

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff VICTOR TORRES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

VICTOR TORRES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GIBSON PERFORMANCE
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: RIC2002842

[Assigned for All Purposes to Hon. Angel M.
Bermudez, Dept. S302]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD**

Date: August 1, 2022
Time: 10:30 a.m.
Dept.: S302

Reservation ID: 013127351548

[Concurrently filed with:

- *Compendium of Declarations Filed With Plaintiff's Motion for Settlement Approval*
- *[Proposed] Order and Judgment Granting Plaintiff's Motion for Settlement Approval*
- *Proof of Service*
- *Proof of Service (on LWDA)]*

Filed: July 24, 2020
Trial: Not Set

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

2 PLEASE TAKE NOTICE that on August 1, 2022 at 10:30 a.m., or as soon thereafter as the
3 matter may be heard in Department S302 of the above-entitled Court, located at 30755-D Auld Road,
4 Murrieta 92563, Plaintiff Victor Torres (“Plaintiff”), on behalf of himself and all other aggrieved
5 employees, will and hereby does move this Court for entry of an Order as follows:

- 6 1. Granting approval, pursuant to California Labor Code section 2698 *et seq.*, and specifically
7 Labor Code section 2699(1)(2), of the proposed Settlement of claims brought pursuant to
8 the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) and set forth in
9 the Settlement;
- 10 2. Appointing Simpluris, Inc. as the Settlement Administrator, and approving an award of
11 \$3,000.00 in anticipated costs to Simpluris, Inc. for its settlement administration services;
- 12 3. Approving the proposed Notice of PAGA Settlement and Release of Claims as to form and
13 content, and directing that it be distributed to the Aggrieved Employees pursuant to the
14 terms of the Settlement;
- 15 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the
16 Settlement;
- 17 5. Approving an award of one-third of the Gross Settlement Amount or \$55,000.00 in
18 attorneys’ fees to Plaintiff’s Counsel;
- 19 6. Approving an award of \$10,721.39 in actual litigation costs reimbursement to Plaintiff’s
20 Counsel;
- 21 7. Approving an enhancement award of \$5,000.00 to Plaintiff for his service to the Aggrieved
22 Employees and the State of California; and
- 23 8. Approving the payment of \$68,458.96 to the California Labor & Workforce Development
24 Agency for its share of PAGA civil penalties.
- 25 9. Approving the payment of \$22,819.65 to the Aggrieved Employees on a pro rata basis based
26 on number of pay periods worked during the relevant time period.

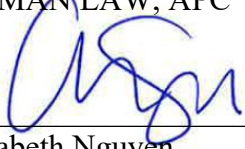
27 This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the
28 Compendium of Declarations (which includes the declarations of Elizabeth Nguyen, Scott M. Lidman,
Milan Moore, Paul K. Haines, Plaintiff Victor Torres, Mediator Jeffrey Krivis, and Eric Springer on

1 behalf of Simpluris, Inc. and the exhibits attached thereto), the pleadings and other papers filed in this
2 action, and on any further oral or documentary evidence or argument presented at the time of hearing.

3
4 Dated: July 8, 2022

Respectfully submitted,
LIDMAN LAW, APC

5
6 By:



Elizabeth Nguyen
Attorneys for Plaintiff
VICTOR TORRES

TABLE OF CONTENTS

I.	INTRODUCTION	6
II.	ARGUMENT	7
A.	FACTORS IN EVALUATING A REPRESENTATIVE PAGA SETTLEMENT.....	7
	CMO C.2.a. thru C.2.c. (SETTLEMENT AGREEMENT AND MEDIATION).....	9
	CMO C.3.a. NATURE OF THE ALLEGED VIOLATIONS	9
	CMO C.3.b. thru C.3.c. NUMBER OF ALLEGED INDIVIDUAL VIOLATIONS	
	AND MAXIMUM AMOUNT OF PENALTIES	10
	CMO C.3.d. thru C.3.f. TOTAL AMOUNT OF PENALTIES TAKEN INTO	
	ACCOUNT DEFENSES AND LIKELIHOOD OF	
	KNOWING AND INTENTIONAL	11
	CMO C.3.g. HOW THE AGREED-UPON PENALTIES WAS	
	CALCULATED	13
	CMO C.3.h. OTHER MATERIAL FACTORS IN DETERMINING	
	THE AGREED-UPON PENALTIES	14
	CMO C.4. ATTORNEY’S FEES AND COSTS	15
	CMO C.5.a. thru C.6.vi. PLAINTIFF’S GENERAL RELEASE AND	
	ENHANCEMENT.	17
	CMO C.7.a. thru C.8.d. PAGA RELEASE	18
	CMO C.9.a. thru C.9.b. THIRD-PARTY ADMINISTRATOR - SIMPLURIS	18
	CMO C.11. UNCASHED FUNDS	19
III.	OTHER FACTORS IN SUPPORT OF APPROVAL	19
A.	ESSENTIAL TERMS OF THE SETTLEMENT.....	19
B.	PAYMENT TO THE LWDA AND AGGRIEVED EMPLOYEES	19
C.	TIMING OF THE PAYMENT	20
D.	PENDING PAGA ACTIONS IMPACTED BY SETTLEMENT	20
IV.	CONCLUSION	20

TABLE OF AUTHORITIES

Federal Cases

<i>Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.,</i> 455 F.2d 101 (7th Cir. 1972)	8
<i>Boyd v. Bank of Am. Corp.,</i> 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014).....	16
<i>Fleming v. Covidien Inc.,</i> Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 (C.D Cal. Aug. 12, 2011).....	13
<i>In re Pacific Enterprises Securities Litig.,</i> 47 F.3d 373 (9th Cir. 1995)	15
<i>In re Taco Bell Wage and Hour Actions,</i> 2016 WL 2755938 (E.D. Cal. April 8, 2016)	11, 12
<i>Jones v. Spherion Staffing,</i> No. LA-CV-11-06462-JAK(JCx) 2012 WL 3264081(C.D. Cal. 2012)	13
<i>Mendez v. Tween Brands, Inc.,</i> 2010 WL 2650571 (E.D. Cal. Jul. 1, 2010)	7
<i>Ochoa-Hernandez v. Cjaders Foods, Inc.,</i> 2010 WL 1340777 (N.D. Cal. Apr. 2, 2010)	7, 8

State Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.,</i> 46 Cal. 4th 993 (2009)	8
<i>Amaral v. Cintas Corp. No. 2,</i> 163 Cal. App. 4th 1157 (2008)	12
<i>Brinker Restaurant Corp. v. Superior Court</i> 53 Cal. 4th 1004 (2012)	12
<i>Cabrera v. Advantage Sale & Mktg., LLC,</i> No. BC485259 2013 WL 1182822 (L.A. Cnty. Super. Ct. Mar. 12, 2013).....	16
<i>Chavez v. Netflix, Inc.,</i> 162 Cal. App. 4th 43 (2008)	15
<i>Chavez v. Saticoy Lemon Ass’n,</i> Case No. 56-2015-00468600-CU-OE-VTA 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015)	15

1	<i>Clark v. Am. Residential Serv. LLC,</i>	
2	175 Cal.App.4th 785 (2009)	9
3	<i>Dunk v. Ford Motor Co.,</i>	
4	48 Cal.App.4th 1794 (1996)	8
5	<i>Kirby v. Immoos Fire Protection, Inc.</i>	
6	(2012) 53 Cal.4th 1244	13
7	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
8	168 Cal. App. 4th 116 (2008)	9
9	<i>Maria P. v. Riles,</i>	
10	43 Cal.3d 1281 (1987)	15
11	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
12	40 Cal. App. 5th 444 (2019)	13
13	<i>Penaloza v. PPG Indus. Inc.,</i>	
14	No. BC471369	
15	2013 WL 2917624 (L.A. Cnty. Super. Ct. May 20, 2013)	16
16	<i>Price v. Starbucks Corp.,</i>	
17	192 Cal.App.4th 1136 (2011)	13
18	<i>Serrano v. Priest,</i>	
19	20 Cal.3d 25 (1977)	15
20	<i>Thurman v. Bayshore Transit Management, Inc.,</i>	
21	203 Cal.App.4th 1112 Cal. Rptr. 3d 130 (Cal. Ct. App. 2012)	13
22	<i>Wershba v. Apple Computer, Inc.,</i>	
23	91 Cal.App.4th 224 (2001)	9
24	Statutes	
25	Cal. Code Civ. Proc. § 1021.5(a)	15
26	Cal. Labor Code § 203	13
27	Cal. Lab. Code § 226.3	11
28	Cal. Lab. Code § 2698 <i>et seq.</i>	6, 18
	Cal. Lab. Code § 2699(g)	15
	Cal. Lab. Code § 2699(i)	6, 19
	Cal. Lab. Code § 2699(l)	6, 7

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Victor Torres (“Plaintiff”), an “Aggrieved Employee” under the California Labor Code
4 § 2698 *et seq.* (“PAGA”), respectfully requests this Court grant approval of the Settlement¹ with Gibson
5 Performance Corporation (“Gibson” or “Defendant”) pursuant to Labor Code section 2699(1)(2). This
6 PAGA action is based on Defendant’s alleged: (1) failure to pay all minimum wages owed; (2) failure to
7 pay all overtime wages owed; (3) failure to provide legally compliant meal periods; (4) failure to
8 authorize and permit rest periods; and (5) failure to issue to accurate, itemized wage statements. This
9 action seeks civil penalties on behalf of the California Labor & Workforce Development Agency
10 (“LWDA”) and all “Aggrieved Employees,” defined in the Settlement as “all current and former hourly,
11 non-exempt employees of Defendant Gibson Performance Corporation who worked in California at any
12 time from July 29, 2019 through date the Court grants approval of this Settlement.”

13 As set forth herein, the proposed Settlement should be approved because it is fair, reasonable, and
14 adequate, as it (1) is the product of arm’s-length negotiations, (2) was negotiated by attorneys experienced
15 in wage-and-hour issues, (3) was negotiated subsequent to undertaking sufficient investigation to
16 evaluate the relative strength and value of the PAGA-based claims, and (4) reflects a reasoned
17 compromise based directly on the relative strength and value of the PAGA-based claims, as well as the
18 risks, expense, complexity and likely duration of further litigation.

19 This proposed PAGA Settlement that Gibson will pay a **non-reversionary** Gross Settlement
20 Amount (“GSA”) of \$165,000.00. After deducting amounts for requested attorneys’ fees (one-third of
21 the GSA or currently \$55,000.00), requested actual costs incurred by Plaintiff’s counsel (\$10,721.39), an
22 enhancement award for Plaintiff (\$5,000.00), and settlement administration costs (\$3,000.00), the
23 Settlement provides for distribution of civil penalties in the amount of \$91,278.61. Pursuant to Labor
24 Code section 2699(i), 75% of \$91,278.61 (or \$68,458.96) will be distributed to the LWDA and 25% of
25 \$91,278.61 (or \$22,819.65) will be distributed to the Aggrieved Employees. There are about 91
26

27 ¹ The PAGA Settlement Agreement (“Settlement”) is attached to the Declaration of Elizabeth Nguyen as Exhibit B. The
28 Proposed Notice of PAGA Settlement and Release of Claims is attached to the Settlement as Exhibit B. All defined terms in
this Motion have the same definitions as used in the Settlement.

1 Aggrieved Employees, which means the average individual payment to each Aggrieved Employees is
2 estimated to be \$250.77, with the lowest estimated recovery at \$2.98 and the highest at \$542.83.²

3 The GSA of \$165,000.00 represents a fair and reasonable recovery for the State of California and
4 Aggrieved Employees considering the limited scope and time period of the release. The release in the
5 Settlement does not impact any underlying Labor Code claims any of the Aggrieved Employees may
6 have. Further litigation may have resulted in a smaller recovery or even no recovery at all based on the
7 defenses asserted by Gibson Performance and given the significant litigation risks involved. This Court
8 should enter the [Proposed] Order Granting Approval of Settlement submitted concurrently herewith.

9 **II. ARGUMENT**

10 **A. FACTORS IN EVALUATING A REPRESENTATIVE PAGA SETTLEMENT**

11 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,
12 which states that the “court shall review and approve any penalties sought as part of a proposed settlement
13 agreement pursuant to this part.” *See* Lab. Code § 2699(l). Notably, the PAGA statute does not set
14 expressly forth the criteria by which a PAGA settlement is to be judged.

15 In evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the
16 amount(s) that “aggrieved employees” are to receive, but rather, must focus on the total settlement
17 amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil
18 penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 (E.D.
19 Cal. Jul. 1, 2010) at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed
20 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders*
21 *Foods, Inc.*, 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a PAGA] action is
22 ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL
23 2650571 at *4), a reviewing Court must take into account the fact that settlement of a PAGA claim – like
24 any settlement – involves a “compromise” that stops short of rendering findings of liability and damages.

25
26
27
28 ² There are approximately 3,300 pay periods. Therefore, dividing the amount to Aggrieved Employees of \$22,819.65 by 3,300
= approximately \$6.92 per pay period. The lowest amount worked by an employee based on the data produced in connection
with mediation was 0.43 pay periods, meaning the lowest estimated amount of recovery would be \$2.98. The highest amount
would be \$542.83, based on the Aggrieved Employee working the entire time period of July 29, 2019 through August 1, 2022
(the date of the hearing for approval), which is 157 workweeks and 78.5 bi-weekly pay periods.

1 The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief
2 for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for
3 the government that otherwise may not have been assessed and collected by overburdened state
4 enforcement agencies.” *Ochoa-Hernandez*, at *4.

5 Second, consistent with the fact that unnamed employees have no property interest in a PAGA
6 claim,³ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability
7 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at *5.

8 Moreover, a settlement is presumptively fair where it is reached through arm’s-length bargaining,
9 based on sufficient discovery and investigation to allow counsel and the court to act intelligently, and
10 counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).
11 Relevant factors for the Court to consider in determining whether the settlement is “fair, adequate, and
12 reasonable” include, but are not limited to:

13 [T]he strength of Plaintiff’s case, the risk, expense, complexity and likely
14 duration of further litigation, the risk of maintaining class action status
15 through trial, the amount offered in settlement, the extent of discovery
16 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.
Dunk, 48 Cal.App.4th at 1801.⁴

17 “In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might
18 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
19 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements
20 inherently involve compromise, even settlements providing for substantially narrower relief than likely
21 would be obtained if the suit were successfully litigated can be reasonable because “the public interest
22 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
23 litigation.” *Id.* (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th
24 Cir. 1972)). In addition, courts review the discovery process and information received through it to aid
25

26 ³ As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does not create property
27 rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil
penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies.” *See*
Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct., 46 Cal. 4th 993, 1003 (2009).

28 ⁴ As explained above, in the context of a representative PAGA settlement, the third and eighth factors (risk of maintaining
class action status and reaction of class members to settlement) are inapplicable.

1 them in assessing whether the parties sufficiently developed the claims and their supporting factual bases
2 before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is sufficient
3 where it allows the parties and the court to form “an understanding of the amount that is in controversy
4 and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th
5 785, 801 (2009). This requirement exists so that the parties can provide the court with “a meaningful and
6 substantiated explanation of the manner in which the factual and legal issues have been evaluated.”
7 *Kullar*, 168 Cal.App.4th at 132. For the reasons discussed herein, the PAGA settlement was reached at
8 arm’s-length bargaining, based on sufficient discovery and investigation and is fair and reasonable.

9 **CMO C.2.a. thru C.2.c. SETTLEMENT AGREEMENT AND MEDIATION⁵**

10 The PAGA Settlement Agreement (“Settlement Agreement”) has been signed by all necessary
11 parties and filed as Exhibit B to the Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 14, Exh. B. All
12 declarations cited herein can be found in the Compendium of Declarations filed concurrently herewith.
13 On January 20, 2022, after extensive research and analysis, a mediation was held with Jeffrey Krivis, Esq.
14 a well-respected wage and hour class and representative action mediator. Nguyen Decl., ¶ 14. During
15 mediation, the Parties vigorously debated their opposing legal positions, the likelihood of Plaintiff
16 proceeding on a representative basis, and the legal basis for the claims and defenses. Ultimately, after
17 mediation and with the assistance of the mediator, the Parties agreed in principle on a settlement that
18 would resolve this matter in its entirety. *Id.* In the weeks that followed, the parties finalized the terms of
19 settlement and executed the PAGA Settlement Agreement (“Settlement”). *Id.* at ¶ 14, Exh. B. A copy of
20 this motion was submitted to the LWDA prior to the filing of this motion. *Id.* at ¶ 15.

21 **CMO C.3.a. NATURE OF THE ALLEGED VIOLATIONS**

22 Plaintiff and the other claims arise from Gibson’s timekeeping policies and practices for not paying
23 for all of time worked. Nguyen Decl., ¶ 16. Plaintiff alleges that Gibson would keep track of the
24 Aggrieved Employees’ time worked on a timecard and would unlawfully shave and/or round the work
25 time such that Plaintiff and the other Aggrieved Employees would not be fully paid for all of their time
26 worked. *Id.* Based, on Plaintiff’s review of the timekeeping and payroll records produced in connection
27

28 ⁵ The following paragraph numbering coincides with the paragraph numbering set for in the Court’s Case Management Order (“CMO”) entered on March 9, 2021 under Section C of the CMO entitled “Motions to Approve Settlement Agreements”.

1 with mediation, Plaintiff alleges that Gibson underpaid the Aggrieved Employees on average one (1) hour
2 per bi-weekly pay period. *Id.*

3 Plaintiff also alleges that Gibson failed to provide all required meal periods to its Aggrieved
4 Employees and that during portions of the relevant time period, Gibson's meal period policies/practices
5 failed to require its employees to record the start and stop time for all meal periods. Plaintiff also believes
6 that during these times Gibson would automatically deduct thirty (30) minutes from the Aggrieved
7 Employees' work time each shift for purported meal breaks regardless of one was taken or not. Nguyen
8 Decl., ¶ 18. Plaintiff further alleges that when Gibson did require its employees to record their meal
9 periods, and as a result of the work demands imposed by Gibson and the requirement to stand in long
10 lines, the employees' meal periods were often late, short, or otherwise unlawful. *Id.*

11 Plaintiff also alleges that Gibson failed to authorize and permit all legally required duty-free rest
12 periods. Nguyen Decl., ¶ 20. Specifically, Plaintiff alleges that Gibson required the Aggrieved Employees
13 to remain on the work premises during rest periods in violation of California law. Based on Plaintiff's
14 review of the data produced in connection with mediation, there was at least one shift worked in excess
15 of 3.5 hours in each of the bi-weekly pay periods during the relevant time period. *Id.*

16 As a result of the above, Plaintiff alleges that Gibson faces exposure for failing to provide accurate,
17 itemized wage statements to Plaintiff and the other Aggrieved Employees during the relevant time period.
18 Nguyen Decl., ¶ 22.

19 **CMO C.3.b. thru C.3.c NUMBER OF ALLEGED INDIVIDUAL VIOLATIONS AND**
20 **MAXIMUM AMOUNT OF PENALTIES**

21 The PAGA Period is July 29, 2019 through the date the Court grants approval of the Settlement.
22 At mediation, there were approximately 3,289 pay periods and 91 Aggrieved Employees at issue.

23 For Plaintiff's claim for civil penalties for Gibson's failure to pay all wages, Plaintiff alleges that
24 rounding and/or time shaving occurred in all 3,289 pay periods. Nguyen Decl., ¶ 16. As such, Plaintiff
25 calculated Gibson's exposure pursuant to Labor Code 1197.1 at \$808,600 ((91 Aggrieved Employees x
26 \$100 initial violation) + (3,198 x \$250 subsequent violation)).

27 For Plaintiff's claim for civil penalties for Gibson's failure to provide all meal periods, Plaintiff
28 alleges that there was at least one meal period violation during each of the 3,289 pay periods. Nguyen

Decl., ¶ 18. Accordingly, Plaintiff calculated Gibson's exposure pursuant to section 558 at \$324,350 ((91 x \$50 initial violation) + (3,198 x \$100 subsequent violations)). *Id.*

For Plaintiff's claim for civil penalties for Gibson's failure to authorize and permit all rest periods, Plaintiff alleges that there was at least one rest period violation in all 3,289 pay periods. Nguyen Decl., ¶ 20. As such, Plaintiff calculated Gibson's exposure at \$324,350.00 ((91 x \$50 initial violation) + (3,198 x \$100 subsequent violations)). *Id.*

Additionally, as Plaintiff's PAGA claim was based on the underlying failure to pay meal period premiums and deficient wage statements, Plaintiff asserts PAGA penalties for each Aggrieved Employee for each of the 3,289 pay periods. Nguyen Decl., ¶ 22. Therefore, pursuant to Labor Code § 226.3 and only applying the initial violation rate of \$250, Plaintiff calculated Gibson's exposure at \$822,250.00 (3,289 pay periods x \$250 initial violation). *Id.*

Based on the above calculations, assuming stacking of PAGA Penalties is permissible and without taking into account of Gibson's defenses or the Court's discretion to reduce civil penalties, Gibson's potential liability if all allegations are proven is about **\$2,279,550**. Nguyen Decl., ¶ 24.

**CMO C.3.d. thru C.3.f TOTAL AMOUNT OF PENALTIES TAKEN INTO ACCOUNT
DEFENSES AND LIKELIHOOD OF KNOWING AND INTENTIONAL**

With regard to Plaintiff's underlying claim for unlawful rounding, Gibson counters that it properly compensated Plaintiff and all Aggrieved Employees for their time worked. Nguyen Decl., ¶ 17. Gibson also contends that its rounding practices were lawful, and any unpaid time was de minimis and therefore non-compensable. *Id.* Gibson also contends that Plaintiff could not recover the \$250 civil penalty for "subsequent violations" because it did not have notice of any initial violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell Wage and Hour Actions*, 2016 WL 2755938, at *7 (E.D. Cal. April 8, 2016). Lastly, Gibson contends that the Court would use its discretion provided for in the PAGA to reduce the maximum penalty exposure due to its good faith efforts to comply with applicable law. In light of these defenses, Plaintiff discounted the maximum recovery on this claim by 75% to account for the risk that Gibson could prevail in its defenses, to arrive at a projected total of \$202,150.00 (\$202,150 = \$808,600 * 25%). *Id.*

With regard to alleged meal period violations, Gibson counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather

1 than any policy or practice of Defendant. Nguyen Decl., ¶ 19. Gibson points out that under *Brinker*
2 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the
3 opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so.
4 *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). *Id.* Gibson also contends that Plaintiff
5 could not recover the \$100 civil penalty for “subsequent violations” because it did not have notice of any
6 initial violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell Wage*
7 *and Hour Actions*, 2016 WL 2755938, at *7 (E.D. Cal. April 8, 2016). Lastly, Gibson contends that the
8 Court would use its discretion provided for in the PAGA to reduce the maximum penalty due to its good
9 faith efforts to comply with applicable law. Given these defenses, Plaintiff discounted the maximum
10 recovery by 80% to account for the risk that Gibson could prevail in its defenses, to arrive at a projected
11 total of \$64,870 ($\$64,870 = \$324,350 * 20\%$). *Id.*

12 As for the alleged rest period violations, Gibson counters it has always maintained and enforced
13 lawful rest period policies and practices, and that Plaintiff and other non-exempt employees were
14 authorized and permitted to take all off-duty rest periods in compliance with California law. Nguyen
15 Decl., ¶ 21. Gibson also contends that Plaintiff could not recover the \$100 civil penalty for “subsequent
16 violations” because it did not have notice of any initial violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal.
17 App. 4th 1157, 1209 (2008); *In re Taco Bell Wage and Hour Actions*, 2016 WL 2755938, at *7 (E.D. Cal.
18 April 8, 2016). Lastly, Gibson contends that the Court would use its discretion provided for in the PAGA
19 to reduce the maximum penalty due to its good faith efforts to comply with applicable law. Given these
20 defenses, the maximum recovery on this claim is discounted by 70% to account for the risk that Gibson
21 could prevail in its defenses, to arrive at a projected total of \$97,305 ($\$97,305 = \$324,350 * 30\%$). *Id.*

22 As for Plaintiff’s underlying claim for wage statement violations, Gibson argues that Plaintiff’s
23 underlying claims will fail and, as a result, the wholly derivative wage statement claim will also fail.
24 Nguyen Decl., ¶ 23. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the
25 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Gibson also argues
26 that meal and rest period claims cannot support a claim for wage statement penalties after *Naranjo v.*
27
28

1 *Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444, review granted⁶ and *Kirby v. Immoos Fire*
2 *Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion Staffing*, No. LA-CV-11-06462-
3 JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9). Further, Gibson contends that the “second
4 violation” should not be applied where the LWDA has not previously cited Gibson. Finally, Gibson also
5 argues that since the primary allegations in this case are that Gibson failed to pay all wages and provide
6 all meal and rest periods, imposing multiple penalties based on different Labor Code section under
7 derivative theories of liability for the same conduct would be inappropriate and unfair. As such, Plaintiff
8 discounted that figure by 85% to account for the risk of losing on the merits and for the risk of the Court
9 reducing penalties, to arrive at a realistic recovery for Aggrieved Employees of \$123,337.50 (\$123,337.50
10 = \$822,250 * 15%). See, e.g., *Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of PAGA
11 penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047 at *5
12 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by more than 82%); *Id.*

13 Based on the above calculations, and without taking into account of Gibson’s defenses and the
14 Court’s discretion to reduce civil penalties, Gibson is potentially liable for \$2,279,550. Based on the sum
15 of the foregoing estimated figures taking into account, Plaintiff predicts the realistic total recovery for the
16 Aggrieved Employees to be approximately \$487,662.50, and that is even assuming the Court would allow
17 the “stacking” of PAGA penalties for various Labor Code violations. Nguyen Decl., ¶ 24.

18 If the fact finder accepts all of Gibson’s asserted defenses, then it would be unlikely that the fact
19 finder would find any of the alleged violations would be knowing and intentional. Nguyen Decl., ¶ 25.

20 Here, Gibson has not previously been cited by the LWDA for any Labor Code violations and no
21 prior class or PAGA action has been filed against Gibson for the same or similar wage and hour class
22 actions weighs in favor of Gibson’s defense that an imposition of the maximum total amount of statutory
23 penalties would be unjust, arbitrary and oppressive or confiscatory. *Id.* at ¶ 26.

24 **CMO C.3.g. HOW THE AGREED-UPON PENALTIES WAS CALCULATED**

25 As discussed above and without waiving the mediation privileges and confidentiality agreements,
26 the Parties did not settle at mediation on January 20, 2022. Following the unsuccessful mediation, the
27

28 ⁶ The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, on May 23, 2022, nearly five months after mediation and about one month after the Parties finalized the Settlement.

1 Parties further vetted the issues with the mediator Jeff Krivis after Mr. Krivis reviewed additional financial
2 documentation provided by Gibson. *See* Declaration of Jeffrey Krivis (“Krivis Decl.”), ¶ 7-12. Thereafter,
3 the Parties, with the assistance of a mediator, ultimately agreed to resolve the PAGA claim for
4 \$165,000.00. Nguyen Decl., ¶ 27.

5 Further, Plaintiff estimated a realistic exposure of \$487,662.50. As such, Plaintiff submits that
6 settling the PAGA claim for \$165,000.00 represents about 34% of the estimated realistic exposure and is
7 reasonable based on the associated risks discussed above, including that a court ultimately has discretion
8 to reduce the amount of PAGA penalties awarded at trial. *Id.*

9 Although at mediation he maintained that the PAGA action is meritorious, Plaintiff acknowledges
10 that his position includes real risks and uncertainty, especially in the face of Gibson’s numerous defenses
11 on the merits discussed above. While Plaintiff maintains he could rebut these defenses, Plaintiff
12 nonetheless faced several substantial challenges in prevailing in this matter, and this risk factor weight in
13 favor of approving the Settlement. During mediation, the Parties vigorously debated their opposing legal
14 positions and the likelihood of Plaintiff’s ability to proceed on a representative basis. Ultimately, the
15 Parties reached a settlement, the terms of which were subsequently finalized in writing after mediation.
16 *See* Krivis Decl., ¶ 7-12; Nguyen Decl., ¶ 27. Additionally, approval of less than the statutory maximum
17 is appropriate in this case because Gibson expressly denied and continues to deny any liability.

18 **CMO C.3.h. OTHER MATERIAL FACTORS IN DETERMINING THE AGREED-
19 UPON PENALTIES**

20 Plaintiff acknowledges that the Court could and likely would substantially reduce the penalties
21 based on the discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties
22 “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award
23 that is unjust, arbitrary and oppressive, or confiscatory.”). Some courts have reduced PAGA penalties
24 drastically where the employer presented good-faith defenses and attempted to comply with the law.
25 Moreover, the Parties conducted an exchange of informal documents and information for mediation which
26 allowed Plaintiff to thoroughly evaluate the claims. *See* Nguyen Decl., ¶¶ 12-13, 28.

27 Another material factor is that the agreed-upon penalties were reached after mediator Jeffrey Krivis
28 reviewed additional financial documentation provided by Gibson and the Parties further vetted the issues
with the mediator. *See* Krivis Decl., ¶ 7-12. Had the Parties not settled, they would need to engage in
formal discovery, potential cross-summary judgment motions, preparation for trial as well as the prospect

1 of appeals in the wake of a summary judgment ruling for either party, and/or post trial-motions. As a
2 result, the Parties would incur considerably more attorneys' fees and costs through trial. This settlement
3 avoids those risks, the accompanying expense, and protracted litigation.

4 **CMO C.4. ATTORNEY'S FEES AND COSTS**

5 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys' fees and costs for
6 these claims. *See* Cal. Labor Code § 2699(g) ("Any employee who prevails in any action shall be entitled
7 to an award of reasonable attorney's fees and costs."); Cal. Code of Civil Procedure § 1021.5(a). A fee
8 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See*,
9 *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when
10 a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for
11 the benefit of all results in the creation or preservation of that fund, such plaintiff...may be awarded
12 attorney's fees out of the fund.")

13 Fee awards of roughly one-third of the settlement fund are routinely awarded in California state
14 and federal courts in class and representative PAGA actions.⁷ Indeed, the California Supreme Court
15 approved the use of the "percentage of fund" method in California. *See Laffitte v. Robert Half Int'l, Inc.*,
16 1 Cal.5th 480, 506 (2016) ("the percentage of fund method survives in California class action cases...").
17 Here, Plaintiff's Counsel's fee request of \$55,000.00 (one-third of the current GSA) is the same
18 percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the recovery method.

19 The California Supreme Court in *Laffitte* also held that trial courts have discretion to assess the
20 reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court
21 calculates counsel's lodestar and determines whether the "lodestar multiplier" needed to bring the lodestar
22 on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under the lodestar
23 method, the court multiplies the number of hours reasonably expended by each attorney or legal staff
24 member by their reasonable hourly rates, then enhances this lodestar figure by a "multiplier" to account
25 for a range of factors. *See Serrano v. Priest* 20 Cal.3d 25, 48-49 (1977).

26
27 ⁷ *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*, 47 F.3d
28 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass'n*, Case No. 56-2015-00468600-CU-OE-
VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys' fees of one-third of settlement fund
in representative PAGA settlement).

1 Lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, supra*, 162 Cal. App.
2 4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest*
3 *v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of approximately 12.8).

4 In this case, Plaintiff's Counsel have a lodestar of \$123,420.00 without the use of any multiplier,
5 which is approximately 2.24 times more than the \$55,000.00 fee request. *See* Nguyen Decl., ¶ 34. A
6 general summary showing the number of hours of work performed by each attorney and paralegals is set
7 forth in the Nguyen and Haines Declarations filed concurrently herewith. *Id.*, at ¶ 33, Exh. D; The fee
8 award requested here is justified because it is significantly **lower** than lodestar. Further, the fee award
9 requested here is justified because Plaintiff's Counsel achieved a fair civil penalty recovery for the State
10 and the Aggrieved Employees in an uncertain and risky case, while bearing the substantial burdens of
11 representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v.*
12 *Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency
13 case, significant risk and the absence of supporting precedents, are proper considerations in awarding
14 attorneys' fees). Additionally, Plaintiff's recovery for the State of California and Aggrieved Employees
15 exceeds other PAGA awards approved by other California courts. *See, e.g., Boyd v. Bank of Am. Corp.*,
16 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*,
17 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average
18 PAGA penalties of \$3.33). That counsel achieved these results in the face of serious defense challenges
19 and an uncertain legal landscape, confirms the strength of the results achieved.

20 As noted above, this case carried substantial risks on the merits and with respect to the propriety
21 of "stacking penalties" and the Court's authority to reduce an award of PAGA penalties. It is fair and
22 reasonable to account for these risks in compensating Plaintiff's Counsel, as well as the risks involved in
23 undertaking this litigation and expending considerable effort while working on a pure contingency basis.

24 Indeed, since undertaking representation of Plaintiff, Plaintiff's Counsel dedicated substantial
25 resources to this litigation, including expending a total of \$10,721.39 (including costs associated with the
26 filing the instant motion) in actual litigation costs, without receiving any compensation to date. Nguyen
27 Decl., ¶ 30, Exh. C. Plaintiff's Counsel conducted legal research regarding the merits of Plaintiff's claims,
28 the ability to recover penalties under the PAGA, and Gibson's potential defenses. Nguyen Decl., ¶ 32.

1 The Parties also drafted and completed the *Belaire-West* privacy notice mailing. Additionally, Plaintiff's
2 Counsel also analyzed the data and information produced informally prior to mediation including
3 timekeeping and payroll data for a 90% sample, prepared an exposure analysis on the PAGA penalties,
4 attended private mediation. *Id.* Plaintiff's Counsel also expended significant additional effort in
5 preparing subsequent settlement documents, this Motion for settlement approval, and supporting
6 declarations, and will oversee the settlement administration process. *Id.* Given the considerable potential
7 for adverse outcomes in this case, the contingent risk borne by Plaintiff's Counsel was great. The quality
8 of Plaintiff's Counsel's work, and the efficacy and dedication with which it was performed, should be
9 compensated. Thus, Plaintiff's Counsel submit that the requested fee award is fair, reasonable and
10 adequate and should be approved. Plaintiff's request for reimbursement of actual litigation costs of
11 \$10,721.39 is also fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff's
12 litigation costs are documented and reasonably incurred. *See* Nguyen Decl., ¶30, Exh. C.

13 **CMO C.5.a. thru C.6.vi. - PLAINTIFF'S GENERAL RELEASE AND ENHANCEMENT.**

14 Under the Settlement, Gibson will pay a total of \$5,000 (requested enhancement award) in
15 exchange for Plaintiff's general release of all claims and as an enhancement award. Nguyen Decl., ¶ 40.

16 The general release encompasses Plaintiff's individual claims for Gibson's underlying Labor Code
17 violations giving rise to the PAGA penalties. *Id.* Plaintiff worked approximately 129 workweeks during
18 the relevant time period and was paid an average hourly rate of \$15.75. Without accounting for any
19 defenses, Plaintiff's maximum recovery was projected at \$20,465. *Id.* at ¶ 41.

20 Further, Courts routinely approve enhancement awards to compensate named Plaintiff for the
21 services they provide and the risks they incur during class and representative litigation. *Cellphone*
22 *Termination Fee Cases*, 186 Cal. App. 5th 1380, 1393-94 (2010) ("These awards 'are discretionary,
23 [citation], and are intended...to make up for financial or reputational risk undertaken in bringing the
24 action, and, sometimes, to *recognize their willingness to act as a private attorney general.*'") Plaintiff
25 invested considerable time and effort into seeing this litigation through resolution, and the Aggrieved
26 Employees, who would not be receiving anything if it were not for Plaintiff's decision to pursue these
27 claims, will benefit greatly from his participation. Plaintiff attached his name to this lawsuit for the benefit
28 of the Aggrieved Employees and the detriment of himself. Indeed, Plaintiff may lose employment

opportunities in the future as a result of prosecuting his rights and the rights of his coworkers. Moreover, Plaintiff assumed the risk for Gibson’s costs if the case was unsuccessful. Declaration of Victor Torres (“Torres Decl.”), ¶¶ 7-8; Nguyen Decl., ¶ 43. Plaintiff has taken on the burden of joining a lawsuit that is a public record.

Here, Plaintiff provided factual information and documents to counsel, assisted in identifying potential witnesses, and participated in numerous discussions with Plaintiff’s counsel regarding the case and took risks in order to benefit the Aggrieved Employees. Torres Decl., ¶ 9; Nguyen Decl., ¶ 43. Plaintiff estimates he has spent approximately 20 hours in total on activities related to this case. Torres Decl., ¶ 9; Nguyen Decl., ¶ 43. Plaintiff has not been involved in any other lawsuits nor has he been a named Plaintiff in any other representative PAGA actions. Torres Decl., ¶ 11.

For the foregoing reasons, the requested amount of \$5,000 to Plaintiff as an Enhancement Award for the risk and services he performed for the benefit of the State of California and Aggrieved Employees and for his general release, including a release of his underlying Labor Code claims with an exposure of \$20,465 and 1542 waiver is fair and reasonable.

CMO C.8.a. thru C.8.d PAGA RELEASE

The release does not release any underlying Labor Code claim. It provides that:

“PAGA Released Claims” means any and all claims for civil penalties arising during the PAGA Period under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* based on the violations pled in the Seventh Cause of Action of the First Amended Complaint in the Action and the PAGA exhaustion letter dated July 29, 2020 that arose during the PAGA Period, including any related claims for attorneys’ fees, costs, or interest resulting therefrom. Plaintiff does not release any Aggrieved Employee’s claim for wages or damages (“Released Claims”). Settlement, ¶ I. 14; Nguyen Decl., ¶ 47.

The Released Parties is limited and defined as: “Defendant and its past and present officers, directors, employees, and agents.” Nguyen Decl., Exh. B, Settlement, ¶ I.13; Nguyen Decl., ¶ 50.

The scope of release is limited to the “the violations pled in the Seventh Cause of Action of the First Amended Complaint in the Action and the PAGA exhaustion letter dated July 29, 2020 that arose during the PAGA Period...” Nguyen Decl., Exh. B, Settlement, ¶ I.14; Nguyen Decl., ¶ 50.

The release was modeled after the acceptable release as written in the CMO at section C.8.d.

CMO C.9.a. thru C.9.b THIRD-PARTY ADMINISTRATOR - SIMPLURIS

Plaintiff’s counsel obtained bids for settlement administration from two settlement administrators. The Parties selected Simpluris to administer the proposed Settlement as Simpluris submitted the lowest

bid with a flat rate of \$3,000 and has extensive experience in class action and representative PAGA matters. Declaration of Eric Springer, ¶ 5; Nguyen Decl., ¶¶ 51-52.

CMO C.11. UNCASHED FUNDS

Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the State Controller's Office pursuant to the Unclaimed Property Law, California Civil Code § 1500, et. seq. for the benefit of and in the name(s) of the Aggrieved Employees to whom the checks were issued but whom did not cash the checks. Nguyen Decl., Exh. B, Settlement, ¶ IV.4; Nguyen Decl., ¶ 54.

III. OTHER FACTORS IN SUPPORT OF APPROVAL

A. ESSENTIAL TERMS OF THE SETTLEMENT

This Settlement provides for Gibson to pay a Gross Settlement Amount of \$165,000.00. Nguyen Decl., Exh. B, Settlement, ¶ III.2. After deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiff's requested enhancement award, and settlement administration costs, the Settlement provides for distribution of the remaining Net Settlement Amount ("NSA") to Aggrieved Employees and the LWDA distributed as follows: 75% to the LWDA and 25% to Aggrieved Employees pursuant to Labor Code 2699(i). Nguyen Decl., Exh. B, Settlement, ¶ III.5.

Gross Settlement Amount:	\$165,000.00
Minus Court-approved attorneys' fees (1/3):	\$55,000.00
Minus Court-approved attorneys' costs:	\$10,721.39
Minus Court-approved enhancement award:	\$5,000.00
Minus settlement administrator costs:	\$3,000.00
Net Settlement Amount:	\$91,278.61
Net Settlement Amount:	\$91,278.61
75% to LWDA	\$68,458.96
25% to Aggrieved Employees	\$22,819.65

B. PAYMENT TO THE LWDA AND AGGRIEVED EMPLOYEES

The entire NSA shall be designated as PAGA civil penalties. Of the NSA, 75% of the NSA will be distributed to the LWDA and 25% will be distributed to the Aggrieved Employees under Labor Code § 2699(i). Based on these distributions, the amount to be paid to the LWDA will be \$68,458.96 and the amount paid to Aggrieved Employees is estimated to be \$22,819.65. Nguyen Decl., ¶ 14. This portion of the NSA shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay

1 periods worked by each Aggrieved Employee during the PAGA Period and will be reported on an IRS
2 Form 1099. Nguyen Decl., Exh. B, Settlement, ¶ III.6.b.; Nguyen Decl., ¶ 14.

3 **C. TIMING OF THE PAYMENT**

4 Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator in three
5 (3) equal installments of \$55,000, with the first payment due within five (5) court days of Court approval
6 of the Settlement, the second payment due six (6) months after the first payment, and the third payment
7 due within (6) months after the second payment. The Settlement Administrator shall hold all portions of
8 the Gross Settlement Amount in an interest-bearing account for the benefit of the Aggrieved Employees
9 until the time for disbursement. The releases identified herein are not effective until Defendant fully funds
10 the Gross Settlement Amount. *See* Nguyen Decl., Exh. B, Settlement, ¶ III.3.

11 Within 7 calendar days of the full funding of the Gross Settlement Amount, the Settlement
12 Administrator shall mail copies of the explanatory letter, in English and Spanish, along with Individual
13 PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail. *See* Settlement, ¶ IV.3.
14 The Settlement does not require Aggrieved Employees to submit a claim form. *Id.*

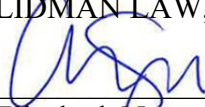
15 **D. PENDING PAGA ACTIONS IMPACTED BY SETTLEMENT**

16 The Parties are not aware of any other PAGA claims pending against Defendant, either in court
17 or in the pre-filing LWDA stage. Nguyen Decl., ¶ 56.

18 **IV. CONCLUSION**

19 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and adopt
20 the [Proposed] Order and Judgment Granting Plaintiff's Motion for Settlement Approval of Claims
21 Brought Under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs, and
22 Enhancement Award submitted concurrently herewith. Plaintiff proposes that the declaration confirming
23 the final distribution of funds should be filed on or before March 29, 2024 and Final Accounting Hearing
(Non-Appearance) be set on April 5, 2024 at 9:00 a.m.

24 Dated: July 8, 2022

25 Respectfully submitted,
26 LIDMAN LAW, APC
27 By: 
28 Elizabeth Nguyen
Attorneys for Plaintiff VICTOR TORRES