

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
Courtney M. Miller (SBN 327850)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com, vgranberry@lelawfirm.com,
cmiller@lelawfirm.com, mhuether@lelawfirm.com

Sahag Majarian II (SBN 146621)
Email: sahagii@aol.com
LAW OFFICES OF SAHAG MAJARIAN II
18250 Ventura Boulevard
Tarzana, California 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff ADRIAN HUTCHERSON A/K/A ADRIAN HUTERSON,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ADRIAN HUTCHERSON A/K/A ADRIAN
HUTERSON, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

RYDER INTEGRATED LOGISTICS, INC.;
RYDER INTEGRATED LOGISTICS OF
CALIFORNIA CONTRACTORS, LLC;
RYDER INTEGRATED LOGISTICS OF
CALIFORNIA, LLC; RYDER SYSTEM,
INC.; CHARTWELL STAFFING
SERVICES, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: CIVSB2024024

[Assigned for All Purposes to the Hon. Joseph
T. Ortiz, Dept. S-17]

**DECLARATION OF MELISSA A.
HUETHER IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

*[Filed concurrently with the Notice of Motion
and Motion for Approval of Private Attorneys
General Act Settlement; [Proposed] Order]*

Hearing Information:

Date: January 25, 2023

Time: 8:30 a.m.

Dept.: 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF MELISSA A. HUETHER

I, Melissa A. Huether, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am an attorney at Lavi & Ebrahimian, LLP and am co-counsel for Plaintiff Adrian Hutcherson a/k/a Adrian Huterson ("Plaintiff"), aggrieved employees, and the State of California as private attorney general. Based on my assignment to this case and familiarity with the file in this matter; I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto. I am a member in good standing of all State and Federal District Courts of California. I am submitting this declaration in support of Plaintiff's Notice of Motion and Motion for Approval of Private Attorneys General Act Settlement.

EXPERIENCE OF COUNSEL

2. The attorneys at our office are experienced and qualified to evaluate the PAGA claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses.

3. I, and the law firm of Lavi & Ebrahimian, LLP, have almost exclusively practiced in the area of labor and employment law.

4. I graduated from Loyola Law School, Los Angeles in 2017. I have been in practice with the law firm of Lavi & Ebrahimian, LLP since April 2021, focusing almost exclusively in the area of employment law and specifically wage and hour class actions. Prior to joining Lavi & Ebrahimian, I litigated exclusively wage and hour class and PAGA actions on behalf of employees throughout California. I have been involved in numerous cases in all aspects from pre-filing through settlement, including California and Federal class actions, PAGA representative actions, and collective actions.

5. I am also familiar with the practice the partner assigned to this case, Mr. Joseph Lavi. Mr. Lavi graduated from law school in 2000 and has been practicing ever since. Mr. Lavi and I have handled numerous cases in all aspects of employment and labor law, including state and federal class actions, wrongful termination, discrimination, harassment, and retaliation cases. Mr. Lavi and I have tried labor and employment cases in California state and federal courts. Additionally, Mr.

1 Lavi has argued before various Court of Appeals, on employment issues such as validity of
2 Arbitration Agreements, Application of Res Judicata in class action cases as well as other
3 employment issues. Mr. Lavi has also been a panelist and/or speaker for various Employment Law
4 Continuing Legal Education Panels on issues of employment law trials, how to proceed and conduct
5 trials as well as proving and winning punitive damages. Mr. Lavi has been named a Southern
6 California Super Lawyer in the area of Plaintiff's employment litigation-class action from 2011-
7 2021. Mr. Lavi and I have settled numerous wage and hour class actions and we are currently
8 Plaintiff's counsel in numerous others. Some of the class actions that Mr. Lavi has handled against
9 employers on wage and hour issues and have been approved as class counsel consisted of Kaiser
10 Permanente which settled for \$6,510,000.00; Hustler Casino which settled for \$980,000.00;
11 Chevron Stations Inc., which settled for \$4,500,000.00; Commerce Casino which settled for
12 \$1,575,000.00; BP West Cost Products, which settled for \$4,000,000.00; Kaiser Permanente which
13 settled for \$3,600,000.00, Fuddruckers (as lead counsel) which settled for \$900,000.00; Movado
14 Retail Group, Inc. (as lead counsel) which settled for \$728,000.00, Chuck-E-Cheese's (as lead
15 counsel) which settled for \$1,900,000.00; Aero-Electric Connector, Inc. (as lead counsel) which
16 settled for \$1,500,000.00; Clougherty Packing, LLC (as lead counsel) which settled for
17 \$4,250,000.00; and Gruma Corporation (as lead counsel) which Defendant's petition to the United
18 States Supreme Court in the matter was denied and the matter settled for \$2,300,000.00. There are
19 numerous other class actions that Mr. Lavi and I have settled as well as pending ones. We have been
20 approved as class counsel by both federal and state Courts. Mr. Lavi, myself, and the other attorneys
21 at Lavi & Ebrahimian who are available to assist us in this case if needed are fully capable of
22 adequately and fairly representing Plaintiff and the proposed class in this matter. Lavi &
23 Ebrahimian, LLP, has been appointed Class Counsel in over fifty contested proceedings including
24 the following:

25 a. *Ischak v. Kaiser Foundation Hospitals, Inc.*, Los Angeles Superior Court
26 Case No. BC343535;

- 1 b. *Santana v. El Pollo Loco, Inc.*, Los Angeles Superior Court Case No.
2 BC369846;
- 3 c. *Edlin, et al. v. Fuddruckers, Inc.*, United States District Court, Central
4 District of California, Case No. CV-07-3678-ABC;
- 5 d. *Chavez, et al. vs. CEC Entertainment, Inc. d/b/a Chukee-Cheeses*, Los
6 Angeles Superior Court Case No. BC380996;
- 7 e. *Bustamante, et al. v. Teamone Employment Specialists*, Los Angeles Superior
8 Court Case No. BC383266;
- 9 f. *Cervantes, et al. v. Kaiser Foundation Hospitals, Inc.*, Alameda Superior
10 Court Case No. RG 0265835;
- 11 g. *Seng Savang v. Club One Casino*; Fresno Superior Court Case No.
12 05CECG02189;
- 13 h. *Norman, et al. v. Movado Retail Group, Inc.*, United States District Court,
14 Central District of California, Case No. CV08-06691 SVW (PLA)
- 15 i. *Shand v. G.A.L.A., Inc. dba Giorgio Armani*, Los Angeles Superior Court
16 Case No. BC342588;
- 17 g. *Solis v. Plycraft Industries, Inc.*, Los Angeles Superior Court Case No.
18 BC374816;
- 19 h. *Campos v. HWB Carwash, Inc.*, Los Angeles Superior Court Case No.
20 BC378990;
- 21 i. *Acosta, et al. v. Texwood Industries*, United States District Court, Central
22 District of California, Case No. CV07-3237-DDP (PLAX);
- 23 h. *Arevalo v. Gruma Corporation*, Los Angeles Superior Court Case No.
24 BC410322;
- 25 j. *Burrola v. American Promotional Events*, Los Angeles Superior Court Case
26 No. BC412315;

1 k. *Cortez v. Trader Distribution Services*, Los Angeles Superior Court Case No.
2 BC397208;
3 l. *Cueva v. Allied Industries, Inc.*, Los Angeles Superior Court Case No.
4 BC399431;
5 m. *Del Toro v. Petco Animal Supplies, Inc.*, San Diego Superior Court Case No.
6 37-2009-00103626-CU-OE-CTL;
7 n. *Garcia v. Home Cooking, Inc.*, Los Angeles Superior Court Case No.
8 BC451148;
9 o. *Alcantar v. Amerimax Building Products, Inc.*, United States District Court,
10 Central District of California, Case No. CV 10-8916 DDP (CWx);
11 p. *Arancivias v. Clougherty Packaging, LLC dba Farmer John*, Los Angeles
12 Superior Court Case No. BC432406;
13 q. *Barajas v. Menzies Aviation, Inc.*, United States District Court, Central
14 District of California, Case No CV-10-02315-JEM;
15 r. *Barrera v. BHFC Operating, LLC dba Bottega Louie*, Los Angeles Superior
16 Court Case No. BC462603;
17 s. *Camacho v. American Textile Maintenance Co.*, Los Angeles Superior
18 Court Case No. BC452570;
19 t. *Cortes v. Monsanto Company*, Ventura Superior Court Case No. 56-2010-
20 00366952-CU-OE-VTA;
21 u. *Escobar v. Aero-Electric Connector, Inc.*, Los Angeles Superior Court Case
22 No. BC421009;
23 v. *Gomez v. Bacara Resort & Spa*, Santa Barbara Superior Court Case No.
24 1341987;
25 w. *Gonzalez v. Ashley Furniture Industries, Inc.*, Los Angeles Superior Court
26 Case No. BC425708
27
28

1 x. *Gonzalez v. Burrtec Waste Industries, Inc.*, Los Angeles Superior Court Case
2 No. BC436879;
3 y. *Gutierrez v. Visterra Credit Union*, Riverside Superior Court Case No.
4 RIC10020183;
5 z. *Hernandez v. Kruse & Son, Inc.*, Los Angeles Superior Court Case No.
6 BC411849;
7 aa. *Lopez v. Tecno Industrial Engineering*, Los Angeles Superior Court Case No.
8 BC411134;
9 bb. *Lowanga v. Continental Currency Services, Inc.*, Orange County Superior
10 Court Case No. 30-2011-0044011-CU-OE-CXC;
11 cc. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central
12 District of California, Case No. CV 10-0415 ODW (FMOx)
13 dd. *Lozada v. Classic Party Rentals, Inc.*, Los Angeles Superior Court Case No.
14 BC443792;
15 ee. *Madrid v. OPI Products, Inc.*, Los Angeles Superior Court Case No.
16 BC451489;
17 ff. *Martinez v. J. Fletcher Creamer & Son, Inc.*, United States District Court
18 Case No. CV 10-0968-PSG-FMOX;
19 gg. *Martinez v. Administaff Companies II, L.P.*, Los Angeles Superior Court Case
20 No. BC425799;
21 hh. *Martinez v. Morgans Hotel Group Management, LLC*, Los Angeles Superior
22 Court Case No. BC446744;
23 jj. *Sanchez v. La Brea Bakery, Inc.*, Los Angeles Superior Court Case No.
24 BC456420;
25 ii. *Montenegro v. Ruggeri Marble and Granite, Inc.*, United States District
26 Court, Central District of California, Case No. CV-10-00711 JFW (PLAx);
27
28

1 kk. *Reed v. 99 Cents Only Stores*, Los Angeles Superior Court Case No.
2 BC436793;

3 ll. *Santos v. Noble Management Group-California, LLC*, United States District
4 Court, Central District of California, Case No. CV 10-2594 DSF (VBKx)

5 mm. *Taylor v. U.S. Healthworks Holding Company, Inc.*, Orange County Superior
6 Court Case No. 30-2011-00473505;

7 nn. *Valencia Diaz v. Gene Wheeler Farms, Inc.*, Los Angeles Superior Court
8 Case No. BC436235;

9 oo. *Zad-Behtooie v. Valley Village*, Los Angeles Superior Court Case No.
10 BC451490;

11 pp. *Bell v. Aidells Sausage Company, Inc.*, Alameda Superior Court Case No.
12 RG10523946;

13 qq. *Negrete v. Cenveo, Inc.*, United States District Court, Central District of
14 California, Case No. CV 11-09543 DSF (MRWx);

15 rr. *Bejar v. Exopack-Ontario, Inc.*, Orange County Superior Court Case No. 30-
16 2011-00518396-CU-OE-CXC;

17 ss. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central
18 District of California, Case No. CV 10-0415 ODW (FMOx);

19 tt. *Sparks v. Larry Flynt dba Hustler Casino*, Los Angeles Superior Court Case
20 No. BC320172;

21 uu. *Morris v. Chevron Stations, Inc.*, Los Angeles Superior Court Case No.
22 BC361380;

23 vv. *Marino v. BP West Coast Products, LLC*, Los Angeles Superior Court Case
24 No. BC357987.

25 6. The attorneys at our law firm and I have performed substantial work and diligently
26 investigated and prosecuted this case to a successful conclusion. Plaintiff's Counsel believes this
27 settlement to be fair, reasonable, and adequate.

1 7. Based upon my experience and after factoring in the risks explained below, I believe
2 that the proposed settlement is fair and reasonable. As such and for the reasons set forth below, I
3 believe that the Parties' proposed PAGA Settlement should be approved.

4 PROCEDURAL AND FACTUAL HISTORY

5 8. Defendant Ryder Integrated Logistics, Inc. operates warehouses throughout
6 California. Defendant Chartwell Staffing Services, Inc. is a staffing agency which placed employees
7 to work at certain Ryder warehouses. Plaintiff worked as a non-exempt hourly paid employee who
8 was placed at a Ryder warehouse and employed through Chartwell. Defendants estimated that there
9 were approximately 2,778 Aggrieved Employees covered by this action from August 10, 2019
10 through September 2022.

11 9. On August 10, 2020, Plaintiff submitted a letter to the California Labor and
12 Workforce Development Agency ("LWDA") to notify the LWDA pursuant to PAGA of Plaintiff's
13 intent to seek civil penalties for violations of the Labor Code.

14 10. On October 28, 2020, Plaintiff filed the complaint in this Lawsuit in San Bernardino
15 County Superior Court against Defendants "on behalf of himself, all other current and former
16 aggrieved California-based hourly non-exempt employees of Defendants, and the State of California
17 pursuant to PAGA." The complaint stated a claim under the California Labor Code Private
18 Attorneys General Act, Labor Code Sections 2698 *et seq.* against Defendants Ryder Integrated
19 Logistics, Inc., Ryder Integrated Logistics of California Contractors, LLC, Ryder Integrated
20 Logistics of California, LLC, Ryder System, Inc., and Chartwell Staffing Services, Inc. for alleged:
21 (1) failure to pay minimum wages for all hours worked in violation of Labor Code Sections 1194
22 and 1197 and the applicable Wage Order; (2) failure to pay overtime wages in violation of Labor
23 Code Sections 510, 558, and 1194 and the applicable Wage Order; (3) failure to provide rest periods
24 and/or pay rest period premiums in violation of Labor Code Section 226.7 and Section 12 of Wage
25 Order 9; (4) failure to timely pay earned wages during employment in violation of Labor Code
26 Sections 204 and 210; (5) failure to provide complete and accurate wage statements in violation of
27 Labor Code Sections 226 and 226.3; (6) failure to pay all wage due at termination or resignation in
28

1 violation of Labor Code Sections 201, 202 and 203; (7) failure to maintain temperature providing
2 reasonable comfort in violation of Labor Code Section 1198 and Section 15 of Wage Order 9, and
3 8 CCR § 3203; and (8) failure to provide suitable seats in violation of Labor Code Section 1198 and
4 Section 14 of Wage Order 9 (“the Action”).

5 11. On October 27, 2020, Plaintiff sent a second letter to the LWDA and Defendants
6 adding additional theories of liability with respect to the claims articulated in the first LWDA letter.
7 Plaintiff’s October 27, 2020 LWDA letter also added a claim for failure to timely pay earned wages
8 during employment in violation of Labor Code Section 204.

9 12. On December 16, 2021, the Parties attended a private mediation session with the
10 Hon. Lisa Hart Cole (Ret.) where the Parties agreed to a resolution and signed a memorandum of
11 understanding. Plaintiff and Plaintiff’s Counsel concluded—after considering the sharply disputed
12 factual and legal issues involved on the PAGA claims, the risks attending further prosecution, delay
13 if the Court required arbitration of the individual claims prior to proceeding on the PAGA claims,
14 and the benefits to be received pursuant to the compromise and settlement of the action as set forth
15 in the agreement—that settlement was in the best interest of the representative Plaintiff, the LWDA,
16 and the aggrieved employees and is fair and reasonable and furthers the purpose of the PAGA to
17 enforce the Labor Code.

18 13. At all times, Defendants denied the allegations and contended that: they properly
19 paid minimum and overtime wages, employees were provided all required rest breaks and any clear
20 violations were due to actions of the employees’ own volition, employees were provided itemized
21 statements in compliance with the Labor Code, all wages due and owing were promptly paid upon
22 separation of employment, they maintained appropriate temperatures at its work sites, they provided
23 suitable seating, and otherwise always complied with all applicable laws.

24 14. In advance of the mediation, the Parties agreed to engage in informal discovery. The
25 Parties subsequently exchanged informal discovery, including: a substantial sampling of the
26 timekeeping and payroll records of the PAGA Group; information and documentation concerning
27 the claims set forth in the Action, such as Defendant’s employee handbooks, pay plans policies, and
28

1 new hire onboarding packet, and policies and procedures regarding the payment of wages, meal and
2 rest breaks, and time keeping; new hire packet; information regarding the number of putative PAGA
3 Group members and the number of current versus former employees; and the total pay periods
4 worked by the PAGA Group.

5 15. The Parties have undertaken reasonable investigation of the facts and law during the
6 pendency of this action. Plaintiff's Counsel diligently conducted and pursued an investigation of the
7 PAGA claims against Defendants, including research of the applicable law and the potential
8 defenses and review of relevant documents. Plaintiff obtained directly relevant data including
9 Defendants' employee handbooks, meal and rest policies, sick leave policies, and arbitration
10 agreement, during the relevant time period, policies and procedures related to the claims alleged in
11 Plaintiff's Complaint, and a sample of time and pay records.

12 16. Thereafter, the Parties negotiated and finalized the terms of a settlement
13 memorialized in a long-form Settlement and Release. A true and correct copy of the fully executed
14 Settlement Agreement is attached hereto as **Exhibit 1**.

15 REASONABLENESS OF THE SETTLEMENT

16 17. In evaluating the reasonableness of the Settlement in this case, our co-counsel and
17 our office thoroughly evaluated the merits of this case and considered the nature and purpose of
18 PAGA as well as comparable PAGA settlements reached by our firm, and those obtained by other
19 firms.

20 18. Here, the penalties are appropriate in light of the underlying principles of PAGA,
21 i.e., "to ensure that settlements involving penalties arising out of Labor Code Section 2699 do not
22 undercut the dual statutory purposes of punishment or deterrence, or result in unjust, arbitrary, and
23 oppressive, or confiscatory settlements." (See July 29, 2004 Letter by Senator Dunn to the President
24 Pro Tem of the Senate Re SB 1809). The non-reversionary Gross Settlement Payment of
25 \$475,000.00 represents an excellent recovery that is large enough to punish or deter Defendants.
26 The proposed Settlement provides a fair and reasonable monetary recovery for the LWDA, should
27 the Court so elect, the Aggrieved Employees in the face of hotly disputed claims.

1 19. Based on the informal discovery produced by Defendants, during the period from
2 August 10, 2019 through September 2022, Defendants employed approximately 2,778 aggrieved
3 employees over the course of approximately 122,275 pay periods.

4 **Failure to Pay Minimum Wages for All Hours Worked in Violation of Labor Code**
5 **Sections 1194 and 1197 and Failure to Pay Overtime Wages for Overtime Hours**
6 **Worked in Violation of Labor Code Sections 510 and 1197:**

7 20. In the PAGA exhaustion letter to the LWDA, as well as the Complaint, Plaintiff
8 alleged Defendants failed to compensate him and other Aggrieved Employees for time spent
9 undergoing off the clock COVID-19 medical screenings such as temperature checks. Plaintiff also
10 alleged that Defendants rounded Plaintiff and other Aggrieved Employees' time punches to the
11 nearest half hour to benefit Defendants. Finally, Plaintiff alleged that Defendants required he and
12 other Aggrieved Employees to undergo various training exercises and take quizzes and tests
13 during their employment without paying for such time. As a result of this off the clock work,
14 Plaintiff alleged that he and other Aggrieved Employees were not paid for all hours worked at
15 either the minimum wage or, if applicable, the overtime wage.

16 21. Defendants would likely contend that all screening time was paid, that there was no
17 rounding policy, and that all training was performed while clocked in.

18 **Failure to Provide All Rest Periods Pursuant to Labor Code Section 226.7**

19 22. Plaintiff alleged that Defendants maintained a policy and practice of requiring
20 Plaintiff and other Aggrieved Employees to remain on the premises during rest periods thus
21 rendering every rest period a violation. Plaintiff argued that he and other Aggrieved Employees
22 should be off duty and free to leave the premises during their rest periods and Defendants failed to
23 permit compliant rest periods. As a result, Plaintiff contends he and other Aggrieved Employees are
24 owed a rest period premium for those rest periods which they could not leave the premises.

25 23. Defendants would likely argue that it did not have a policy requiring Plaintiff and
26 other Aggrieved Employees to remain on the premises during rest periods, that if an employee chose
27
28

1 to remain on the premises, it was their choice, and that even if it had such a policy it would not have
2 been illegal.

3 **Failure to Provide Complete and Accurate Wage Statements Pursuant to Labor Code**

4 **Section 226**

5 24. Based on the foregoing allegations of unpaid minimum and overtime wages and rest
6 period violations, Plaintiff alleged Defendants failed to provide complete and accurate wage
7 statements based on unpaid minimum and overtime wages and rest period premiums owed which
8 were not reflected in the wage statements. However, this claim was stricken in response to
9 Defendant Ryder's demurrer, and the claim was subject to the defenses for the unpaid wages and
10 meal period and rest period violations.

11 **Failure to Timely Pay All Wages After Separation of Employment Pursuant to Labor**

12 **Code Sections 201 and 202**

13 25. Based on the foregoing allegations of unpaid wages and rest period violations,
14 Plaintiff alleged Defendants failed to timely pay all wages to employees following separation of
15 employment by not paying employees unpaid wages and rest period premiums owed. However, this
16 violation was subject to the defenses for the unpaid wages and rest period violations because it was
17 derivative. Defendants also argued that it did not willfully fail to pay wages due at termination and
18 therefore it did not violate Labor Code §203.

19 **Failure to Maintain Temperature Providing Reasonable Comfort**

20 26. Plaintiff also alleged that Defendants failed to maintain a reasonable temperature in
21 the warehouses in which Plaintiff and other Aggrieved Employees worked in. Labor Code 6720
22 required the California Division of Occupational Safety and Health ("Cal/OSHA") to propose an
23 indoor heat illness standard. Cal/OSHA's draft standard stated that that it applied to "all indoor work
24 areas where temperature equals or exceeds 82 degrees Fahrenheit when employees are present."
25 Plaintiff alleged that he and other Aggrieved Employees were subjected to temperatures exceeding
26 82 degrees Fahrenheit while they worked for Defendants.

1 27. Defendants would likely argue that they had proper protocols in place to maintain a
2 reasonable temperature and further maintain significant policies relating to the heat and potential
3 heat illness and heat stroke. Finally, Defendants maintained that it had the proper infrastructure to
4 maintain a reasonable temperature and that it did maintain reasonable temperatures.

5 **Failure to Provide Suitable Seating**

6 28. Plaintiff alleged that Defendants could have provided suitable seats for Aggrieved
7 Employees but failed to do so. Plaintiff contends that when not engaged in the active duties of his
8 employment and the nature of the work required standing, Defendants failed to place an adequate
9 number of suitable seats in reasonable proximity to the work area and further failed to permit
10 Aggrieved Employees to use such seats when it did not interfere with the performance of their
11 duties. Here, Defendants contended that it placed an adequate number of chairs in the work area if
12 it were required. Defendants further would likely argue that it was not feasible to place additional
13 seats in the work area. Finally, Defendants could argue that the job duties could not be done from a
14 seat and therefore they were not required to provide additional seats.

15 29. Importantly however, a number of courts have found that the “subsequent” penalty
16 under PAGA applies only after a court or the Labor Commissioner determines that the employer
17 has violated the Labor Code. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209;
18 *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10,
19 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts have held that employers are not
20 subject to heightened penalties for subsequent violations unless and until a court or commissioner
21 notifies the employer that it is in violation of the Labor Code”); *Bernstein v. Virgin Am., Inc.*, 990
22 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil penalties” because the
23 defendant was not given notice by the Labor Commissioner when the “subsequent” violations
24 occurred); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014
25 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have
26 notice that they are committing a violation, they are not subject to the heightened penalties.”); *Trang*
27 *v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL

1 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened
2 penalties for subsequent violations unless and until a court or commissioner notifies the employer
3 that it is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th
4 1157 (2008). When evaluating Defendants’ exposure here, Plaintiff’s counsel was forced to consider
5 this line of cases.

6 30. Applying further significant discounts for the risks associated with the action
7 (including but not limited to, the risk that the Court finds the action is unmanageable, the risk that
8 the Court exercises its discretion to lower the penalties awarded, the risk of losing at trial, and the
9 risks inherent in *Viking River Cruises*) and applying further discounts for Defendants’ evidenced
10 compliance with some sections of the California Labor Code, this settlement for \$475,000 is within
11 a reasonable range, especially considering the defenses Defendants raised by properly paying wages
12 for all time worked, Defendants’ policies regarding heat illness, issuing legally compliant rest period
13 policies during the PAGA period and type of violations potentially do not give rise to penalties
14 pursuant to Labor Code sections 226 or 203.

15 31. Moreover, the proposed Settlement, even with deductions, provides a substantial sum
16 to the Aggrieved Employees. The Settlement secured by Plaintiff here is greater than other PAGA
17 penalty awards approved by California state courts, which often range between \$7,500.00 and
18 \$15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much
19 lower PAGA penalty payments on a per capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*,
20 Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving
21 PAGA penalties of \$5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing,*
22 *LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving
23 PAGA penalties of \$10,000.00 for class of approximately 3,000 members).

24 32. Defendants also argued that PAGA penalties would be limited. Defendants argued
25 that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts
26 to consider the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks*
27 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
28

1 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27
2 Cal.App.5th 809. Thus, Defendants argued that even if the Plaintiff was able to establish any
3 violation of the Labor Code, there is a likelihood that a further reduction of the penalty to \$5 per
4 pay period as approved in *Carrington*, or lower, would apply given Defendants' compliance with
5 the Labor Code as discussed above.

6 33. Plaintiff understood Defendants' position could have been, using the most recent
7 court of appeal decision on the topic of evaluating the value of a PAGA claim (*Carrington v.*
8 *Starbucks, supra*) (i.e. at \$5.00 per pay period X 122,275 pay periods at issue at the first
9 mediation), that it is likely Defendants' maximum exposure was actually only **\$611,375.00**.
10 Defendants could have argued that this Court would use the *Carrington* valuation as a ceiling for
11 assessing PAGA penalties and that this amount (i.e., \$611,375.00 was its true "worst case
12 scenario" exposure).

13 34. Finally, the Parties were forced to consider the then pending Supreme Court ruling
14 in *Viking River Cruises v. Moriana*, No. 20-1573, and its consequences on PAGA in California and
15 specifically this Action.

16 35. Accordingly, the gross PAGA penalty payment is highly reasonable in light of the
17 risks and uncertainties associated with the PAGA claims in this case. The Settlement commits
18 Defendants to pay a sum large enough to punish Defendants for alleged violations and to deter such
19 alleged conduct in the future. At the same time, in light of the alleged violations and defenses thereto,
20 it is not so large as to be unjust, oppressive or confiscatory. Based upon the foregoing, the proposed
21 settlement is fair, reasonable, and in the best interest of the state of California and the Aggrieved
22 Employees.

23 36. Practically speaking, if Plaintiff continued litigating this matter, Plaintiff, LWDA,
24 and employees potentially could have received nothing if the Court had agreed with Defendants'
25 position especially in light of the volatility of this area of law, and the aforementioned defenses. The
26 settlement is reasonable in light of the risks involved in this case—including the prospect of a
27
28

potential adverse summary adjudication ruling, defenses to the case, potential appeal, and potential costs which could be forced on our client if Plaintiff was not successful.

37. Plaintiff's Counsel is convinced that the proposed settlement is fair based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks associated with a motion for summary adjudication, trial, and other normal perils of litigation have impacted the value of the claims and were all weighed in reaching the proposed settlement. In light of the above, the proposed Settlement is well within the range of reasonableness and should be granted approval. Plaintiff believes that in providing employees with relief and obtaining penalties for the LWDA, this settlement furthers the purpose of PAGA to enforce compliance with the Labor Code and should be approved.

ATTORNEYS' FEES

38. Under the terms of the Settlement Agreement, Plaintiff's Counsel is requesting \$156,750 in attorney's fees. This amount is equal to 33% of the \$475,000 agreed upon by the parties as the Settlement Amount.

39. Plaintiff's Counsel has spent a considerable amount of time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. Reviewing Plaintiff's documents, speaking to Plaintiff, preparing the Notice to the LWDA, drafting and preparing the complaint, and legal research into the viability of Plaintiff's claims;
- b. Reviewing and researching Defendants' Answer;
- c. Propounding formal discovery and reviewing Defendant's responses thereto;
- d. Reviewing formal discovery propounded by Defendants;
- e. Reviewing and opposing Defendants' Motion to Strike;
- f. Reviewing Defendant Chartwell's Motion to Compel Arbitration;
- g. Reviewing data and documents produced in informal discovery by Defendants;

- h. Communicating with Plaintiff, Defense Counsel, the mediator, and proposed settlement administrators;
- i. Preparing for and attending mediation;
- j. Preparing the Settlement Agreement and moving papers for approval;
- k. Negotiating and corresponding with Defendants' counsel in reaching the settlement at issue before the Court; preparing and appearing for approval.

40. Mr. Lavi and I and other attorneys at Lavi & Ebrahimian made every effort to litigate this action in an efficient and cost-effective manner. Given his years of experience, his trial and appellate experience, and the focus of his practice, if Mr. Lavi were to charge for his type of work by the hour, his current hourly rate would be \$750 per hour. My hourly rate would be \$500 per hour. This rate is the firm's current billing rate and is supported by the extensive and specialized experience in these types of cases and recognized expertise described. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to both Mr. Lavi's and mine. Based on that information, I believe that our rates are fully consistent with the market rate for attorneys with comparable expertise, experience and qualifications. Based on the information I have, I further believe that our rates are reasonable and appropriate fees for Los Angeles attorneys with comparable expertise, experience, and qualifications.

41. I have spent at least 47 hours on this. My hourly rate is \$500 per hour. This is in line with the rate charged by associates in the area and the Laffey Matrix which states a rate of \$468 for attorneys out of law school for four (4) to seven (7) years. My lodestar amount to date is at least \$23,500.00. I graduated from the Loyola Law School, Los Angeles in 2017 and have been practicing law since December 2017. Given my experience and the focus of my practice, if I were to charge for my type of work by the hour my rate would be \$500 per hour. A \$500 rate is warranted based on my years of experience in a highly specialized area of law and is in line with the Laffey Matrix. (Huether Decl. Ex. 6 available at <http://www.laffeymatrix.com/see.html>.) California Courts have applied the Laffey Matrix with adjustments to the specific California locality where the Counsel's office is located based on "Locality Pay Tables." (*Syers Properties III, Inc. v. Rankin*

1 (2014) 226 Cal.App.4th 691, 695-696 [affirming fee award based on Laffey Matrix with upward 9
2 percent rate adjustment from D.C. area compared to San Francisco Bay Area based on Locality Pay
3 Tables]; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365
4 F.Supp.2d 912, 921-922 [using Laffey Matrix with upward adjustment of 9 percent for San
5 Francisco based on difference between D.C. Area 's +15.98 locality pay compared to San
6 Francisco's +26.39 percent locality pay differential from the federal courts' "Judiciary Salary Plan
7 Pay Tables."].) Here, Plaintiffs' Counsels' offices are located in Los Angeles County. For 2018, the
8 Locality Pay Tables (and Judiciary Salary Plan Pay Tables referred to in *In re HPL Techs., Inc.*),
9 state a 2.35 percent increase for the Los Angeles-Long Beach, CA area which includes the following
10 counties: Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino
11 County, Santa Barbara County, and Ventura County. (Ex. 7, 8 [2018 Locality Pay Tables for
12 Washington-Baltimore-Arlington and Los Angeles-Long Beach, CA available at
13 <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/>]; Ex.
14 9, 10 [Judiciary Salary Plan Pay Tables available at
15 <http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates>]; Ex. 11 [2018
16 Locality Pay Area Definitions defining counties within Los Angeles-Long Beach, CA area available
17 at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/)
18 [definitions/](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/)].) In applying the 2.35 locality increase for attorneys working in Kern County, Los
19 Angeles County, Orange County, Riverside County, San Bernardino County, Santa Barbara County,
20 and Ventura County over the Washington-Baltimore area stated in the Laffey Matrix, the Laffey
21 Matrix states the following relevant rates: \$468 for attorneys 4 to 7 years out of law school, \$676
22 for attorneys 8 to 10 years out of law school, \$764 for attorneys 11 to 19 years out of law school,
23 and \$920 for attorneys 20 plus years out of law school.

24 42. Over the course of the litigation, I am informed that Mr. Lavi has spent at least 50
25 hours on this matter for a lodestar amount of at least \$37,500.00.

26 43. Throughout the course of this litigation, Vincent C. Granberry estimates he has spent
27 at least 28 hours litigating this matter. Accordingly, Mr. Granberry's unadjusted lodestar in this
28

1 matter is \$18,200.00 (28 x \$650 = \$18,200.00). If Mr. Granberry were to charge a rate for this type
2 of work by the hour, given his experience and the focus of his practice, his current hourly rate would
3 be \$650. A \$650 rate is warranted based on Mr. Granberry's years of experience in a highly
4 specialized area of law and is in line with the Laffey Matrix.

5 44. I am also informed that Courtney M. Miller has spent numerous hours working on
6 this matter. Ms. Miller, who has been practicing since 2019, has spent at least 76 hours working on
7 this matter and at her rate of \$450 an hour, her total lodestar is \$34,200.00.

8 45. I am also informed that Jordan D. Bello has spent numerous hours working on this
9 matter. Mr. Bello, who has been practicing since 2005, has spent at least 8 hours working on this
10 matter and at his rate of \$650 an hour, his total lodestar is \$5,200.00.

11 46. Therefore, Lavi & Ebrahimian's lodestar amounts to \$118,600.00 with more lodestar
12 to be incurred through approval and distribution of the settlement funds, which is warranted and
13 reasonable under settled precedent and the results obtained. Collectively, with co counsel,
14 Plaintiff's counsel has spent 236.8 hours and incurred a collective lodestar of \$140,701.00.

15 47. The requested attorneys' fees are justified here due to the contingent nature of the
16 representation, the risks involved, the complexity of the issues, the high quality of legal work
17 performed, and the excellent results obtained. After initially calculating the combined lodestar, the
18 Court may adjust the lodestar based on several factors in order to "fix a fee at the fair market value
19 for the particular action." *Ketchum v. Moses* (2001) Cal.4th 1122, 1132; *Graham v. Daimler*
20 *Chrysler Corp.* (2004) 34 Cal.4th 553, 574. These additional factors include the contingent risk of
21 litigation, the novelty and complexity of the issues, and exceptional results obtained. *Ketchum*, 24
22 Cal.4th at 1132, *Serrano III*, 20 Cal.3d at 48.

23 48. Moreover, the case involved significant risks of non-payment of attorneys' fees and
24 non-recovery of costs if the settlement was not granted approval, or of Plaintiff did not prevail.
25 California courts consider the risks counsel takes in litigating a case where they may not prevail on
26 the merits in granting attorneys' fees awards. See *Graham v. Daimler Chrysler Corp.*, 34 Cal.4th

1 553, 583 (Cal. 2004). Thus, not only are Plaintiff's Counsel's rates reasonable and typical, but the
2 attorneys' fees requested are also fair and reasonable.

3 **COSTS**

4 49. Our firm maintains all records regarding costs expended on each case. I have
5 reviewed the records of costs expended in this matter. According to our records, our firm has
6 incurred \$9,380.40 in costs in this matter at this time. This amount includes, but is not limited to,
7 costs associated with the costs associated with filing of the papers filed and responded to in this
8 matter, court appearances, and mediation. Therefore, the total costs incurred of \$9,380.40, which is
9 less than the Parties agreed Plaintiff's Counsel could seek in the Settlement Agreement and will
10 result in an increase in the PAGA Fund payable to the State of California and Aggrieved Employees.
11 Attached as **Exhibit 2** is a true and correct record of the costs incurred to date by Lavi & Ebrahimian,
12 LLP.

13 **SUBMISSION TO THE LWDA**

14 50. The Settlement is concurrently being submitted to the LWDA in accordance with
15 Labor Code § 2699(l)(2). The proof of electronic submission is attached hereto as **Exhibit 3**.

16 51. Attached as **Exhibit 1** to this declaration is a true and correct copy of the settlement
17 agreement.

18 52. Attached as **Exhibit 2** to this declaration is a true and correct copy of the costs of
19 Lavi & Ebrahimian during this matter.

20 53. Attached as **Exhibit 3** to this declaration is a true and correct copy of a printout of
21 the confirmation from the LWDA which indicates that the settlement was submitted.

22 54. Attached as **Exhibit 4** to this declaration is a true and correct copy of printouts from
23 the 2014 National Law Journal sampling of California firm billing rates.

24 55. Attached as **Exhibit 5** to this declaration is a true and correct copy of the 2008
25 National Law Journal sampling of billing rates.

26 56. Attached as **Exhibit 6** to this declaration is a true and correct printout of the Laffey
27 Matrix available at <http://www.laffeymatrix.com/see.html>.

57. Attached as **Exhibit 7** to this declaration is a true and correct copy of the 2018 Locality Pay Table for Washington-Baltimore-Arlington available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/>.

58. Attached as **Exhibit 8** to this declaration is a true and correct copy of the 2018 Locality Pay Table for Los Angeles-Long Beach, CA available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/>.

59. Attached as **Exhibit 9** to this declaration is a true and correct copy of the Judiciary Salary Plan Pay Table for Washington-Baltimore-Arlington available at <http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates>.

60. Attached as **Exhibit 10** to this declaration is a true and correct copy of the Judiciary Salary Plan Pay Table for Los Angeles-Long Beach, CA available at <http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates>.

61. Attached as **Exhibit 11** to this declaration is a true and correct copy of 2018 Locality Pay Area Definitions defining counties within Los Angeles-Long Beach, CA area available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/>.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this 30th day of December 2022, at Beverly Hills, California.

Melissa Yutten

Melissa A. Huether

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
