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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN DIEGO**

13 **(UNLIMITED JURISDICTION)**

14
15 WILLIAM DENNIS O'GRADY and HAROLD
THOMAS, as "aggrieved employees" on behalf
16 of other "aggrieved employees" under the Labor
Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18
19 vs.

20 TEAM CAR CARE, LLC, a Delaware limited
liability company; and DOES 1-50, inclusive,

21 *Defendant(s).*

Case No. 37-2020-00035860-CU-OE-CTL

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

RESERVATION NO. 2913628

Hearing Date: March 3, 2022
Hearing Time: 9:00 a.m.
Hearing Dept.: C-73, The Honorable
Joel R. Wohlfeil

Action Filed: October 7, 2020
Trial Date: Not Set



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TABLE OF CONTENTS

TABLE OF AUTHORITIES	v
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	1
A. Plaintiffs' Written Notice to the State of California	1
B. Plaintiffs' PAGA Claim	2
C. Mediation	2
III. OVERVIEW OF SETTLEMENT	3
A. "PAGA Members" Definition	3
B. Monetary Terms Of The Settlement	3
C. Timing of Payments	4
D. Calculation of Settlement Shares	5
E. Apportionment of Settlement Shares	5
F. The Releases	5
G. Notice Process and Procedures	7
H. Uncashed Checks	7
IV. ARGUMENT	7
A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT	7
B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA.	9
C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE IT IS A FAIR, REASONABLE AND ADEQUATE IN VIEW OF PAGA'S PUBLIC POLICY GOALS	9
1. The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm's Length Negotiations Between The Parties	10
2. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement	10



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19
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22
23
24
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26
27
28

3. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiffs’ Case and the Risks and Costs of Further Litigation 10

 a. Risks Associated with Plaintiffs’ Claim That Defendant Failed To Pay All Earned Wages at the Correct Rates of Pay 12

 b. Risks Associated with Plaintiffs’ Claim That Defendant Failed To Provide All Meal Periods 12

 c. Risks Associated with Plaintiffs’ Claim That Defendant Failed To Authorize or Permit Rest Breaks 13

 d. Risks Associated with Plaintiffs’ Claim That Defendant Failed To Indemnify for Expenses 14

 e. Risks Associated with Plaintiffs’ Claim That Defendant Failed To Issue Accurate and Complete Wage Statements 14

 f. Risks Associated with Plaintiffs’ Claim That Defendant Failed To Timely Pay All Wages 14

 g. The Absence of Large Civil Penalty Awards under PAGA 14

 h. The Risk That PAGA Claims Are Subject To Arbitration Agreements 17

4. Plaintiffs’ Counsel is Experienced in Similar Litigation..... 18

5. The Proposed Attorneys’ Fees and Costs Are Fair, Adequate, and Reasonable and Should Be Approved. 18

6. Plaintiffs’ General Release Payment Is Fair, Adequate, and Reasonable and Should Be Approved..... 20

7. The Proposed Third Party Settlement Administration Fees Are Fair and Reasonable and Should Be Approved..... 22

V. CONCLUSION 22



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TABLE OF AUTHORITIES

	Cases	Page(s)
	<i>Amey v. Cinemark USA Inc.</i>	
	(N.D.Cal. May 13, 2015) 2015 WL 2251504	17
	<i>Austin v. Foodliner, Inc.</i>	
	(N.D.Cal. May 10, 2019) 2019 U.S. Dist. LEXIS 79638	19
	<i>Bernstein v. Virgin Am., Inc.</i>	
	(N.D.Cal. 2017) 227 F.Supp.3d 1049	15, 16
	<i>Bowers v. First Student, Inc.</i>	
	(C.D.Cal. Apr. 23, 2015) 2015 WL 1862914	17
	<i>Brinker Restaurant Corp. v. Superior Court</i>	
	(2012) 53 Cal.4th 1004	13
	<i>Carrington v. Starbucks Corp.</i>	
	(2018) 30 Cal.App.5th 504	16
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43	20
	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794	9
	<i>Duran v. U.S. Bank National Assn.</i>	
	(2014) 59 Cal.4th 1	14
	<i>Farm Raised Salmon Cases</i>	
	(2008) 42 Cal.4th 1077	19
	<i>Gutilla v. Aerotek, Inc.</i>	
	(E.D.Cal. Mar. 21, 2017) 2017 U.S. Dist. LEXIS 41655	8, 9
	<i>Hamilton v. Juul Labs, Inc.</i>	
	(N.D.Cal. Nov. 16, 2021) 2021 WL 5331451	21
	<i>Hanlon v. Chrysler Corp.</i>	
	(9th Cir. 1998) 150 F.3d 1011	8
	<i>In re Exec. Life Ins. Co.</i>	
	(1995) 32 Cal.App.4th 344	8



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1	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i>	
2	(2014) 59 Cal.4th 348	18
3	<i>Juarez v. Villafan</i>	
4	(E.D.Cal. Aug. 24, 2017), 2017 U.S. Dist. LEXIS 137205	8, 9
5	<i>Laffitte v. Robert Half Internat. Inc.</i>	
6	(2016) 1 Cal.5th 480	19
7	<i>Lealao v. Beneficial California, Inc.</i>	
8	(2000) 82 Cal.App.4th 19	19
9	<i>Litty v. Merrill Lynch & Co.</i>	
10	(C.D.Cal. Nov. 10, 2014) 2014 WL 5904904	17
11	<i>Lopez v. Mgmt. & Training Corp.</i>	
12	(S.D.Cal. Apr. 20, 2020) 2020 U.S. Dist. LEXIS 70029	19
13	<i>Magadia v. Wal-Mart Assocs.</i>	
14	(9th Cir. May 28, 2021) 384 F.Supp.3d 1058, 2021 U.S. App. LEXIS 16070	16
15	<i>Mendiola v. CPS Security Solutions, Inc.</i>	
16	(2015) 60 Cal.4th 833	17
17	<i>Moorer v. Noble L.A. Events, Inc.</i>	
18	(2019) 32 Cal.App.5th 736	9
19	<i>Neary v. Regents of University of California</i>	
20	(1992) 3 Cal.4th 273	8
21	<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i>	
22	(N.D.Cal. Apr. 2, 2010) 2010 WL 1340777	8
23	<i>Officers for Justice v. Civil Service Com.</i>	
24	(9th Cir. 1982) 688 F.2d 615	8
25	<i>Ortiz v. CVS Caremark Corp.</i>	
26	(N.D.Cal. Mar. 18, 2014) 2014 WL 1117614	17
27	<i>Parker v. Cherne Contracting Corp.</i>	
28	(N.D.Cal. Dec. 9, 2021) 2021 WL 5834227	21
	<i>Pilkington v. Cardinal Health, Inc. (In re Synacor ERISA Litigation)</i>	
	(9th Cir. 2008) 516 F.3d 1095	8
	///	



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1	<i>Principe v. Ukropina (In re Pacific Enter. Sec. Litig.)</i>	
2	(9th Cir. 1995) 47 F.3d 373	20
3	<i>Ramirez v. Benito Valley Farms, LLC</i>	
4	(N.D.Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137272	8, 9
5	<i>Rincon v. West Coast Tomato Growers, LLC</i>	
6	(S.D.Cal. Feb. 12, 2018) 2018 U.S. Dist. LEXIS 22886	8, 9
7	<i>Rodriguez v. West Publ'g Corp.</i>	
8	(9th Cir. 2009) 563 F.3d 948	21
9	<i>Salazar v. Sysco Cent. Cal., Inc.</i>	
10	(E.D.Cal. Feb. 2, 2017) 2017 U.S. Dist. LEXIS 14971	7
11	<i>Serrano v. Priest</i>	
12	(1977) 20 Cal.3d 25	19
13	<i>Smith v. H.F.D. No. 55, Inc.</i>	
14	(E.D.Cal. Apr. 19, 2018) 2018 U.S. Dist. LEXIS 67192	8, 9
15	<i>Stafford v. Dollar Tree Stores, Inc.</i>	
16	(E.D.Cal. Nov. 20, 2014) 2014 WL 6633396	17
17	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
18	(2012) 203 Cal.App.4th 1112	11, 16
19	<i>Troester v. Starbucks Corp.</i>	
20	(2018) 5 Cal.5th 829	12
21	<i>Viking River Cruises, Inc. v. Moriana</i>	
22	(2022) 142 S.Ct. 1906	18
23	<i>Wershba v. Apple Computer, Inc.</i>	
24	(2001) 91 Cal.App.4th 224	19
25	<i>Wesson v. Staples The Office Superstore, LLC</i>	
26	(2021) 68 Cal.App.5th 746	17
27	<i>Western Heritage Ins. Co. v. Frances Todd, Inc.</i>	
28	(2019) 33 Cal.App.5th 976	19
	<i>Williams v. MGM-Pathe Communs. Co.</i>	
	(9th Cir. 1997) 129 F.3d 1026	20
	///	



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1	Statutes	
2	Bus. & Prof. Code, section 17200 <i>et seq.</i>	6
3	Civ. Code, section 1542	4
4	Lab. Code, section 200	6
5	Lab. Code, section 201	6, 14
6	Lab. Code, section 202	6, 14
7	Lab. Code, section 203	6, 14
8	Lab. Code, section 204	6
9	Lab. Code, section 210	6
10	Lab. Code, section 218.5	22
11	Lab. Code, section 218.6	22
12	Lab. Code, section 221	6
13	Lab. Code, section 225.5	6
14	Lab. Code, section 226	6, 14, 15, 16
15	Lab. Code, section 226.3	6
16	Lab. Code, section 226.7	6
17	Lab. Code, section 226.8	6
18	Lab. Code, section 351	6
19	Lab. Code, sections 510-515	6
20	Lab. Code, section 558	6
21	Lab. Code, section 558.1	6
22	Lab. Code, section 1194	6
23	Lab. Code, section 1197	6
24		
25		
26		
27		
28		



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1	Lab. Code, section 1198	6
2	Lab. Code, sections 1770-1774 <i>et seq.</i>	6
3	Lab. Code, section 2698 <i>et seq.</i>	1, 6
4	Lab. Code, section 2699	<i>passim</i>
5	Lab. Code, section 2699.3	1, 6
6	Lab. Code, section 2699.5	6
7	Lab. Code, section 2802	6
8	Rules	
9	California Rules of Court, rule 8.1115	19
10	Other	
11	IWC Wage Order No. 7-2001	6
12		
13		
14		
15		
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **APPROVAL OF PAGA SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiffs William Dennis O’Grady (“Plaintiff O’Grady”) and Harold Thomas (Plaintiff
5 Thomas) (collectively referred to as Plaintiffs) submit this memorandum of points and authorities
6 in support of their motion for approval of the PAGA Settlement Agreement (the “Agreement” or
7 “PAGA Settlement” or “Settlement”)¹ for the civil penalties claim they brought against
8 Defendant Team Car Care, LLC (“Defendant”) under the Labor Code Private Attorneys General
9 Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiffs bring this motion because Labor
10 Code section 2699(l) of the PAGA requires Court-approval of any civil penalties sought as part
11 of a proposed settlement agreement. Based on Plaintiffs and their attorneys’ investigation and
12 evaluation, Plaintiffs are of the opinion that the PAGA Settlement represents a reasonable and
13 adequate settlement of strongly disputed claims and is in the best interest of the State of
14 California, the PAGA Members, and Plaintiffs. Through this motion, therefore, Plaintiffs
15 respectfully request for this Court to approve the PAGA Settlement for resolution of the PAGA
16 claim.

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 Defendant performs various services on vehicles. DS, ¶ 3. Defendant employed Plaintiff
18 O’Grady as an Assistant General Manager and Store Manager from about August 01, 2016 until
19 November 01, 2019. *Id.* Defendant employed Plaintiff Thomas as an automotive technician from
20 about February 18, 2017 until August 5, 2022, when he resigned from his employment.

21 **A. Plaintiffs’ Written Notice to the State of California**

22 Plaintiff O’Grady complied with the procedures of Labor Code § 2699.3 for bringing suit
23 under PAGA. By letter dated September 24, 2020, Plaintiff O’Grady, on behalf of himself and
24 other aggrieved hourly employees gave written notice by certified mail to the Labor and
25 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
26 California Labor Code alleged to have been violated, including the facts and theories to support
27 the alleged violations. DS, ¶ 4, Ex. 2. By letter dated August 3, 2020, Thomas gave written notice
28

¹ The PAGA Settlement is attached as **Exhibit (“Ex.”) 1** to the Declaration of David Spivak
 (“DS”), which is submitted herewith under a separate cover.



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1 by certified mail to the LWDA and Defendant of the specific provisions of the California Labor
2 Code Defendant violated.

3 **B. Plaintiffs' PAGA Claim**

4 Plaintiffs and the PAGA Members are subject to arbitration agreements with Defendant.
5 Plaintiff O'Grady filed his lawsuit in San Diego County Superior Court on October 07, 2020.
6 DS, ¶ 5, Ex. 3. On December 09, 2020, Plaintiff O'Grady filed a First Amended Complaint
7 ("1AC"). DS, ¶ 5, Ex. 4. On February 1, 2021, and per the stipulation of the parties, Plaintiff
8 O'Grady filed his Second Amended Complaint. DS, ¶ 5 Ex. 5. Plaintiff Thomas filed his lawsuit
9 on February 10, 2021.² On August 8, 2022, and per the stipulation of the parties, Plaintiff
10 O'Grady filed a Third Amended Complaint adding Plaintiff Thomas as a named plaintiff. DS, ¶
11 5, Ex. 6. Plaintiffs' complaint presents one cause of action for civil penalties under PAGA. *Id.*

12 **C. Mediation**

13 On March 22, 2022, the Parties participated in mediation with mediator Jeff Winikow in
14 an attempt to resolve the PAGA claim. The Parties engaged in arm's-length negotiations and
15 ultimately reached a resolution of the PAGA claims asserted in the Action. The PAGA Settlement
16 was reached after exchanges of data, information and documents, and is a result of extensive
17 arms-length negotiations. The Parties conducted informal discovery for purposes of potential
18 resolution through which they ascertained the size of the aggrieved employee group and the
19 number of pay periods worked by them during the PAGA Period to ascertain the total value of
20 Plaintiffs' PAGA claim. Now that the parties have finalized the PAGA Settlement, Plaintiffs
21 submit it to this Court for approval. DS, ¶ 6.

22 **III. OVERVIEW OF SETTLEMENT**

23 **A. "PAGA Members" Definition**

24 The PAGA Members are all current and former California employees Defendant
25 employed any time during the period from September 24, 2019 through the date of Court

26 ² In addition to his PAGA claim, Plaintiff Thomas brought an individual discrimination claim in
27 violation of Fair Employment and Housing Act against Defendant. Defendant and Plaintiff
28 Thomas negotiated and settled Plaintiff Thomas' individual claims separately and pursuant to a
confidential settlement agreement for \$50,000.00. Zambrano decl., ¶ 11.



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1 approval of the Settlement (the “PAGA Period”) (collectively referred to as “PAGA Members”).
2 Agreement, ¶¶ 1 – 2.

3 **B. Monetary Terms Of The Settlement**

4 Defendant will pay \$435,000.00 to settle the PAGA claims in the Action (“Maximum
5 Settlement Amount”) pursuant to the terms of the Agreement. In no event shall Defendant pay
6 more than the Maximum Settlement Amount of Four Hundred Thirty Five Thousand Dollars and
7 Zero Cents (\$435,000.00) as a result of the Settlement, regardless of how the Court rules on the
8 first or subsequent motions for approval. The Maximum Settlement Amount will be allocated as
9 follows:

10 a. Third-Party Settlement Administration Fees of up to Twenty Thousand Dollars
11 and Zero Cents (\$20,000.00);

12 b. Plaintiffs’ counsel’s, David Spivak of The Spivak Law Firm, Walter L. Haines of
13 United Employees Law Group, and Ronald L. Zambrano of West Coast Employment Lawyers
14 (collectively, “PAGA Counsel”), request for attorneys’ fees of up to one-third (1/3) of the
15 Maximum Settlement Amount, or One Hundred and Forty Five Thousand Dollars and Zero Cents
16 (\$145,000.00) (“PAGA Counsel’s Fees”), subject to Court approval, plus actual costs and
17 expenses incurred by PAGA Counsel related to the Action as supported by declaration, which
18 are currently estimated to be no greater than Twenty Thousand Dollars and Zero Cents
19 (\$20,000.00) (“PAGA Counsel’s Costs”). The PAGA Counsel’s Fees awarded by the Court shall
20 be divided among Plaintiffs’ counsel as follows: (1) sixty five percent (65%), or Ninety-Four
21 Thousand Two Hundred and Fifty Dollars and Zero Cents (\$94,250) to Plaintiff William Dennis
22 O’Grady’s counsel; and (2) thirty five percent (35%), or Fifty Thousand Seven Hundred and
23 Fifty Dollars and Zero Cents (\$50,750) to Plaintiff Harold Thomas’s counsel;

24 c. A payment to each Plaintiff in the amount of Fifteen Thousand Dollars and Zero
25 Cents (\$15,000.00) (“General Release Payment”) for (1) a release of any and all claims against
26 Defendant and/or the Released Persons (identified below) and agreement to execute and/or
27 endorse the Personal Release contained herein, which includes a release of claims pursuant to
28 California Civil Code section 1542 and (2) their service to the State of California and the PAGA



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Members in prosecuting the Action; and

d. The remaining funds in the amount of Two Hundred and Twenty Thousand Dollars and Zero Cents (\$220,000) (the Maximum Settlement Amount less the Third-Party Settlement Administration Fees, PAGA Counsel's Fees, PAGA Counsel's Costs, and each Plaintiffs' General Release Payment) shall be referred to as the "Net Settlement Amount."

Agreement, ¶4

C. Timing of Payments

Within forty-five (45) calendar days after the Effective Date (as that term is defined in the Agreement) and notice by the Court or Plaintiffs that the Action has been dismissed with prejudice, Defendant shall deposit the Maximum Settlement Amount with the Settlement Administrator, who shall issue payment to PAGA Counsel and Plaintiffs within ten (10) calendar days of receipt of the Maximum Settlement Amount. Within forty-five (45) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with information maintained by Defendant in the normal course of its business operations concerning all PAGA Members with each listed employee's full name, date of hire, and, if applicable, termination dates in connection with the employee's employment with Defendant during the PAGA Period, last known mailing address, and social security number. Data provided by Defendant shall be kept confidential by the Settlement Administrator except for purposes of administering the settlement and this data shall not be provided to Plaintiffs' counsel for any reason. Within twenty (20) calendar days of receipt of the list of all PAGA Members, the Settlement Administrator shall run all the addresses of PAGA Members through the United States Postal Service NCOA database to obtain current address information, and issue payments to (a) PAGA Members; (b) the LWDA; and (c) itself. The Settlement Administrator will skip-trace return mail and re-mail within five (5) calendar days. In the event that prior to the final date for any PAGA Member to cash the Settlement Payment, any notice mailed to the PAGA Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall, via skip-tracing, seek an address correction from such PAGA Member(s), and send a Notice to the new or different address within seven days. The Settlement Administrator may conduct any investigation it deems



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1 reasonable and consistent with its role and industry practice to determine the correct address of
2 any PAGA Member. Agreement, ¶ 9.

3 **D. Calculation of Settlement Shares**

4 The Net Settlement Amount shall be designated as PAGA penalties in full satisfaction of
5 all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations,
6 and/or other provisions of law alleged to have been violated in or reasonably related to the
7 operative Complaint with respect to PAGA Members, allocated between the LWDA and the
8 PAGA Members pursuant to Labor Code Section 2699(i) with 75%, or One Hundred and Sixty-
9 Five Thousand Dollars and Zero Cents (\$165,000), paid to the LWDA and 25% or Fifty-Five
10 Thousand Dollars (\$55,000), paid to the PAGA Members on an equal, per capita basis
11 (“PAGA Penalties Fund”). Agreement, ¶ 5.

12 **E. Apportionment of Settlement Shares**

13 One hundred percent (100%) of the individual PAGA payment under this Settlement will
14 be considered penalties and may be subject to local, state, or federal tax withholdings and will
15 be reported to the IRS and state tax authorities. Notice of PAGA Settlement (“Notice”).

16 **F. The Releases**

17 As of and subject to the occurrence of the Effective Date (as that term is defined in the
18 Agreement), and in consideration for the Maximum Settlement Amount, the claims settled, fully
19 released and forever discharged by the LWDA and the PAGA Members, including Plaintiffs,
20 constitute any and all claims, rights, demands, liabilities and causes of action for civil penalties
21 Plaintiffs, the PAGA Members, and the State of California may have against the Released Parties
22 under the PAGA that arose during the PAGA Period, based on the factual allegations pled in the
23 operative complaint in the Action under the California Labor Code, Wage Orders, regulations,
24 and/or any other provisions of state and federal law arising from allegations that the PAGA
25 Members suffered Labor Code violations based on, and any other Labor Code violations that
26 were alleged in the Action, or that could have been alleged in the Action based on the facts
27 alleged in the Action, which includes, but is not limited to, alleged violations of Labor Code
28 section 2698 et seq. with respect to the following claims: (a) failure to pay all overtime wages
(Labor Code sections 510-515, 558, 1194 and 1198); (b) failure to pay all wages and/or minimum



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1 wages for all hours worked (Labor Code sections 221, 225.5, 351, 1770-1774 et seq., 1194, 1197,
2 and 1198 IWC Wage Order sections 2, 3 and 4); (c) failure to provide proper meal periods or pay
3 penalties for such failure (Labor Code sections 1198, 226.7, 512, 558 and 558.1 and IWC Wage
4 Order section 11); (d) failure to authorize and permit rest periods or pay penalties for such failure
5 (Labor Code sections 1198, 226.7 and IWC Wage Order section 12); (e) failure to furnish
6 accurate wage statements (Labor Code sections 226 and 226.3); (f) failure to reimburse
7 employees for business expenses (Labor Code section 2802); (g) failure to timely pay final wages
8 and wages during employment (Labor Code sections 200-204 and 210); (h) misclassification
9 (Labor Code section 226.8); (i) unfair business practices (Business and Professions Code sections
10 17200, et seq.) and (j) violations of the California Private Attorneys' General Act of 2004 (Labor
11 Code section 2698, et. seq., 2699, 2699.3 and 2699.5) including any related claims for attorneys'
12 fees, costs, penalties or interest resulting therefrom from September 24, 2019 through the date of
13 approval ("PAGA Released Claims").

14 The PAGA Released Claims shall specifically include all civil penalties or other amounts
15 which are or may be available under or through the PAGA based on the facts that were alleged
16 in the operative complaint filed in the Action, and/or predicated on any violation of the Labor
17 Code, Wage Orders, regulations, and/or any other provisions of state and federal law asserted in
18 the operative complaint filed in the Action, inclusive of all PAGA Members and the PAGA
19 Members' attorneys' fees and costs. As to the foregoing claims, Plaintiffs and PAGA Members
20 release PAGA civil penalties recoverable under any theory of liability upon which such civil
21 penalties under the PAGA could have been recovered based upon the factual and legal allegations
22 in the operative complaint filed in the Action. The "Released Parties" are Team Car Care, LLC
23 and its present and former agents, attorneys, insurers, past, present and future divisions, affiliates,
24 any DBAs, predecessors, successors, shareholders, officers, directors, managers, employees,
25 trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners,
26 parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by,
27 through, under or in concert with any of them (hereinafter "Released Parties").
28



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Any PAGA Member covered by this Agreement will be barred from proceeding with any Claim released by this Agreement.

Agreement, ¶ 12

G. Notice Process and Procedures

The Settlement Administrator will issue each PAGA Member a check for his or her share of the Net Settlement Amount along with an explanatory letter in the form attached as Exhibit A to the Agreement. Agreement, ¶ 10.

H. Uncashed Checks

Checks will remain negotiable for one hundred and eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Member. Agreement, ¶ 10.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The Court necessarily has broad discretion in making the decision to approve or reject a settlement for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount of penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2). Although the PAGA does not set forth the particular standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for approval that mirrors the standards for evaluating class action settlements. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval of PAGA settlements may be had where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate). The established standards for evaluating whether class action settlements are fair, reasonable, and adequate



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1 provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been
2 adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4
3 (E.D. Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San*
4 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S.
5 Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
6 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal.
7 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon*
8 *v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

9 PAGA penalties are in the nature of a law enforcement penalty and are designed to
10 penalize an employer for its failure to comply with California’s wage and hour laws and
11 regulations and are not designed to compensate employees. *Ochoa-Hernandez v. CJADERS*
12 *Foods, Inc.*, 2010 WL 1340777 *1, *5 (E.D. Cal. Apr. 2, 2010). (“Unnamed employees need not
13 be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative
14 PAGA claim. There is no indication that the unnamed plaintiffs can contest a settlement, if any,
15 reached between the parties.”).

16 In making the determination whether a settlement taken as a whole is fair, reasonable,
17 and adequate, the Court should be careful to still give “proper deference to the private consensual
18 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
19 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
20 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
21 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at, 1027. The law favors
22 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
23 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
24 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
25 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

26 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
27 **PAGA.**

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



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1 follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See*
2 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
3 The Parties' Settlement so provides. Second, the LWDA must be given notice of the settlement
4 so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code §
5 2699(1)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion.
6 DS, ¶ 7 Ex. 7. As a result, Plaintiffs have met all procedural statutory requirements for settling a
7 PAGA action.

8 C. **THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT**
9 **BECAUSE IT IS A FAIR, REASONABLE AND ADEQUATE IN VIEW**
10 **OF PAGA'S PUBLIC POLICY GOALS.**

11 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the
12 Court may consider several factors, including:

13 the strength of the Plaintiff's case, the risk, expense, complexity and likely
14 duration of further litigation, the risk of maintaining class action status through
15 trial, the amount offered in settlement, the extent of discovery completed and the
16 stage of the proceedings, and the experience and views of counsel.

17 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS
18 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS
19 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886,
20 *6. However, this Court should begin its analysis with a presumption that the proposed settlement
21 is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length
22 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
23 intelligently; (3) counsel is experienced in similar litigation" *Dunk*, 48 Cal. App. 4th at 1802.

24 The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The
25 Parties reached the Settlement through arm's-length bargaining with the aid of a respected
26 mediator; (2) The Parties conducted sufficient investigation and discovery to allow Counsel and
27 the Court to act intelligently. Plaintiffs requested and Defendant provided the number PAGA
28 Members, data from which the number of total pay periods during the PAGA Period could be



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extrapolated, and all relevant policies in effect during the PAGA Period; and (3) Counsel for the Parties are experienced with PAGA cases. DS, ¶ 8. For the reasons discussed below, this Court should approve the PAGA Settlement.

1. **The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm's Length Negotiations Between The Parties.**

The PAGA Settlement was reached only after litigation and arms' length negotiations between experienced attorneys, which included a full day mediation with the Honorable Jeff Winikow (ret.), a respected mediator. At all times, the negotiations were adversarial and contentious, although still professional in nature. DS, ¶ 6.

2. **The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement**

Plaintiffs considered various sources of information in the lead-up to, during and after the mediation that enabled them to achieve the PAGA Settlement at issue. Among other things, Plaintiffs considered the following:

- Defendant produced and Plaintiffs reviewed their personnel files.
- Defendant produced and Plaintiffs reviewed and analyzed time and payroll records for approximately 117 PAGA Members.
- Plaintiffs requested that Defendant produce any and all relevant policies regarding Plaintiffs' claims and Defendant produced those policies in effect during the relevant time period.
- Plaintiffs interviewed other employees about the claims at issue.
- Plaintiffs analyzed the state of caselaw on PAGA claims, claims for meal and rest breaks, unpaid wages, and unreimbursed expenses, and related claims.
- Plaintiffs surveyed the outcomes of PAGA cases that went to trial or otherwise concluded before trial.

DS, ¶ 13.

3. **The Settlement Is Fair and Reasonable Based on the Strength of Plaintiffs' Case and the Risks and Costs of Further Litigation**

A court has discretion under PAGA to award a lesser amount than the maximum penalty.



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1 Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th
2 1112, 1135 (reducing PAGA award). Defendant has posed valid defenses to the Labor Code
3 claims underlying Plaintiffs' PAGA allegations. Thus, the PAGA claims likewise face significant
4 uncertainty. DS, ¶ 14. There is a risk that the Court would consider the maximum civil penalty
5 available to be confiscatory. This uncertainty increases Plaintiffs' risk of pursuing the PAGA
6 claims and required a significant discount for settlement purposes. DS, ¶ 14. For mediation
7 purposes, Plaintiffs' counsel estimated a maximum exposure of approximately \$15,929,100.00
8 in civil penalties. This estimate did not take into account any of the risks discussed here and
9 assumed a violation for every single pay period. Plaintiffs' counsel also assessed multiple
10 penalties for the same pay period for the same alleged violations of different Labor Code
11 provisions and derivative violations. Although two federal district court decisions held that
12 "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in
13 controversy for purposes of removal jurisdiction, Plaintiffs' counsel are not aware of any
14 California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the
15 same pay period under different Labor Code provisions. This may be because the PAGA does
16 not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

17 In preparation for mediation and during the settlement negotiations that followed,
18 Defendant disclosed that there were approximately 1,281 potentially aggrieved employees and
19 Plaintiffs (extrapolating from the data) estimated there were approximately 28,962 pay periods.
20 The maximum possible civil penalties under the PAGA is the total number of pay periods with
21 one or more violations multiplied by the maximum possible civil penalty amount per pay period.
22 Unfortunately, for the employees concerned, the potential for recovery of the maximum possible
23 civil penalties depends on circumstances that are extremely unlikely independently and in
24 combination. It would depend on the Court stacking the maximum recoverable civil penalties for
25 approximately 28,962 pay periods for all 1,281 potentially aggrieved employees during the
26 PAGA Period. Plaintiffs' counsel are not aware of any California State court decision awarding
27 a plaintiff and the other aggrieved employees he represents multiple civil penalties for the same
28 pay period under different Labor Code provisions. Plaintiffs' counsel had to substantially



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discount the value of these claims in the settlement negotiations for this and a variety of other reasons (outlined below). DS, ¶ 15.

a. Risks Associated with Plaintiffs' Claim That Defendant Failed To Pay All Earned Wages at the Correct Rates of Pay

There is a risk that Plaintiffs' claim that Defendant did not pay all wages at the correct rates of pay would be extremely limited at best, largely because Defendant's written policies throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment policies, Defendant mandates that employees must record all time worked accurately and strictly prohibit employees from performing any work off-the-clock. Moreover, while Defendant disputes that off-the-clock work occurred, it contends that any time spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of civil penalties seems unlikely with respect to this claim. DS, ¶ 16.

The difficulty inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim. Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records indicating when such off-the-clock work may have taken place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked "minutes" off-the-clock on a "regular" basis. Accordingly, there is a significant risk that the Court would consider this evidentiary showing insufficient as a methodology for all aggrieved employees. DS, ¶ 17.

b. Risks Associated with Plaintiffs' Claim That Defendant



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Failed To Provide All Meal Periods

There are risks to Plaintiffs' claims that defendant failed to provide all meal periods. DS, ¶ 18. Defendant contends that, to establish a violation of the meal period law, a plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

Defendant contends it did not impede or discourage Plaintiffs, or any other employees, from taking their meal periods. Defendant's policies mandate that employees take at least a 30-minute, off-duty meal period and record the beginning and ending time of their meal breaks each day on their time records. The time records that comprise the random sample Defendant produced to Plaintiffs for purposes of mediation show that meal periods were taken the vast majority of the time. Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendant or each of the employees concerned. Accordingly, there is a significant risk that the recoverable amount of civil penalties for unprovided meal periods would be substantially reduced at trial. DS, ¶ 18.

c. Risks Associated with Plaintiffs' Claim That Defendant Failed To Authorize or Permit Rest Breaks

There are risks to Plaintiffs' claims that Defendant failed to authorize or permit rest breaks. DS, ¶ 19. Employers are not required to record rest periods and such periods are paid. *Id.* Defendant contends it provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendant's written policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims



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1 at trial has become exceedingly difficult. *Id.* Plaintiffs will depend on sample witness testimony
2 and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible,
3 relevant caselaw makes such claims risky from a trial management and due process perspective.
4 *Id.*, See *Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient
5 common questions exist to support class certification, it may be possible to manage individual
6 issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo*
7 (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

8 **d. Risks Associated with Plaintiffs’ Claim That Defendant
Failed To Indemnify for Expenses**

9 There is a risk that the Court may consider Plaintiffs’ claim that Defendant failed to
10 indemnify for business expenses to be individual in nature and thus decline to allow a trial on
11 behalf of all aggrieved employees and the State. DS, ¶ 20. Plaintiffs allege that Defendant
12 required Plaintiffs and the aggrieved employees to use their personal items for work, including
13 cellular phones and vehicles, and failed to indemnify them for these business expenses. *Id.*
14 Defendant presented evidence that it had an expense reimbursement policy. As such, there is a
15 risk that the Court may consider Plaintiffs’ claims to be individual in nature and unfit for class
16 wide resolution. *Id.*

17 **e. Risks Associated with Plaintiffs’ Claim That Defendant
Failed To Issue Accurate and Complete Wage Statements**

18 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and
19 PAGA penalties. Under Labor Code section 226, wage statements must include various
20 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
21 DS, ¶ 21. Here, Plaintiffs’ wage statement claim has the same underlying risks as the above
22 claims, as it is derivative of them. *Id.* On their face, the wage statements issued by Defendant
23 comply with the requirements of Labor Code § 226.

24 **f. Risks Associated with Plaintiffs’ Claim That Defendant
Failed To Timely Pay All Wages**

25 Plaintiffs’ claim for untimely wages is predicated on Labor Code section 201 to 203. Like
26 the claim under Labor Code sec. 226, Plaintiffs must establish that the late payments were willful.
27 The evidence of good faith Defendant put forth will defeat this claim. DS, ¶ 22.

28 **g. The Absence of Large Civil Penalty Awards under PAGA**



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1 The sole source of money recoverable for the PAGA Members and the State is civil
2 penalties available under PAGA. It allows employees to seek civil penalties for certain violations
3 of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory.
4 As discussed above, Plaintiffs' maximum estimated liability exposure is based on the theories
5 that: (1) Every paycheck that Defendant issued to employees during the PAGA Period represents
6 a pay period in which every PAGA Member suffered a minimum wage violation; (2) Every
7 paycheck that Defendant issued to employees during the PAGA Period represents a pay period
8 in which every PAGA Member suffered an overtime wage violation; (3) Every paycheck that
9 Defendant issued to employees during the PAGA Period represents a pay period in which every
10 PAGA Member suffered a meal period violation; (4) Every paycheck that Defendant issued to
11 employees during the PAGA Period represents a pay period in which every PAGA Member
12 suffered a rest period violation; and (5) Every paycheck that Defendant issued to employees
13 during the PAGA Period represents a pay period in which every PAGA Member suffered an
14 unreimbursed expense violation. There are no California state court decisions under the PAGA
15 to date with substantial awards of civil penalties. Plaintiffs' counsel is aware of only two
16 significant awards under the PAGA in a contested proceeding, both issued by federal district
17 courts, one of which was overturned on May 28, 2021.³ DS, ¶ 23.

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

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
comply with the requirements of California Labor Code section 226. On May 28, 2021, the
United States Court of appeals for the Ninth Circuit overturned the decision finding that there is



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1 Additionally, PAGA states a court has discretion to award a lesser amount than the
2 maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
3 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the
4 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiffs'
5 evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504*
6 (*"Carrington"*) illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
7 discounted award of only \$5 per violation because it was within the Court's discretion to
8 significantly reduce PAGA penalties even when there is a finding that a violation of the
9 California Labor Code occurred. Under *Carrington*, assuming three (3) violations for each pay
10 period for all 1,281 PAGA Members, will result in a recovery of \$434,430.00 (28,962 x 3 x \$5
11 = \$434,430.00). DS, ¶ 24.

12 Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In
13 *Ghrdilyan v. RJ Financial, Inc., Los Angeles Superior Court*, case number BC430633, the
14 employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in
15 civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian
16 awarded approximately \$366,073.29 in civil penalties under the PAGA. DS, ¶ 25, Exs. 8-10. In
17 a similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving*
18 *Company, Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded
19 the prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could occur
20 here. DS, ¶ 25.

21 Defendant could also convince the Court to dismiss the claims due to unmanageability
22 because determining whether each Aggrieved Employee worked off the clock or why each
23 employee missed a meal or rest period would require separate mini-trials. *Id. See, Mendiola v.*
24 *CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court
25 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal.

26 no technical wage statement violation for a failure to list the rates and hours of pay associated
27 with adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
28 LEXIS 16070 (9th Cir. May 28, 2021).



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1 2014). The *Ortiz* court cited the “multitude of individualized assessments” that case would have
2 required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed
3 PAGA claims where, there are a large number of allegedly aggrieved individuals whose claims
4 require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3
5 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see*
6 *also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating
7 trial of plaintiff’s claim from representative claims: “in light of the number of potential aggrieved
8 employees, judicial economy favors deferring the representative portion of the PAGA claim”);
9 *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). Further, on
10 September 9, 2021, the California Court of Appeal issued a decision in *Wesson v. Staples The*
11 *Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh’g denied (Sept. 27, 2021) holding that
12 trial courts have authority to ensure that claims under PAGA are manageable, and that courts
13 may limit or strike unmanageable PAGA claims. DS, ¶ 26.

14 While the evidence gathered through Plaintiffs’ discovery supports the merits of the
15 claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the risks
16 associated with the merits of Plaintiffs’ claims, the uncertainties of complex litigation, the cost
17 of pretrial and trial proceedings, the Court’s discretion to lower the amount of penalties ultimately
18 awarded, and the secured benefit to the PAGA Members and the LWDA promoting compliance
19 with the Labor Code. DS, ¶ 27.

20 **h. The Risk That PAGA Claims Are Subject To Arbitration**
21 **Agreements**

22 The arbitration agreements entered into between Defendant on the one hand, and the
23 Plaintiffs and comparable workers, on the other, present a significant risk to the success of
24 Plaintiffs’ representative litigation. DS ¶ 28. According to Defendant, the majority of the workers
25 entered into arbitration agreements with Defendant. *Id.* As the arbitration agreements in question
26 restrict potential litigants from bringing PAGA actions against Defendant, Plaintiffs would be
27 effectively barred from pursuing claims on behalf of the Aggrieved Employees in Court. *Id.* As
28 such, by continuing to trial on representative claims, Plaintiffs would run the high risk of
suffering defeat due to the existence of the arbitration agreements. Also, because different



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1 defenses would apply to some workers and not others – i.e., the existence of signed arbitration
2 agreements – there is a risk that the Court could determine that Plaintiffs’ claims present too
3 many individualized inquiries to allow for manageable PAGA trial. *Id.* Further, at the time the
4 Parties settlement the case, the United States Supreme Court had announced that, in the near
5 future, it would hear the matter of *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, and
6 decide whether or not to overrule the California Supreme Court’s decision in *Iskanian v. CLS*
7 *Transportation* (2014) 59 Cal.4th 348 that a private arbitration agreement cannot deprive an
8 employee of his right to sue under PAGA in a court of law. *Id.*⁴

9 **4. Plaintiffs’ Counsel is Experienced in Similar Litigation.**

10 Plaintiffs’ counsel have considerable experience in class actions and wage and hour
11 litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving
12 forward with litigation, and viability of possible affirmative defenses. *See* DS, ¶¶ 9 - 12;
13 Declaration of Walter L. Haines (“Haines Decl.”) ¶¶ 1-6; Zambrano decl., ¶¶1-6.

14 **5. The Proposed Attorneys’ Fees and Costs Are Fair, Adequate, and**
15 **Reasonable and Should Be Approved.**

16 Of the \$435,000.00 MSA, Plaintiffs’ counsel requests \$145,000.00 (1/3 of the MSA) in
17 attorney’s fees and up to \$20,000.00 in litigation expenses. DS, ¶ 30; Agreement, ¶ 4.b. The
18 written retainer agreement Plaintiffs’ counsel entered into with Plaintiffs provided that their
19 counsel may elect to recover either (a) statutorily awarded attorney fees or (b) up to 40% of any
20 recovery. *Id.*

21 It is an accepted practice in wage and hour class action settlements to award attorneys’
22 fees to Plaintiffs’ counsel based on a percentage of the total settlement value agreed upon by the
23 parties. California courts have long recognized that an appropriate method for awarding
24 attorneys’ fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
25 (1977) 20 Cal.3d 25, 48-49 [“when a number of persons are entitled in common to a specific
26 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
27

28 ⁴ The Supreme Court in *Moriana* ultimately held that the employer could enforce the arbitration
agreement as to the employee’s individual PAGA claim and that the employee lacked standing
to maintain her representative PAGA claims. *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct.
1906 (2022), reh’g denied, No. 20-1573, 2022 WL 3580311 (U.S. Aug. 22, 2022).



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1 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
2 fund”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial*
3 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

4 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
5 check” on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
6 1 Cal. 5th 480, 505 (“*Laffitte*”). However, the California Supreme Court in *Laffitte* has now made
7 clear that this cross-check is not required and approved one-third of the class action settlement
8 fund as reasonable attorney fees as “[t]he percentage of the fund method survives in California
9 class action cases....” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
10 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
11 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not
12 “engage in a full-blown lodestar analysis when the primary basis remains the percentage
13 method...” The lodestar calculation is merely a “useful perspective on the reasonableness of a
14 given percentage award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638
15 (“Trial courts ‘also retain the discretion to forgo a lodestar cross-check and use other means to
16 evaluate the reasonableness of a requested percentage fee.’”⁵ *Id.* (citing *Laffitte*)).

17 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
18 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
19 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
20 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
21 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
22 also consistent with Plaintiffs’ Counsel’s experience in wage and hour class and PAGA
23 settlements. DS, ¶ 33.

24 ⁵ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a))
25 does not apply to unpublished decisions from the lower federal courts. (*Farm Raised Salmon*
26 *Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18 [“Citing unpublished federal opinions does not violate
27 our rules.”].) Like published decisions of the lower federal courts, unpublished decisions are not
28 binding on us even on questions of federal law, but they are persuasive authority. (*Western*
Heritage Ins. Co. v. Frances Todd, Inc. (2019) 33 Cal.App.5th 976, 989, fn. 6.)



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Should the Court elect to use Plaintiffs' Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, Plaintiffs' Counsel's fee request of \$145,000.00 (one-third of the MSA) is fair and reasonable based on their lodestar as cross-checked against the percentage of the recovery. In this case, Plaintiffs' Counsel have a total lodestar of approximately \$134,271.50 without the use of any multiplier, which results in a multiplier of 1.080 when compared against the \$145,000.00 fee request. DS, ¶ 31, Ex. 12; Haines decl., ¶¶ 4-10; Zambrano decl., ¶¶ 7-9. Plaintiffs' counsel's previous experience in litigating wage and hour class actions and the caliber of opposing counsel also support the reasonableness of the fee request. DS, ¶¶ 31, 34.

In addition, Plaintiffs' Counsel incurred substantial costs, \$15,603.46 to date, including the costs of a mediator to aid in the representation of the PAGA Members.⁶ DS, ¶ 32, Ex. 13; Haines Decl. ¶ 11; Zambrano decl., ¶ 10. Plaintiffs' Counsel anticipate that Plaintiffs will incur an additional \$100.07 in costs, which consist of filing fees and attorney service fees for filing this motion and notice of entry of order. Plaintiffs' Counsel anticipate that litigation costs will total approximately \$15,703.53 through final accounting of the Settlement. *Id.* As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. DS, ¶ 32, Ex. 13. Accordingly, they warrant the Court's approval.

6. Plaintiffs' General Release Payment Is Fair, Adequate, and Reasonable and Should Be Approved.

Plaintiffs' General Release Payments in the amount of \$15,000.00 each is being paid to Plaintiffs as PAGA Representatives for their general release and service to the State of California and the PAGA Members in prosecuting the Action. DS, ¶ 35.

There is authority for the General Release Payment to Plaintiffs. While the statutory language of the PAGA is silent on the issue of incentive awards to named Plaintiffs, it nonetheless provides implicit support for incentive payments to named Plaintiffs. Moreover, language from the Ninth Circuit Court of Appeals and recent California district court caselaw indicates that such

⁶ Plaintiffs' counsel do not seek reimbursement for the wages they paid to the attorneys, paralegals, and legal assistants to aid in the representation of the PAGA Members and the State. Plaintiffs' Counsel bore these expenses over the lengthy since they began work on this matter without reimbursement.



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1 awards are permitted. The Ninth Circuit Court of Appeals has stated that enhancement payments
2 provided to named plaintiffs can serve, among other functions, to “recognize [a representative’s]
3 willingness to act as a private attorney general.” *Rodriguez v. West Publ’g Corp.* (9th Cir. 2009)
4 563 F.3d 948, 958. Although made in the context of a class action settlement, the Ninth Circuit’s
5 observation should extend to suits asserting claims solely PAGA; *see also Hamilton v. Juul Labs,*
6 *Inc.*, No. 20-CV-03710-EMC, 2021 WL 5331451, at *14 (N.D. Cal. Nov. 16, 2021) (approving
7 a \$10,000 service award and explaining that “Service payments to plaintiffs are appropriate in
8 representative litigation, including class cases, derivative cases (where an individual sues on
9 behalf of a legal entity), and PAGA cases (where an individual sues on behalf of the State)” and
10 that “Courts may grant service awards beyond the presumptively reasonable amount of \$5,000 if
11 the circumstances so warrant.”); *Parker v. Cherne Contracting Corp.*, No. 18-CV-01912-HSG,
12 2021 WL 5834227, at *9 (N.D. Cal. Dec. 9, 2021)(approving \$20,000 “General Release
13 Payments” that were awarded to plaintiffs in addition to service awards of \$5,000 to each
14 plaintiff).

15 Plaintiffs’ General Release Payments of \$15,000.00 each are entirely reasonable given
16 each Plaintiff’s efforts in the Lawsuit and the risks he undertook on behalf of the PAGA
17 Members. *See generally* O’Grady Decl. and Thomas Decl. Plaintiffs devoted many hours
18 advancing the interests of the PAGA Members. Plaintiffs have done this, by, among other things,
19 retaining experienced counsel, providing them with information about their work history with
20 Defendant, assisting in contacting absent PAGA Members to gather information, participating in
21 mediation, and being actively involved in the settlement process to ensure a fair result for the
22 PAGA Members as a whole. In doing this, Plaintiffs have been exposed to significant risks,
23 including the risk of an order to pay Defendant’s attorneys’ fees and costs if this action had been
24 unsuccessful and in bad faith (*See* Labor Code §§ 218.5-218.6). The efforts and risks that
25 Plaintiffs undertook on behalf of the PAGA Members show that the proposed General Release
26 Payment to each Plaintiff is fair, adequate, and reasonable, and thus warrants approval. *See*
27 *generally* O’Grady Decl. and Thomas Decl. DS, ¶ 36.

28 ///



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V. CONCLUSION

Respectfully submitted,

Dated: December 12, 2022

By:



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