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12 Attorneys for Plaintiff,
KRYSTAL THOMAS

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN BERNARDINO**
15 **(UNLIMITED JURISDICTION)**

16 KRYSTAL THOMAS, on behalf of herself, and
17 as an “aggrieved employee” on behalf of other
18 similarly situated “aggrieved employees” under
the Labor Code Private Attorney General Act of
2004,

19 *Plaintiff(s),*

20 v.

21 CHOICE PHYSICIANS NETWORK, INC., a
22 California corporation; DESERT PHYSICIANS
MANAGEMENT, LLC, a California
23 corporation, and DOES 1 through 50, inclusive,

24 *Defendant(s)*
25
26

Case No.: CIVDS2013964

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
KRYSTAL THOMAS’ MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Action filed: June 25, 2020

Hearing Date: October 20, 2021

Hearing Time: 10:00 a.m.

Dept.: S-26, Hon. David
Cohn



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1 **DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFF KRYSTAL**
2 **THOMAS’S MOTION FOR APPROVAL OF PAGA SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am
5 an attorney of record for Plaintiff Krystal Thomas (hereafter referred to as “Plaintiff” or
6 “Thomas”) in this action against Defendants Choice Physicians Network, Inc. (“Choice”) and
7 Desert Physicians Management, LLC (DPM) (“Defendants”) (collectively the “Parties”). I am a
8 member in good standing of the State Bar of California. Except as otherwise indicated, I have
9 personal knowledge of all matters set forth herein and, if called as a witness, could and would
10 competently testify thereto under oath.

11 2. A true and correct copy of the PAGA Settlement Agreement and Release (the
12 “Agreement” or “PAGA Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy
13 of the Parties’ agreed upon notice to the below-defined PAGA Members (the “PAGA Notice”) is
14 attached hereto as **Exhibit 2**.

15 ***Factual and Procedural Background***

16 3. DPM is a medical practice located in Apple Valley, California. Choice, a DPM
17 affiliate, is a network of contracted physicians. DPM employs persons in several hourly, non-
18 exempt positions, including, but not limited to, case managers, and comparable employees
19 (hereafter “PAGA Members”).

20 4. DPM first employed Plaintiff on or around April 8, 2019 as a Licensed Vocational
21 Nurse (LVN) Case Manager in DPM’s Case Management Department. Plaintiff continuously
22 worked for DPM from the time of her hire until approximately July 3, 2019 when DPM
23 terminated her employment.

24 5. In this lawsuit, Plaintiff contends that Defendants are liable to her and the other
25 approximately 109 PAGA Members for their failures to: (1) provide all required timely, off-
26 duty, and unrestricted meal and rest periods or pay premium wages; (2) pay all wages for all
27 hours worked; (3) reimburse the PAGA Members for gas, mileage, and use of their personal
28 mobile phones; (4) provide accurate written wage statements and facially compliant paychecks;
29 (5) timely pay final wages upon termination of employment; (6) maintain accurate employment
30 records; and (7) maintain temperature providing reasonable comfort at the workplace.

31 6. Defendants deny Plaintiff’s allegations. Defendants contend that they have



1 complied at all times with their obligations to pay all wages due, provide all meal and rest breaks,
2 reimburse all necessary business expenses, issue facially compliant paychecks and accurate wage
3 statements, maintain accurate employment records, and maintain temperature providing
4 reasonable comfort throughout their facility. Agreement, ¶ 36.

5 7. Plaintiff and the PAGA Members are subject to arbitration agreements with
6 Defendants. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
7 under PAGA. By letter dated June 5, 2020, Plaintiff, on behalf of herself and other aggrieved
8 hourly employees gave written notice by certified mail to the Labor and Workforce Development
9 Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code
10 alleged to have been violated, including the facts and theories to support the alleged violations.
11 A true and correct copy of Plaintiff’s letter to the LWDA dated June 5, 2020 is attached as
12 **Exhibit 3.**

13 8. On June 20, 2020, Plaintiff filed a Class Action Complaint in the San Bernardino
14 Superior Court, Case No. CIVDS2013964, against Choice Physicians Network, Inc., Desert
15 Physicians Management, LLC, and Manmohan Nayyar, on behalf of herself and others similarly
16 situated, alleging causes of action on a class-wide basis for (1) Failure to Provide Rest Breaks;
17 (2) Failure to Provide Meal Periods; (3) Failure to Pay All Wages Earned for All Hours Worked;
18 (4) Failure to Indemnify; (5) Failure to Provide Accurate Written Wage Statements; (6) Waiting
19 Time Penalties; and (7) Unfair Competition. A true and correct copy of Plaintiff’s Complaint
20 filed on June 20, 2020 is attached as **Exhibit 4.**

21 9. On September 22, 2020, the Court dismissed Manmohan Nayyar without
22 prejudice based on the Parties’ stipulated request. A true and correct copy of the Court’s Order
23 dismissing Manmohan Nayyar is attached as **Exhibit 5.**

24 10. Plaintiff chose to dismiss without prejudice her class action lawsuit based on an
25 arbitration agreement with a class action waiver she signed on April 8, 2019.

26 11. On October 7, 2020, Plaintiff filed a representative action Complaint as an
27 “aggrieved employee” with a single cause of action for civil penalties under the PAGA against
28 Defendants Choice and DPM in the San Bernardino Superior Court. A true and correct copy of
Plaintiff’s First Amended PAGA Complaint filed on October 7, 2020 is attached as **Exhibit 6.**

12. On October 7, 2020, and by stipulation of the Parties, the Court dismissed
Plaintiff’s class action lawsuit without prejudice.



1 13. On April 20, 2021, Glenn Lerman, Esq., a professional mediator, mediated this
2 dispute and the Parties agreed to settle the entire Action. At all times, the negotiations were
3 adversarial and contentious, although still professional in nature.

4 14. On September 22, 2021, per the PAGA Settlement and by stipulation of the
5 Parties, Plaintiff sent a supplemental letter to the LWDA and Defendants of her facts and
6 theories, and, on the same day, Plaintiff filed a Second Amended Complaint (the operative
7 complaint) with a single cause of action for civil penalties under the PAGA against Defendants
8 Choice and DPM adding alleged violations of Labor Code sections 212, 226.3, 511, 1194.2,
9 1197.1, and 6720. A true and correct copy of Plaintiff's supplemental LWDA letter dated
10 September 22, 2021 is attached as **Exhibit 7**. A true and correct copy of Plaintiff's Second
11 Amended Complaint submitted for filing on September 27, 2021 is attached as **Exhibit 8**.

12 15. This PAGA Settlement was reached after substantial exchanges of data,
13 information and documents before and during the mediation, and is a result of extensive arms-
14 length negotiations. In advance of the mediation, and before agreeing to the terms of the
15 Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendants
16 produced Plaintiff's personnel file, copies of their relevant company written policies, and time
17 records for a random sample of PAGA Members randomly selected by Plaintiff. Counsel for the
18 Parties further investigated the applicable law as applied to the facts discovered regarding
19 Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by Plaintiff. Now
20 that the Parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for
21 approval.

22 16. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).
23 The Court necessarily has broad discretion in making the decision to approve or reject a
24 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
25 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
26 of penalties based on the facts and circumstances of the particular case. Although the PAGA
27 does not set forth the particular standards against which a PAGA settlement should be evaluated,
28 the LWDA has provided guidance for approval that mirrors the standards for evaluating class
 action settlements.

 17. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
 met here. First, any civil penalties recovered, whether by judgment or settlement, must be



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distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i). The Parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as **Exhibit 9**. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

18. The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The Parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator; (2) The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. Plaintiff requested and Defendants provided the number of PAGA Members, the number of total paychecks issued during the Covered Period, all policies in effect during the Covered Period, and a sampling of time records; and (3) Counsel for the Parties are experienced with PAGA cases.

19. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent PAGA Members. Plaintiff contends that she is an adequate PAGA representative. Plaintiff and the PAGA Members have strong and co-extensive interests in this litigation because they all worked for Defendants during the relevant time period under the same written and unwritten policies, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the PAGA Members. As this is a PAGA-only claim, there is no issue of ascertainability. However, Plaintiff maintains that the number of PAGA Members is ascertainable because they may be identified by reference to Defendants' records and Defendants have agreed to share the relevant information from its records to facilitate the process. Therefore, the number of PAGA Members and their whereabouts are ascertainable.

Background of Counsel

20. I am experienced in handling employment law matters and specifically wage and hour cases. I have been practicing law since 1995. My experience has been almost exclusively in the area of employment law representing employees with claims of wrongful termination, harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical



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1 leave violations. I have tried many cases before California and federal courts, government
2 agencies and neutral arbitrators. I am a member of the California Employment Lawyers
3 Association (CELA).

4 21. Since I started practicing law, I have tried many cases before courts, arbitrators
5 and government agencies. Some of my cases are:

6 A. *Ricardo Sandoval v. Dept. of Treasury*, United States District Court,
7 Southern District of California (the Honorable Judith Keep presiding), 1998. Plaintiffs Special
8 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
9 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
10 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
11 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, *San Diego
12 Union-Tribune*, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias
13 And Retaliation" by Valerie Alvord, *San Diego Union-Tribune*, May 16, 1998.

14 B. *Jorge Guzman v. Department of Justice*, United States District Court,
15 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
16 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
17 and police brutality by agents of the Office of the Inspector General. Jury found the defendants
18 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
19 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
20 Latino, including falsified charges" by Patrick J. McDonnell, *Los Angeles Times*, January 21,
21 1999.

22 C. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton
23 (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights
24 claims and wrongful termination claims against employer in a month-long jury trial. The jury
25 awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His
26 Job" by Dan Weikel, *Los Angeles Times*, September 28, 2000; "Punitive Damages Awarded to
27 Fired Social Worker" by Dan Weikel, *Los Angeles Times*, June 10, 2000; "A Whistleblower's
28 Revenge" by Susan Goldsmith, *New Times Los Angeles*, June 8, 2000.

D. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
Plaintiff, who I represented *pro bono* sought the return of \$45,000.00 he paid to an attorney



1 escrow officer who subsequently absconded with the money. The jury awarded compensatory
2 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
3 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
4 Legal Services.

5 E. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
6 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
7 Customs Agent, followed by an award of Attorneys' fees and costs.

8 F. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
9 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
10 wrongful termination against his former employer. The Neutral Arbitrator awarded
11 compensatory and liquidated damages. The claims for damages, attorney's fees and costs were
12 resolved shortly thereafter by means of a confidential settlement.

13 G. *Alina Ghrdilyan v. RJ Financial, Inc.*, et al., LA Superior Court case no.
14 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
15 first and only case to be successfully prosecuted through trial under the Labor Code Private
16 Attorney Generals Act of 2004, Labor Code §§ 2698, *et seq.* on behalf of plaintiffs and other
17 aggrieved employees against someone other than an employer for civil penalties including
18 unpaid wages. The case involves claims of unpaid overtime, unprovided rest and meal periods,
19 unpaid vacation, untimely interval and final wages, and unreimbursed expenses. For my work in
20 that case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

21 22. I have been involved in the prosecution of numerous wage and hour class and
22 representative actions at various stages of litigation. A small sampling of the representative wage
23 and hour cases in which I have been counsel of record is as follows:

24 A. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
25 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
26 settlement on behalf of assistant fitness manager employees).

27 B. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-
28 000382146 (appointed Class Counsel and granted final approval of class action settlement by
the court on behalf of nonexempt employees).

C. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct.,
Case No. BC465017 (appointed Class Counsel and granted final approval by this Court of class



1 action settlement on behalf of merchandiser employees).

2 D. *Deckard v. MSL Community Management LLC*, Riverside County
3 Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of
4 class action settlement on behalf of caregivers and medical technicians).

5 E. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior
6 Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final
7 approval of class action settlement on behalf of boutique manager and assistant manager
8 employees).

9 F. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058
10 (appointed Class Counsel and granted final approval by this Court of class action settlement on
11 behalf of personal trainer employees).

12 G. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No.
13 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class
14 action settlement on behalf of medical devices employees).

15 H. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No.
16 BC480808 (appointed Class Counsel and granted final approval of class action settlement on
17 behalf of hourly employees).

18 I. *La Fleur v. Medical Management International, Inc.*, United States
19 District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class
20 Counsel and granted final approval of class action settlement on behalf of practice managers).

21 J. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court,
22 Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action
23 settlement on behalf of non-exempt hourly employees excluding truck drivers).

24 K. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court,
25 Case No. BC462681 (appointed Class Counsel and granted final approval of class action
26 settlement on behalf of security guard employees).

27 L. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
28 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
on behalf of dairy and agricultural laborers).

M. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
BC442608 (appointed Class Counsel and granted final approval by this Court of class action



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1 settlement on behalf of call concert rigging employees).

2 N. *Nardone v. Sequoia Beverage Company, LP*, Tulare County Superior
3 Court, Case No. VCU-248370 (appointed Class Counsel and granted final approval of class
4 action settlement by the court on behalf of hourly employees).

5 O. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
6 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
7 (appointed Class Counsel and granted final approval of class action settlement on behalf of
8 virtual customer account executives).

9 P. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
10 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
11 behalf of bobtail truck drivers).

12 Q. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
13 BC431249 (granted class certification through contested motion and appointed Class Counsel in
14 case on behalf of former pharmacy employees based on late final wage payments in violation of
15 Labor Code §§ 201–203).

16 R. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
17 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
18 approval of class action settlement by the court on behalf of auditor employees).

19 S. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
20 Class Counsel and granted final approval by this Court of class action settlement involving
21 alleged misclassification of sales employees and unpaid vacation pay).

22 T. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
23 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
24 settlement on behalf of service account manager employees).

25 U. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
26 No. BC421485 (granted class certification through contested motion and appointed Class
27 Counsel in case on behalf of former security workers based on late final wage payments in
28 violation of Labor Code §§ 201–203).

V. *Vang v. Burlington Coat Factory Corporation*, United States District
Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel
and granted final approval of class action settlement by the court on behalf of assistant store



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manager employees).

W. *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class action settlement on behalf of customer specialist employees).

X. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

Exposure & Risk Analysis

23. I considered various sources of information in the lead-up to and during the mediation of April 20, 2021 that enabled Plaintiff to achieve the PAGA Settlement at issue. Among other things, Plaintiff considered the following:

- Defendants produced and Plaintiff reviewed her personnel file.
- Plaintiff requested that Defendants produce any and all policies regarding job duties, position descriptions, timekeeping procedures, overtime and double-time wages, meal periods and rest breaks, meal period waivers and agreements, expense reimbursement, compensation plans, incentive pay, bonuses and complaints about working conditions in effect during the Covered Period beginning in June of 2019. Defendants produced those policies.
- Prior to mediation, Defendants disclosed that there were 109 PAGA Members during the Covered Period. Based on this information, Plaintiff requested sample time and payroll records for 22 randomly chosen employees. This represents 20% of the total employees that Defendants employed during this time period. Defendants sent a list of all the anonymous employee identification numbers for this time period. Plaintiff chose 22 employee identification numbers by using a random number generator in Microsoft Excel. Defendants then produced the time records of such employees to Plaintiff in excel format. Plaintiff then retained a professional data analyst to examine the records and to determine the frequency of workdays with presumptive meal periods violations, i.e., workdays with meal periods that were absent, short, or late.
- Plaintiff interviewed other employees about the claims at issue.
- Plaintiff analyzed the state of caselaw on PAGA claims and claims for off-the-clock work, meal and rest violations, and expense reimbursement.
- Plaintiff surveyed the outcomes of PAGA cases that went to trial or otherwise concluded before trial.

24. Before mediation, Defendants disclosed that as of October 10, 2020, there were approximately 1,982 total pay periods and 109 PAGA Members. Agreement, ¶ 60. Based on this



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1 information, I prepared an estimate of the maximum civil penalties under the PAGA. A true and
2 correct copy of the spreadsheet I prepared in advance of the mediation of this Action is attached
3 to this declaration as **Exhibit 10**. The maximum possible civil penalties under the PAGA is the
4 total number of pay periods with one or more violations multiplied by the maximum possible
5 civil penalty amount per pay period. *Id.*

- 6 • The maximum civil penalty for unpaid minimum wage violations is \$100.00 under Labor
7 Code section 1197.1. As such, Plaintiff's counsel estimated that the maximum amount
8 Plaintiff could recover for herself, the State, and the Aggrieved Employees is
9 \$198,200.00 (1,982 pay periods x \$100 civil penalty amount) and only if she established
10 that every PAGA Member suffered an unpaid minimum wage violation in each pay
11 period.
- 12 • The maximum civil penalty for unpaid overtime wage violations is \$50.00 under Labor
13 Code section 558. As such, Plaintiff's counsel estimated that the maximum amount
14 Plaintiff could recover for herself, the State, and the Aggrieved Employees is \$99,100.00
15 (1,982 pay periods x \$50 civil penalty amount) and only if she established that every
16 PAGA Member suffered an unpaid overtime wage violation in each pay period.
- 17 • For rest period violations, the maximum civil penalty is \$100 under Labor Code sec.
18 2699(f)(2). As such, Plaintiff's counsel estimated that the maximum amount Plaintiff
19 could recover for herself, the State, and the Aggrieved Employees is \$198,200.00 (1,982
20 pay periods x \$100 civil penalty amount) and only if she established that every PAGA
21 Member suffered a rest period violation in each pay period.
- 22 • The maximum civil penalty for meal period violations is \$50 under Labor Code sec. 558.
23 As such, Plaintiff's counsel estimated that the maximum amount Plaintiff could recover
24 for herself, the State, and the Aggrieved Employees is \$99,100.00 (1,982 pay periods x
25 \$100 civil penalty amount) and only if she established that every PAGA Member suffered
26 a meal period violation in each pay period.
- 27 • For unreimbursed business expenses violations, the maximum civil penalty is \$100 under
28 Labor Code sec. 2699(f)(2). As such, Plaintiff's counsel estimated that the maximum
amount Plaintiff could recover for herself, the State, and the Aggrieved Employees is
\$198,200.00 (1,982 pay periods x \$100 civil penalty amount) and only if she established
that every PAGA Member suffered an unreimbursed expenses violation in each pay
period.
- For untimely wages, the maximum civil penalty is \$100 under Labor Code sec. 210.
Plaintiff's counsel determined that the most Plaintiff could recover for herself, the State,
and the Aggrieved Employees in civil penalties for untimely wages is about \$198,200
(1,982 pay periods x \$100 civil penalty amount).
- For faulty wage statements, the maximum civil penalty is \$100 under Labor Code sec.



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1 sec. 2699(f)(2). Plaintiff's counsel determined that the most Plaintiff could recover for
2 herself, the State, and the Aggrieved Employees in civil penalties for wage statement
violations is approximately \$198,200.00 (1,982 pay periods x \$100 civil penalty amount).

3 25. Stacking each of these maximum recoverable civil penalty estimates yields a total
4 amount of \$1,189,200.00. Unfortunately for the employees concerned, the potential for recovery
5 of over \$1 million in civil penalties depends on circumstances that are extremely unlikely
6 independently and in combination. It would depend on the Court stacking the maximum
7 recoverable civil penalties for unpaid minimum wage violations, unpaid overtime violations,
8 unprovided meal breaks violations, unprovided rest breaks violations, unreimbursed expenses
9 violations, untimely final wages violations, and faulty wage statement violations per pay period
10 for all 1,982 pay periods for all 109 PAGA Members during the Covered Period. I am not aware
11 of any California State court decision awarding a plaintiff and the other PAGA Members she
12 represents multiple civil penalties for the same pay period under different Labor Code provisions.
13 With this in mind, I reduced the civil penalties by about 70%. I concluded that \$386,490.00 was
14 more likely the maximum possible recoverable civil penalties. I applied an additional 60%
15 discount to account for all other risks discussed below. The Settlement of \$149,000.00 involves
16 a total payment of about 39% of the maximum possible recovery. A settlement for
17 approximately 39% of the potential recovery is a proportion substantially in excess of recovery
18 proportions sanctioned by existing case law.

19 26. There are risks to Plaintiff's claims for off-the-clock work. DPM's Timekeeping
20 Procedure Policy expressly prohibits non-exempt employees from working off-the-clock. An
21 acknowledgment form is attached to the "Timekeeping Procedures Policy," and all employees
22 are required to sign this acknowledgment prior to starting work.

23 27. There are risks to Plaintiff's meal and rest period claims. Out of the 3,759 total
24 shifts recorded in the sample, 0.27% of the shifts had no meal periods, 3.80% of the shifts had a
25 late meal period and 0.19% of the shifts had meal periods that were short. This is a presumptive
26 meal period violation rate of only 4.26% and required a significant discount during settlement
27 negotiations. Moreover, Defendants contend that, to establish a violation for missed meal
28 periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. Instead, a plaintiff must



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1 show the employer impeded, discouraged, or prohibited the employee from taking a proper
2 break, or otherwise failed to release the employee of all control. Id. “Thus, the crucial issue with
3 regard to the meal break claim is the reason that a particular employee may have failed to take a
4 meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.
5 Determining by a review of Defendants’ time records the exact reasons why a meal period
6 appears to be short or late would be difficult and pinpointing those days in which Plaintiff and
7 the PAGA Members worked during their meal periods will be a challenge. Additionally,
8 Defendants provided evidence that they provide employees with the opportunity to take meal
9 and rest breaks. DPM’s Employee Handbook contains legally compliant meal period and rest
10 break policies. According to Defendants, management regularly reminds employees to take their
11 meal periods and rest breaks and employees often take meal and rest breaks in excess of that
12 required by law, both in quantity and length. Defendants also represented that most PAGA
13 Members signed meal period waivers for shifts between five (5) and six (6) hours as permitted
14 by Wage Order 5-2001. Finally, beginning in July 2020, Defendants began paying a premium
15 where meal or rest period violations are indicated on time records and where an employee or
16 supervisor notifies payroll of a non-compliant meal or rest break.

17 28. Defendants contend they provided their non-exempt employees with the
18 opportunity to take rest periods in accordance with California law, and, accordingly, Plaintiff’s
19 rest break claim has no support. Additionally, there are other risks to Plaintiff’s rest period claim.
20 Employers are not required to record rest periods and such periods are paid. Unlike meal periods,
21 where there are often records showing whether an employee clocked out or not, there is no such
22 evidence to prove a missed rest period or that the employer refused to authorize and permit one.
23 Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample
24 witness testimony and surveys to prove the claims. While a victory with such evidence is
25 certainly possible, relevant caselaw makes such claims risky from a trial management and due
26 process perspective.

27 29. There is a risk that the Court may consider Plaintiff’s claims as to Defendants’
28 alleged failure to indemnify for business expenses to be individual in nature. Plaintiff alleges
that Defendants did not reimburse her or the other PAGA Members for use of their personal cell
phones, gas, and mileage expenses. Defendants provided evidence at mediation that all case
managers, like Plaintiff, are issued cell phones. Moreover, Defendants represented that the



PAGA Members, including Plaintiff, received reimbursements for their mileage expenses and that Defendants have a reimbursement request form, which expressly includes mileage.

30. The sole source of money recoverable for the PAGA Members and the State is civil penalties available under PAGA. It allows employees to seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory. As discussed above, Plaintiff's maximum estimated liability exposure is based on the theories that: (1) Every paycheck that Defendants issued to employees during the Covered Period represents a pay period in which every PAGA Member suffered a minimum wage violation; (2) Every paycheck that Defendants issued to employees during the Covered Period represents a pay period in which every PAGA Member suffered an overtime wage violation; (3) Every paycheck that Defendants issued to employees during the Covered Period represents a pay period in which every PAGA Member suffered a meal period violation; (4) Every paycheck that Defendants issued to employees during the Covered Period represents a pay period in which every PAGA Member suffered a rest period violation; and (5) Every paycheck that Defendants issued to employees during the Covered Period represents a pay period in which every PAGA Member suffered an unreimbursed expense violation. There are no California state court decisions under the PAGA to date with substantial awards of civil penalties. I am aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts, one of which was overturned on May 28, 2021.¹

¹ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from the plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein* suffered a particularly sizeable injury – the court found that the defendant's policies caused damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in *Bernstein*, who the court noted had received "millions of dollars from the state of California" to train their flight attendants, engaged in glaring violations of the labor code, such as failing to compensate its flight attendants for work performed outside of "block time" (time during which the aircraft is moving), including time spent participating in pre-flight briefings, boarding passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049, 1055-1058. Indeed, defendant's liability was so clear in *Bernstein* that the case was resolved on the plaintiffs' motion for summary judgment. *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court awarded approximately \$102 million in damages, primarily based on the defendants' failures to comply with the requirements of California Labor Code section 226. On May 28, 2021, the United States Court of appeals for the Ninth Circuit overturned the decision finding that there is no technical wage statement violation for a failure to list the rates and hours of pay associated with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App. LEXIS 16070 (9th Cir. May 28, 2021).



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1 31. Additionally, PAGA states a court has discretion to award a lesser amount than the
2 maximum penalty. There is a substantial risk that the Court could reduce civil penalties to an
3 insignificant amount if it is unpersuaded by Plaintiff’s evidence of willful and intentional conduct.
4 *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 (“*Carrington*”) illustrates this. In that case,
5 the Court of Appeal affirmed a trial court’s heavily discounted award of only \$5 per violation
6 because it was within the Court’s discretion to significantly reduce PAGA penalties even when
7 there is a finding that a violation of the California Labor Code occurred. The plaintiff in
8 *Carrington* had requested penalties in excess of \$70 million and was successful in proving the
9 PAGA claim during a bench trial. However, the trial court reduced the total award after trial to
10 only \$150,000 (30,000 violations x \$5) and stated that this reduction was warranted because
11 imposing the maximum penalty would be “unjust, arbitrary, and oppressive”, based on Starbucks’s
12 “good faith attempts” to comply with meal break obligations and because the Court found the
13 violations were minimal. Applying the same formula here and assuming there was one violation
14 during each pay period, the award of civil penalties could not exceed \$9,910.00 in PAGA penalties
15 (1,982 violations x \$5). As such, this Settlement is an excellent result based solely on the risk the
16 Court chooses to apply the *Carrington* formula. Defendants have also posed formidable defenses
17 to the Labor Code claims underlying Plaintiff’s allegations. Thus, the chance of Plaintiff
18 recovering a higher amount than the Settlement Fund is uncertain.

19 32. Moreover, judges have awarded extremely small sums to PAGA claimants in the
20 past. In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
21 BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and correct
22 copy of the amended judgment is attached as **Exhibit 11**. The plaintiff sought in excess of \$9
23 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
24 Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct
25 copy of the judgment transcript is attached as **Exhibit 12**, 19:8-20:19. In a similar PAGA case
26 before the Los Angeles Superior Court, *Shields v. Security Paving Company, Inc.*, LA Superior
27 Court case no. BC492828, on October 24, 2017, the court awarded the prevailing PAGA plaintiff
28 civil penalties totaling only \$50.00. A similar result could occur here.

 33. Defendants could also convince the Court to dismiss the claims due to
unmanageability given that that DPM has approximately 45 different positions or job titles across
13 departments and their procedures are individualized. Defendants contend that Plaintiff’s



1 allegations require a host of individualized inquiries which would arguably devolve into a series
2 of mini-trials based on whether each employee voluntarily elected to unilaterally waive a provided
3 meal period or authorized rest break, based on position titles, job duties and the type of work they
4 perform, whether they worked off-the-clock, whether their work involves vehicle travel, whether
5 they are issued company phones, among others. (See, e.g., *Brinker*, 53 Cal.4th at 1004.)
6 Defendants contend that the claims for overtime, meal and rest periods, and expense
7 reimbursements are largely job-specific and dependent upon the job title and shift, since the PAGA
8 Members report to different managers, and there are different procedures, requirements, and
9 practices depending on the position and department. In *Ortiz v. CVS Caremark Corp.*, the court
10 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal.
11 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would have
12 required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed
13 PAGA claims where, as here, there are a large number of allegedly aggrieved individuals whose
14 claims require individual assessments. See, e.g., *Litty v. Merrill Lynch & Co.*, 2014 WL 5904904,
15 at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015);
16 see also *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
17 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of
18 potential aggrieved employees, judicial economy favors deferring the representative portion of the
19 PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015).

20 34. Furthermore, on September 9, 2021, the California Court of Appeal issued a
21 significant decision in *Wesson v. Staples the Office Superstore, LLC*, No. B302988, 2021 Cal.
22 App. LEXIS 743 (Ct. App. Sep. 9, 2021) (“*Wesson*”), holding that courts have authority to ensure
23 that PAGA claims are manageable, and that courts may limit or strike unmanageable PAGA
24 claims.²

25 35. While the evidence gathered through Plaintiff’s discovery supports the merits of
26 the claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the
27 risks associated with the merits of Plaintiff’s claims, the uncertainties of complex litigation, the
28 cost of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties

² The *Wesson* decision marks the first time an appellate court has weighed in on whether PAGA claims must be manageable.



ultimately awarded, and the secured benefit to the PAGA Members and the LWDA promoting compliance with the Labor Code.

Individual PAGA Payments

36. Defendants represent that there are approximately 109 PAGA Members during the Covered Period. After deducting the requested Court-approved PAGA Counsel Fees (49,666.67) for attorneys' fees and up to \$15,000 for PAGA Counsel's Costs for litigation expenses, the General Release Payment (\$15,000.00) to Plaintiff, and the Settlement Administration Costs (up to \$6,000), the PAGA Penalties will be approximately \$70,847.60. Seventy five percent (75%) of the PAGA Penalties will be paid to the Labor and Workforce Development Agency ("LWDA") (\$53,135.70), and twenty five percent (25%) (\$17,711.90) of the PAGA Penalties will be paid to the PAGA Members on a pro-rata basis based upon their respective number of Eligible Pay Periods during the Covered Period. Agreement, ¶ 41. With a total of 109 PAGA Members, the average estimated Individual PAGA Payment for each PAGA Member is approximately \$162.49 (\$17,711.90 (25% of the estimated PAGA Penalties of \$70,847.60)/109 PAGA Members).

37. Although an average payment of \$162.49 per PAGA Member is not an enormous sum of money, it is an excellent result given the uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of the PAGA. The PAGA is not a restitution statute with a traditional damages provision designed to restore victims to the position they would have been in had the Labor Code violations not taken place. Rather, it is at best a punishment statute designed to reduce future Labor Code violations. It provides for civil penalties only. *Id.* As recent caselaw makes clear, plaintiffs in a PAGA lawsuit cannot recover as part of the civil penalty any wages the Labor Code violations at issue caused. *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175 (2019). The penalties are likely limited by the PAGA's per paycheck cap of only \$100 and the caps of the Labor Code statutes it incorporates, such as Labor Code § 558 which limits the civil penalty for a meal period violation to \$50 per paycheck.

38. Further, PAGA obligates the prevailing plaintiff to disburse 75% of the civil penalties collected to the State. Within the framework she is bound by, Plaintiff, considering the evidence she faced, achieved a phenomenal result for the employees concerned. What's more, the Settlement Plaintiff achieved permits the employees concerned who are dissatisfied with the amount they received in civil penalties to pursue any unpaid restitution, wages, interest, statutory



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1 penalties, and attorney fees and costs they believe they are owed in arbitration pursuant to their
2 agreements with the Defendants. The Settlement does not require them to opt out to do so. As
3 such, there is no basis for objection even if the PAGA permitted it. Under the circumstances,
4 the average payment of \$162.49 per PAGA Member is a victory by any rational standard.

Attorneys' Fees and Costs

5 39. A true and correct copy of the fee sharing agreement between the Spivak Law
6 Firm and United Employees Law Group is attached as **Exhibit 13** to this declaration. My co-
7 counsel and I intend to request attorneys' fees of \$49,666.67 (1/3 of the Settlement Fund) and
8 \$8,485.73 in reasonable litigation costs through the conclusion of matters related to the
9 Settlement. The written retainer agreement I entered into with Plaintiff provides that I may elect
10 to recover either (a) statutorily awarded attorney fees or (b) up to 40% of any recovery. I will
11 make my written fee agreement available to the Court on request.

12 40. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
13 awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's
14 Counsel's fee request of \$49,666.67 (one-third of the Settlement Fund) is fair and reasonable
15 based on their lodestar as cross-checked against the percentage of the recovery. In this case,
16 Plaintiff's Counsel have a total lodestar of approximately \$54,589.50 without the use of any
17 multiplier, which results in a negative multiplier of 0.91 when compared against the \$49,666.67
18 fee request.³ A true and correct summary of the time records of my firm is attached as **Exhibit**
19 **14** to this declaration. I will make the detailed copies of such records available to the Court for
20 *in camera* inspection upon its request. I will have waited for almost two years to be awarded
21 attorneys' fees for work performed since December of 2019, when Plaintiff first contacted my
22 office, compared to Defendants' counsel who have been paid as they performed work during this
23 case. Moreover, my co-counsel and I have expended time, effort, and money that we could have

24 ³The negative multiplier of 0.91 is supported by California case law. Under California law, lodestar multipliers can
25 range from 2 to 4 or even higher. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple*
26 *Computer, Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL
27 5377849, *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in
28 awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v.*
Bank of America Nat'l Trust & Sav. Ass'n., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate
awarded) (cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora*
Community Redevelopment Agency v. Demeter (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee
award 12 times estimated lodestar multiplier).



expended on less risky cases instead.

41. My firm's current litigation costs total approximately \$7,792.50 to date. A true and correct summary of my firm's costs and expense is attached as **Exhibit 15** to this declaration. I will make detailed copies of such records available to the Court for *in camera* inspection upon its request. I anticipate that I will incur an additional \$685.93 in costs, which consist of filing fees and attorney service fees for filing this motion, Notice of Entry and Final Accounting, and estimated future appearance fees regarding the hearing on the Settlement Approval and Final Accounting. I anticipate my firm's litigations costs will total approximately \$8,478.43 through final accounting of the Settlement. Including the out-of-pocket expenses incurred by my co-counsel⁴, Plaintiff's Counsel request a total of \$8,485.73 in reasonable litigation costs.⁵

42. In addition, based on my experience in wage and hour class action and PAGA matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC, U.S.*

⁴ My co-counsel's current out of pocket expenses total approximately \$7.30. See Haines Decl. ¶ 11.

⁵ My co-counsel and I do not seek reimbursement for the wages I paid to the attorneys, paralegals, and legal assistants to aid in the representation of the Class. We bore these expenses over the time since this lawsuit began without expectation of reimbursement.



1 District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund);
2 *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-
3 third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court,
4 Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare
5 Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles
6 Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles
7 Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No.
8 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No.
9 BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case
10 No. CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court,
11 Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v.*
12 *National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of
13 fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado,
14 Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/*
15 *Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California,
16 Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard*
17 *Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris*
18 *v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-
19 third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-
20 third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-
CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino
Superior Court, Case No. CIVDS1500146 (one-third of fund).

21 43. My previous experience in litigating wage and hour class actions supports the
22 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
23 experience in similar matters was integral in evaluating the strengths and weaknesses of the case
24 against Defendants and the reasonableness of the Settlement. Practice in the narrow field of wage
25 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law,
26 state and federal, as well as the procedural law of class action litigation. Because it is reasonable
27 to compensate me commensurate with my skill, reputation, and experience, attorneys' fees of
28 approximately one-third of the Settlement Fund is reasonable. Likewise, the caliber and
experience of opposing counsel in labor and employment litigation, Mark Posard and Allison



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Ross of Gordon Rees Scully Mansukhani, LLP, support the fairness and reasonableness of the requested fee award.

44. Attached hereto as **Exhibit 16** is a true and correct copy of the biography page for Allison Ross from the Gordon Rees Scully Mansukhani, LLP website. She defended this case.

45. Attached hereto as **Exhibit 17** is a true and correct copy of the biography page for Mark Posard from the Gordon Rees Scully Mansukhani, LLP website. He defended this case.

Plaintiff's General Release Payment

46. The General Release Payment to Plaintiff in the amount of \$15,000.00 is being paid to Plaintiff for her general release that includes a release of claims pursuant to California Civil Code section 1542.

47. Here, by agreeing to settle the case in the best interests of the PAGA Members and the State, Plaintiff has given up the right to pursue her individual claims and recover substantially more in unpaid wages, interest, waiting time penalties, and pay stub penalties that she will release as part of the Settlement. Plaintiff did not seek an individual settlement for her claims at all, instead choosing to prosecute this suit on behalf of the PAGA Members and the State.

48. Moreover, Plaintiff's General Release Payment of \$15,000 is entirely reasonable given Plaintiff's efforts in the Lawsuit and the risks she undertook on behalf of the PAGA Members. Plaintiff devoted many hours advancing the interests of the PAGA Members. Plaintiff has done this, by, among other things, retaining experienced counsel, providing them with information about her work history with Defendants, assisting in contacting absent PAGA Members to gather information, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the PAGA Members as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful and in bad faith (See Labor Code §§ 218.5-218.6). Lastly, here, Plaintiff signed a general release of all claims against Defendants, not only PAGA claims. Based on this legal authority, the public policy considerations, and the extent of Plaintiff's involvement in this action, and the fact that Plaintiff signed a general release of all claims, the proposed General Release Payment to Plaintiff is fair, adequate, and reasonable, and thus warrants approval. *See generally* Thomas Decl.

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Settlement Administration Duties

49. The duties of the Settlement Administrator are spelled out in section VI of the Agreement and in the bid by CPT Group, Inc., a true and correct copy of which is attached as **Exhibit 18**.

Settlement Administration Costs

50. With regard to the settlement administration costs provision (Agreement, ¶ 41(b)), it is reasonable. Before agreeing to CPT Group, Inc. the Parties sought and reviewed bids from other reputable third-party administrators and CPT Group Inc.'s bid was comparable:

A. Phoenix Class Action Administration Solutions = \$3,000.00;

B. CPT Group, Inc. = \$5,000.00; and

C. ILYM Group = \$ 5,503.84.

A true and correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as **Exhibit 19**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 20**. Thus, settlement administration costs provision should be given approval.

Uncashed Checks

51. Individual PAGA Payment checks will remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If an Individual PAGA Payment check remains uncashed or undeliverable after the 120-day period, such check(s) will be voided by the Settlement Administrator, and any funds remaining from such uncashed checks shall be tendered to the California State Controller's Unclaimed Property Fund in the names of the Aggrieved Employees to whom the checks were issued. With regard to the Individual PAGA Payments to the PAGA Members, IRS Form 1099s will be issued as legally appropriate. Agreement, ¶¶ 44, 57.

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Notice of Settlement to the LWDA

52. As stated above, pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency (“LWDA”) at the same time Plaintiff’s Motion is being filed with the Court. A true and correct copy of Plaintiff’s submission with the LWDA and a confirmation email is attached hereto as **Exhibit 9**.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on Monday, September 27, 2021 at Encino, California.



DAVID SPIVAK,
Declarant



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