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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 ALEJANDRO PANUCO; ADRIAN
11 DELGADO ROSALES; NOE SILVA,

12 *Plaintiffs,*

13 vs.
14

15 BEACON SALES ACQUISITION, INC.
16 and DOES 1 to 25, inclusive,

17 *Defendant(s).*
18
19
20

Case No.: 21STCV18970

**MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: 5/19/21

Date: 6/26/23

Time: 8:30am

Dept: 19

Reservation ID:
351669393189

Department: 19, Hon. Stephanie
Bowick

Submitted Herewith Under Separate Cover:

1. Declaration of Harout Messrelian in Support of Motion for Approval of PAGA Settlement and Release; and
2. [Proposed] Order

1 **I. INTRODUCTION**

2 Plaintiffs Alejandro Panuco, Adrian Delgado Rosales, and Noe Silva (“Plaintiffs”) and
3 Defendant Beacon Sales Acquisition, Inc. (“Defendant”) have reached an agreement to settle the
4 above-captioned action (the “Action”). Plaintiffs and Defendant are collectively referred to as
5 the “Parties” and any one of them individually may be referred to as a “Party.” The Parties have
6 memorialized the terms of this settlement in a PAGA Settlement Agreement and Motion (the
7 “Settlement Agreement”). Attached as **Exhibit 1** to the Declaration of Harout Messrelian
8 (“Messrelian Decl.”) is a true and accurate copy of the Settlement Agreement and the PAGA
9 notice that will be sent to the alleged aggrieved employees covered by the Settlement Agreement,
10 being Plaintiffs and all current and former non-exempt employees of Defendant in the State of
11 California from January 14, 2021 through the date of the Settlement Approval (“PAGA
12 Members”), with their payment. By this Motion and pursuant to California Labor Code § 2699(l),
13 Plaintiffs seek an order permitting settlement on the terms outlined in the Settlement Agreement.

14 **II. ALLEGATIONS AND INVESTIGATION**

15 Defendant is a roofing supply company, which provides roofing materials for use in
16 construction projects. Plaintiffs all worked for Defendant for several years and performed the
17 duties of “loaders” or “signal men”. All Plaintiffs were classified as hourly, non-exempt
18 employees. *See* Messrelian Decl., ¶4.

19 Plaintiffs contend that they complied with the procedures of Labor Code § 2699.3 for
20 bringing suit under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
21 (“PAGA”). Plaintiffs further contend that on November 4, 2020, Plaintiffs Alejandro Panuco and
22 Adrian Delgado Rosales, on behalf of themselves and Defendant’s other California non-exempt
23 hourly employees (hereafter, collectively, the “Aggrieved Employees”) gave written notice by
24 electronic service to the California Labor and Workforce Development Agency (“LWDA”) and
25 via certified mail to Defendant of their claims against Defendant. Plaintiffs further contend that
26 on November 6, 2020, Plaintiff Noe Silva also gave written notice by electronic service to the
27 LWDA and via certified mail to Defendant of his claims against Defendant. In their notices to
28 the LWDA, Plaintiffs asserted on behalf of themselves and the Aggrieved Employees that

1 Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor Code
2 Sections 1194, 1197, 1197.1), including failure to pay the prevailing wage (Labor Code Sections
3 1771, 1774, 1776, 1777.5); (2) failed to pay overtime compensation (Labor Code Section 510);
4 (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide meal breaks
5 (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during employment (Labor
6 Code Section 204); (6) failed to provide accurate itemized wage statements (Labor Code Section
7 226); (7) failed to keep accurate and complete payroll records (Labor Code Section 1174/1174.5);
8 (8) failed to pay wages at the end of employment (Labor Code section 203); and (9) failed to
9 reimburse business expenses (Labor Code Sections 2800, 2802) under Industrial Welfare
10 Commission Wage Orders 16-2001. *See* Messrelian Decl., ¶5 and **Exhibit 1** at ¶¶21-22.

11 Plaintiffs filed their initial lawsuit on May 19, 2021 in the Superior Court for the State of
12 California, County of Los Angeles, Case No. 21STCV18970 with one cause of action for
13 penalties under PAGA under the following legal theories: (a) failure to pay all minimum wages
14 owed, including the prevailing wage; (b) failure to pay all overtime wages owed; (c) failure to
15 provide compliant meal periods, or premium pay for non-compliant meal periods; (d) failure to
16 authorize and permit complaint rest periods, or provide premium pay for non-complaint rest
17 periods; (e) failure to provide accurate, itemized wage statements and/or otherwise maintain
18 accurate records; (f) failure to timely pay wages during employment and/or upon separation of
19 employment; and (g) failure to indemnify and/or reimburse for all reasonable and necessary
20 business expenses.

21 Before mediation, the Parties engaged in informal discovery regarding Defendant's
22 policies, practices, operations, time and payroll information and other topics. Through pre-
23 mediation discovery, Defendant produced records and represented that it employed
24 approximately 963 workers falling within Plaintiffs' Aggrieved Employees definition for the
25 period from January 14, 2021 through October 14, 2022, and that there are paychecks issued for
26 a total of approximately 18,560 pay periods worked for that same time period. *See* Messrelian
27 Decl., ¶6 and **Exhibit 1** at ¶23.

1 Also in advance of mediation, Defendant produced Plaintiffs' personnel files, time and
2 payroll data for Plaintiffs, and time records and payroll records for 178 of the 963 workers falling
3 within Plaintiffs' Aggrieved Employees definition for the period from January 14, 2021 through
4 October 14, 2022, which represented an 18% sample. Defendant consistently denied any liability
5 or wrongdoing of any kind whatsoever associated with the Action throughout the negotiation
6 process. *See* Messrelian Decl., ¶9.

7 The Parties used January 14, 2021 as the starting date for settlement negotiations because
8 a prior settlement covered all current and former employees of Defendant who were employed
9 in the State of California as hourly or non-exempt employees from March 26, 2018 through
10 January 13, 2021. Accordingly, the Settlement Agreement covers PAGA Members, which are
11 Aggrieved Employees employed on or after January 14, 2021, through the date of Settlement
12 Approval. *See* Messrelian Decl., ¶7 and **Exhibit 1** at ¶10.

13 On October 27, 2022, the Parties attended a full day mediation session with experienced
14 wage-and-hour mediator Eleanor Barr, Esq. of Barr Mediation. At the mediation, the Parties
15 agreed to settle the Action. Through extensive arm's length negotiations at the mediation and
16 only after discovery and investigation were performed, the Parties agreed to settlement terms.
17 *See* Messrelian Decl., ¶¶9-10 and **Exhibit 1** at ¶40.

18 Plaintiffs conducted investigation of the facts and law both before and after the lawsuit
19 was filed. Counsel for the Parties have also investigated the applicable law as applied to the facts
20 discovered regarding Plaintiffs' claims, the defenses thereto, and the Labor Code violations
21 claimed by Plaintiffs. Based on their own independent investigations and evaluations, the Parties
22 and their respective counsel are of the opinion that the Settlement for the consideration and on
23 the terms set forth in this Motion are fair, reasonable and adequate and are in the best interests of
24 Plaintiffs, the PAGA Members, and Defendant in light of all known facts and circumstances and
25 the risks inherent in litigation, especially in this post-pandemic era when most businesses are still
26 struggling to remain afloat, much less prosper and make a large profit. *See* Messrelian Decl., ¶10.

27 The Parties further recognize that the issues presented in the Action are likely only to be
28 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will

1 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
2 maximum potential benefits, especially in light of the post- pandemic era and the business
3 climate. *See* Messrelian Decl., ¶11.

4 **III. FAIRNESS OF THE SETTLEMENT**

5 While this Action is a representative PAGA claim, the Parties are not obligated to follow
6 the class action procedural rules for obtaining approval of this settlement. *Arias v. Superior Court*
7 (*Angelo Dairy*) (2009) 46 Cal.4th 969.

8 Plaintiffs allege that the strongest claims are that Plaintiffs and other PAGA Members
9 were not provided timely, uninterrupted meal and rest breaks and that there was a rounding issue
10 with the working hours. Defendant vehemently denies that there were any meal and rest break
11 violations, especially in light of the fact that Defendant presented evidence that it maintained
12 Labor-Code-compliant meal and rest policies and paid premium wages to PAGA Members when
13 time records suggested potentially missed, short, or late meal periods. In fact, Plaintiffs' own
14 expert found that Defendants did in fact pay premium wages if there were what appeared to be
15 statutory break violations. Defendant also vehemently denies that there were any rounding issues
16 at all. In terms of Plaintiffs' claims regarding not being paid the prevailing wage rate, Plaintiffs'
17 position is that Plaintiffs and others provided roofing materials to companies who were working
18 on Public Works Projects and so Plaintiffs should have been paid at the prevailing wage rate for
19 those projects. The defense argument on that front was that Plaintiffs did not fall within the scope
20 of the prevailing wage statutes because, in part, they were only delivering roofing supplies that
21 would eventually be incorporated into projects, and as such, Plaintiffs were not actively
22 participating in the projects in terms of the construction work. *See* Messrelian Decl., ¶12.

23 Plaintiffs contend that the civil penalty statutes applicable to the Action arise from
24 violations of the California Labor Code, including, but not limited to, Labor Code §§ 210, 226.3,
25 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under these civil penalty statutes, an employee who
26 suffers a Labor Code violation may be awarded a sum of money for each pay period in which he
27 or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award
28

1 of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory. *See* Messrelian
2 Decl., ¶13.

3 Under the civil penalty formulas applicable under PAGA, Plaintiffs estimated a
4 **maximum** exposure of approximately \$582,200 for civil penalties for Plaintiffs' strongest
5 disputed claims of failure to provide meal and rest periods and failure to provide minimum wages
6 due to the rounding issue. Plaintiffs' analysis, which Defendant vehemently disputes, revealed a
7 6.1% violation rate for either late, short, or interrupted meal periods. As such, with the 6.1%
8 violation rate, the maximum exposure would be \$56,600, which is calculated as \$50 penalty
9 multiplied by 1132 pay periods (6.1% of the 18,560 pay periods). Plaintiffs extrapolated the same
10 6.1% rate for rest break violations, which would equate to an exposure of \$113,200 (\$100 penalty
11 per pay period multiplied by 1132 pay periods). In terms of the rounding issue, Plaintiffs' data
12 expert identified an alleged rounding issue with 47% of shifts having unfavorable rounding, 36%
13 having favorable rounding, and the balance of the shifts being even. At an 11% violation rate due
14 to rounding, if proven, the penalties would amount to \$204,200 (11% of the 18,560 pay periods,
15 which is 2042 pay periods multiplied by \$100 per pay period). The same latter formula would
16 also be used for the derivative claim under Labor Code section 204 for failure to pay wages owed
17 every pay period, which would also be \$204,200, for an aggregate maximum exposure amount
18 of \$582,200. Assuming that Plaintiffs' calculations and analysis is accurate, the maximum
19 exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary,
20 oppressive, or confiscatory. *See* Messrelian Decl., ¶14.

21 Moreover, Plaintiffs are aware of no California state courts awarding a plaintiff multiple
22 PAGA penalties for the same violation for the same pay period under different Labor Code
23 provisions. As such, one of the risks Plaintiffs faced was that the Court would refuse to "stack"
24 civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
25 extremely small sums to PAGA claimants in the past. In addition, Defendant would make an
26 argument that any presumption of meal or rest period violations could be rebutted by evidence
27 that the break was provided, and therefore are not a predicate for civil penalties themselves or
28 derivative for improper wage statements and untimely final wages under Labor Code secs. 201-

1 203, 226, 226.3, and 2699. Defendant also adamantly disputes all of Plaintiffs' allegations in the
2 operative Complaint. *See* Messrelian Decl., ¶15.

3 The source of penalties available is under PAGA, which allows employees to recover
4 civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
5 arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date
6 with substantial awards of civil penalties. There is a substantial risk that the Court could reduce
7 civil penalties to an insignificant amount if it is unpersuaded by Plaintiffs' evidence of willful
8 and intentional conduct. The PAGA expressly counsels against such awards. *See* Lab. Code §
9 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount
10 specified by this part if, based on the facts and circumstances of the particular case, to do
11 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
12 Further, although, class certification is not required for a PAGA claim, Defendant could contend
13 that Plaintiffs cannot show that the PAGA claims are manageable given the nature of the claims,
14 Defendant's operations and the number of alleged aggrieved employees. *See* Messrelian Decl.,
15 ¶16.

16 As such, Defendant could also convince the Court to dismiss the claims due to
17 unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746
18 ("*Wesson*"); *Feltz v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist. LEXIS 207087.
19 On September 9, 2021, the California Court of Appeal issued the significant decision in *Wesson*
20 *v. Staples the Office Superstore, LLC*, holding that courts have authority to ensure that PAGA
21 claims are manageable, and that courts may limit or strike unmanageable PAGA claims.
22 Defendant contends that Plaintiffs' allegations require a host of individualized inquiries which
23 would arguably devolve into a series of mini-trials based on whether each employee voluntarily
24 elected to unilaterally waive a provided meal period or authorized rest break, based on position
25 titles, job duties and the type of work they perform. (*See, e.g., Brinker*, 53 Cal.4th at 1004.) In
26 *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable.
27 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). In *Ortiz v. CVS Caremark Corp.*, the court
28 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal.

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, as here, there are a large number of allegedly aggrieved individuals whose
4 claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904,
5 at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015);
6 *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
7 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of
8 potential aggrieved employees, judicial economy favors deferring the representative portion of
9 the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13,
10 2015). DS, ¶ 24. The risk of an unmanageable trial is heightened in a representative PAGA claim
11 because the burden of proof rests with the plaintiff to establish violations of the Labor Code “with
12 respect to each and every individual on whose behalf [they] seek[] to recover civil penalties.”
13 *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9,
14 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009).
15 Moreover, in a PAGA case the plaintiff must prove liability with respect to “each and every
16 individual” through representative evidence – but without sacrificing the defendant’s due process
17 right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th 1337,
18 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S. Bank*
19 *Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiffs would be required to establish a violation of
20 the Labor Code in each pay period of each and every one of the approximately 963 employees.
21 The Court could find that this is an impractical task and require the PAGA Members to bring
22 individual claims instead of a PAGA representative claim. *See Messrelian Decl.*, ¶17.

23 The Parties further recognize that the issues presented in the Action are likely only to be
24 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
25 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
26 maximum potential benefits to the PAGA Members and Plaintiffs from continued litigation. *See*
27 *Messrelian Decl.*, ¶18.

1 The settlement of the Action involves monetary relief to all PAGA Members, Plaintiffs,
2 their attorneys, and the State of California. *See* Messrelian Decl., ¶19.

3 Furthermore, Plaintiffs recognize that continued litigation presents significant risks that
4 support a significant downward departure from Plaintiffs' estimated civil penalties amount. In
5 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
6 for these claims and is in the best interest of Plaintiffs and PAGA Members and thus, warrants
7 approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
8 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and
9 equitable to Defendant, Plaintiffs, and the State, especially in light of the current economic
10 climate, and are the product of good faith, and informed arms-length negotiations between the
11 Parties consistent with public policy and fully comply with applicable provisions of law. *See*
12 Messrelian Decl., ¶20.

13 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

14 The Settlement Agreement covers all claims, charges, complaints, liens, demands, causes
15 of action, obligations, and liabilities, whether known or unknown, against the Released Parties
16 (as defined in the Settlement Agreement) for civil penalties predicated on any of the alleged
17 violations of the California Labor Code, Industrial Welfare Commission Wage Orders,
18 regulations, and/or other provisions of law that were alleged or asserted in the Action or any
19 PAGA notices filed by any of the Plaintiffs, or that could have been asserted in the Action or any
20 PAGA notices filed by any of the Plaintiffs based on any facts or allegations therein, with respect
21 to PAGA Members from January 14, 2021 through the date of the Settlement Approval. *See*
22 Messrelian Decl., **Exhibit 1** at ¶¶10, 12, 14, 19, 26.

23 Defendant agrees to pay \$250,000.00 toward the Settlement (the "Gross Settlement
24 Amount" or "GSA") which will be distributed as follows:

- 25 i. \$83,333.33 (33 1/3% of the GSA) in attorneys' fees to Harout Messrelian, Esq. of
26 Messrelian Law Inc.
27 ii. \$7,226.00 in attorney litigation costs to Harout Messrelian, Esq. of Messrelian
28 Law Inc.

- 1 iii. \$5,000.00 in PAGA Settlement Administrator costs to the Settlement
2 Administrators (Phoenix Settlement Administrators).
- 3 iv. \$154,440.67 (the “Net Settlement Amount” or “NSA”) will be divided as follows:
- 4 a. \$115,830.50 (75% of “NSA”) to the LWDA, which represents civil
5 penalties payable to the LWDA under the Labor Code Private Attorneys
6 General Act (“PAGA”), Labor Code section 2698, *et seq.*; and
- 7 b. \$38,610.17 (25% of NSA) (the “PAGA Members Amount”) to the PAGA
8 Members which represents civil penalties payable to the PAGA Members
9 as civil penalties that are allegedly owed in the Action for the period from
10 January 14, 2021 through Approval of the Settlement.

11 *See* Messrelian Decl., ¶13 and **Exhibit 1** at ¶¶3, 6, 17, 24-25, and 29.

12 Plaintiffs and each PAGA Member shall receive a portion of the Aggrieved Employee
13 Amount on a pro-rata basis by multiplying the PAGA Members Amount by the ratio of (i) the
14 number of pay periods worked by the PAGA Member during the release period and (ii) the total
15 number of pay periods worked by all PAGA Members during the release period. *See* Messrelian
16 Decl., **Exhibit 1** at ¶25.

17 For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved
18 Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to
19 withholding, unless otherwise required by law. The Claims Administrator shall file proof of
20 payment. *See* Messrelian Decl., **Exhibit 1** at ¶¶6, 30, and 34.

21 **V. THE PROPOSED FEE AMOUNT FOR ATTORNEYS’ FEES AND COST**
22 **AMOUNT FOR LITIGATION EXPENSES IS FAIR, ADEQUATE, AND REASONABLE**
23 **AND SHOULD BE APPROVED**

24 Plaintiffs’ counsel represents Plaintiffs on a straight contingency basis. Plaintiffs’
25 counsel’s request for \$83,333.33 in attorney fees and \$7,226.00 in litigation costs is fair and
26 reasonable. “Empirical studies show that, regardless of whether the percentage method or the
27 lodestar method is used, fee awards in class actions average around one-third of the
28 recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba*

1 *America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v.*
2 *Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that
3 courts can use the percentage method for the calculation of attorneys' fees). This is also consistent
4 with Plaintiffs' Counsel's experience in cases involving PAGA claims. This award is justified
5 here because Plaintiffs' counsel achieved a strong result for the PAGA Members and the State
6 while bearing the substantial burdens of contingency representation. *See Messrelian Decl.*, ¶22.

7 It is an accepted practice in wage and hour class action settlements to award attorneys'
8 fees to Plaintiffs' Counsel based on a percentage of the total settlement value agreed upon by the
9 Parties. California courts have long recognized that an appropriate method for awarding
10 attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
11 (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in common to a specific
12 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
13 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
14 fund"]; *Wershba v. Apple Computer, Inc.* (2001), 91 Cal.App.4th, 230, 254; *Lealao v. Beneficial*
15 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

16 The litigation costs expended to aid in the representation of the PAGA Members include
17 the following: lawsuit filing fee of \$454.22, PAGA initial filing fees of \$150.00, a mediation fee
18 of \$5,750.00 (for Plaintiffs' portion of the mediation); expert data analysis fee of \$850.00, and
19 miscellaneous court filing fees of \$21.78. All of these costs are documented and reasonably
20 incurred.. *See Messrelian Decl.*, ¶23.

21 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

22 The payment of consideration or any other obligation are not and shall not be construed
23 in any way as an admission of wrongdoing or liability on the part of Defendant, or any other
24 person or business entity. Defendant adamantly denies all allegations of wrongdoing arising out
25 of the employment relationship between the Parties and the PAGA Members. The Parties intend
26 merely to avoid the expense, delay, uncertainty and burden of continued litigation. *See*
27 *Messrelian Decl.*, **Exhibit 1** at ¶27.

28 ///

1 **VII. PAGA SETTLEMENT ADMINISTRATION**

2 The Parties agree to use PHOENIX SETTLEMENT ADMINISTRATORS to handle the
3 administration of this Settlement. *See* Messrelian Decl., **Exhibit 1** at ¶¶16 and 30.

4 The Settlement Administrator will be responsible for establishing a qualified settlement
5 fund (“QSF”) and issuing payments and appropriate tax forms to PAGA Members, the LWDA,
6 and Plaintiffs’ Counsel. The Settlement Administration Costs will be paid from the Gross PAGA
7 Settlement Amount. *See* Messrelian Decl., **Exhibit 1** at ¶30.

8 Pursuant to the terms of the Settlement Agreement, the Parties are hereby presenting the
9 Settlement Agreement to the Court and requesting that the Court issue an order and judgment of
10 Settlement Approval, approving and incorporating by reference the terms and conditions of the
11 Settlement Agreement (the “Order and Judgment”) to the extent necessary to effectuate this
12 Settlement Agreement. *See* Messrelian Decl., **Exhibit 1** at ¶31.

13 Plaintiffs’ Counsel is responsible for complying with all requirements of the PAGA
14 governing notice to the LWDA of settlement and/or judgment. *See* Messrelian Decl., **Exhibit 1**
15 at ¶32. Specifically, Plaintiffs’ Counsel has provided a copy of the Settlement Agreement to the
16 LWDA at the same time that it was submitted to the Court and will further provide a copy of the
17 Court’s Order and Judgment to the LWDA within ten (10) calendar days after entry of said
18 judgment or order as required by Labor Code sections 2699(1)(2)-(3). *See* Messrelian Decl., ¶24
19 and **Exhibit 2**.

20 Within fourteen (14) calendar days after entry of the Order and Judgment, Defendant will
21 provide the Settlement Administrator a complete list of all PAGA Members (“PAGA Members
22 List”). The PAGA Members List will be formatted in Microsoft Office Excel or other format
23 acceptable to the Settlement Administrator and will include each PAGA Members’ full name;
24 most recent mailing address and telephone number known to Defendant; Social Security number;
25 the respective number of Pay Periods for each PAGA Member worked during the PAGA Period;
26 and any other relevant information needed to calculate settlement payment distributions. *See*
27 Messrelian Decl., **Exhibit 1** at ¶33.

28 Within fourteen (14) calendar days after Defendant receives notice of entry of the Order

1 and Judgment, Defendant will deposit the Gross PAGA Settlement Amount into the QSF to be
2 established by the Settlement Administrator. Within fourteen (14) calendar days of the funding
3 of the Settlement, the Settlement Administrator will issue payments, as provided for in this
4 Agreement, to: (a) PAGA Members; (b) the LWDA; (c) Plaintiffs' Counsel; and (d) itself. The
5 Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all
6 payments issued under this Settlement. *See* Messrelian Decl., **Exhibit 1** at ¶34.

7 The Settlement Administrator will issue each PAGA Member one check for his or her
8 pro rata share of the PAGA Members' Amount along with an explanatory letter in a form
9 substantially similar to that attached at the end of **Exhibit 1** to the Declaration of Harout
10 Messrelian. Prior to mailing, the Settlement Administrator will perform a search based on the
11 National Change of Address Database for information to update and correct for any known or
12 identifiable address changes. Any checks returned as non-deliverable on or before the check
13 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
14 affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly
15 attempt to determine the correct address using a skip-trace, or other search using the name,
16 address or Social Security number of the PAGA Member involved, and will then perform a single
17 re-mailing. Checks will remain negotiable for 180 days. Any un-cashed checks which remain
18 outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator
19 will be tendered to the State Controller's Unclaimed Property Fund. All settlement payments to
20 PAGA Members will be treated as miscellaneous income for which a 1099 will be issued. *See*
21 Messrelian Decl., **Exhibit 1** at ¶35.

22 Because this settlement resolves claims and actions brought pursuant to PAGA by
23 Plaintiffs acting as proxies and as Private Attorneys General of, and for, the State of California
24 and the LWDA, the Parties agree that no PAGA Member has the right to exclude himself or
25 herself from the Settlement. PAGA Members will be bound by the terms of the Settlement
26 Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment
27 received as a result of this Settlement. The Parties also agree that no PAGA Member has the right
28 to object to the terms of the Settlement Agreement. *See* Messrelian Decl., **Exhibit 1** at ¶36.

1 Payments to PAGA Members will not be utilized to calculate any additional benefits
2 under any benefit plans to which any PAGA Member may be eligible, including, but not limited
3 to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave
4 plans, PTO plans, and any other benefit plan. *See* Messrelian Decl., **Exhibit 1** at ¶37.

5 **VIII. TAXES**

6 Plaintiffs and each PAGA Member bear full responsibility for the payment of any taxes
7 or withholdings arising from the settlement monies paid to them. *See* Messrelian Decl., **Exhibit**
8 **1** at ¶6.

9 **IX. RELEASED CLAIMS**

10 Upon the approval by the Court of this Settlement, Plaintiffs, the State of California and
11 each PAGA Members Amount shall fully release and forever discharge Defendant and the
12 Released Parties from any and all claims, charges, complaints, liens, demands, causes of action,
13 obligations, and liabilities, whether known or unknown, against the Released Parties (as defined
14 in the Settlement Agreement) for civil penalties predicated on any of the alleged violations of the
15 California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or other
16 provisions of law that were alleged or asserted in the Action or any PAGA notices filed by any
17 of the Plaintiffs, or that could have been asserted in the Action or any PAGA notices filed by any
18 of the Plaintiffs based on any facts or allegations therein, with respect to PAGA Members from
19 January 14, 2021 through the date of the Settlement Approval, including, but not limited to,
20 PAGA penalties for alleged violations of California Labor Code sections 201, 202, 203, 204,
21 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1771, 1774, 1776, 1777.5,
22 2698, 2699, 2800, 2802, and Industrial Welfare Commission Wage Orders no. 16. *See* Messrelian
23 Decl., **Exhibit 1** at ¶¶10, 12, 14, 19, 21, and 26.

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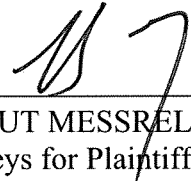
1 **X. CONCLUSION**

2 Plaintiffs respectfully request the Court grant this Motion.

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4 Respectfully Submitted,

5 MESSRELIAN LAW INC.

6
7 DATED: June 1, 2023

8 By 

9 HAROUT MESSRELIAN, ESQ.
10 Attorneys for Plaintiffs
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