time expended, the lodestar fees incurred to date total \$213,542.50, resulting in a
12 negative multiplier of 0.52 when cross-checked to the requested Attorneys' Fees Award.³⁶

13 **VII. THE LITIGATION COSTS TO BE REIMBURSED AND SHOULD BE APPROVED**

14 The Settlement provides for a Litigation Costs Award of \$15,000.³⁷ Plaintiff's Counsel
15 has incurred \$12,452.88 in litigation costs and expenses.³⁸ Thus, Plaintiff's Counsel request the
16 Court order reimbursement of the costs and expenses of \$12,452.88 to Plaintiff's Counsel.

17 **VIII. APPROVAL OF THE PROPOSED ENHANCEMENT PAYMENT TO PLAINTIFF**

18 The Settlement provides for an Enhancement Payment of \$5,000 to be paid to Plaintiff.³⁹
19 Plaintiff contributed considerable time and effort to the litigation to enforce the Labor Code,
20 producing relevant documents and providing the facts and evidence necessary to support the
21 allegations. Plaintiff was available whenever Plaintiff's Counsel needed him and tried to obtain
22

23 ³⁴ (Han Dec., *supra*, at ¶ 41; Exhibit 4.)

24 ³⁵ (*Id.* at ¶¶ 42-43; Exhibits 5-6.)

25 ³⁶ (*Id.* at ¶¶ 42, 44.)

26 ³⁷ (Settlement Agreement, *supra*, § 7.b.ii.)

27 ³⁸ (Han Dec., *supra*, at ¶ 45; Exhibit 7.)

28 ³⁹ (Settlement Agreement, *supra*, at § 7.b.iv.)

documents and information that would aid the litigation of this case. Plaintiff was also made aware of and accepted the risks and consequences associated with serving as the named plaintiff (*i.e.*, broader release, difficulty finding employment). Finally, Plaintiff's continued assistance has proven to be invaluable to Plaintiff's Counsel in terms of developing legal theories, interviewing putative settlement group members, and requesting and obtaining relevant documents.⁴⁰

Thus, it is reasonable and just for Plaintiff to receive an Enhancement Payment of \$5,000 in addition to the Individual Settlement Award he will receive as a Settlement Group Member.

IX. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

The Agreement provides for the payment of Settlement Administration Costs of \$5,000 to Simpluris, Inc. ("Simpluris").⁴¹ The Settlement Administration Costs are intended to cover the costs incurred by Simpluris for performing its duties outlined in Agreement. Plaintiff's Counsel have worked with Simpluris before and are familiar with their good reputation and work product.⁴²

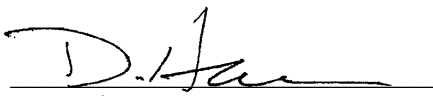
Therefore, the Court should approve the payment of the Settlement Administration Costs of \$5,000 to Simpluris, a necessary third-party to the notice and settlement process.

X. CONCLUSION

The Settlement is fair, adequate, and reasonable, as it represents a reasoned compromise. Based thereon, Plaintiff respectfully requests that the Court approve the Settlement, including the plan of allocation and distribution of the Gross Settlement Amount, the Attorneys' Fees Award, the Litigation Costs Award, the Settlement Administration Costs, and the Enhancement Payment.

Dated: March 25, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

⁴⁰ (Han Dec., *supra*, at ¶ 48; Amended Declaration of Daniel Rodriguez In Support of Plaintiff's Motion for Approval of Private Attorneys General Act (Labor Code §§ 2698, et seq.) Settlement Agreement ("Enriquez Dec."), ¶¶ 5-10.)

⁴¹ (Settlement Agreement, *supra*, at § 7.b.iii.)

⁴² (Han Dec., *supra*, at ¶ 46.)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On March 25, 2022, I served the foregoing document described as

for the following case: **Rodriguez v. Means Engineering, Inc.**
 LWDA/Court Case No.: **LWDA Case No.: CM-785180-20**
Court Case No.: 37-2020-00024397-CU-OE-CTL
San Diego County Superior Court

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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

Mark Anderson

PROOF OF SERVICE