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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

FELIX DE LA ROSA FUENTES, as an  
individual and on behalf of all others similarly  
situated,

Plaintiff,

v.

LA JOLLA BEACH AND TENNIS CLUB  
PARTNERS L.P., a California corporation;  
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 37-2020-00045980-CU-OE-CTL

*[Assigned for All Purposes to the Hon. James A.  
Mangione, Dept. C-75]*

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

Date: March 4, 2022  
Time: 9:00 a.m.  
Dept.: 75

Complaint Filed: December 15, 2021  
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on March 4, 2022 at 9:00 a.m., or as soon thereafter as the matter  
3 may be heard in Department 75 of the above-entitled Court, located at 330 W. Broadway, San Diego,  
4 California 92101, Plaintiff Felix De La Rosa Fuentes (“Plaintiff”), on behalf of himself and all other  
5 aggrieved employees, will and hereby does move this Court for entry of an Order as follows:

- 6 1. Granting approval, pursuant to California Labor Code section 2698 *et seq.*, and specifically  
7 Labor Code section 2699(1)(2), of the proposed Settlement of claims brought pursuant to the  
8 Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 *et seq.*) and set forth in the  
9 Settlement;
- 10 2. Appointing Simpluris Administrators as the Settlement Administrator, and approving an  
11 award of \$4,000.00 in anticipated costs to Simpluris for its settlement administration services;
- 12 3. Approving the proposed Notice of PAGA Settlement and Release of Claims as to form and  
13 content, and directing that it be distributed to the Aggrieved Employees pursuant to the terms  
14 of the Settlement;
- 15 4. Directing the distribution of the Gross Settlement Amount pursuant to the terms of the  
16 Settlement;
- 17 5. Approving an award of one-third of the Gross Settlement Amount (currently estimated to be  
18 \$90,000.00) in attorneys’ fees to Plaintiff’s Counsel;
- 19 6. Approving an award of \$23,025.49 in actual litigation costs reimbursement to Plaintiff’s  
20 Counsel;
- 21 7. Approving an enhancement award of \$5,000.00 to Plaintiff for his service to the Aggrieved  
22 Employees and the State of California; and
- 23 8. Approving the payment of \$110,980.88 to the California Labor & Workforce Development  
24 Agency for its share of PAGA civil penalties.
- 25 9. Approving the payment of \$36,993.63 to the Aggrieved Employees on a *pro rata* basis based  
26 on number of pay periods worked during the relevant time period.

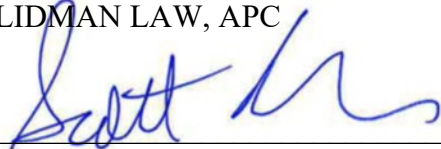
27 This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the  
28 declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore, Plaintiff Felix De La  
Rosa Fuentes, and Eric Springer on behalf of Simpluris and the exhibits attached thereto, the pleadings

1 and other papers filed in this action, and on any further oral or documentary evidence or argument  
2 presented at the time of hearing.

3  
4 Dated: February 8, 2022

Respectfully Submitted,  
LIDMAN LAW, APC

5  
6 By:

  
Elizabeth Nguyen  
Attorneys for Plaintiff  
FELIX DE LA ROSA FUENTES

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1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Plaintiff Felix De La Rosa Fuentes (“Plaintiff”), an “Aggrieved Employee” under the California  
5 Labor Code § 2698 *et seq.* (“PAGA”), respectfully requests this Court grant approval of the Settlement<sup>1</sup>  
6 with La Jolla Beach and Tennis Club L.P. (“LJBTC” or “Defendant”) pursuant to Labor Code section  
7 2699(1)(2). This PAGA action is based on LJBTC’s alleged: (1) failure to pay all overtime wages owed;  
8 (2) failure to pay all minimum wages owed; (3) failure to provide all legally required meal periods; (4)  
9 failure to authorize and permit all rest periods; (5) failure to provide accurate, itemized wage statements;  
10 and (6) failure to timely pay all wages upon termination. This PAGA action seeks civil penalties on  
11 behalf of the California Labor & Workforce Development Agency (“LWDA”) and all “Aggrieved  
12 Employees,” defined in the Settlement as “all current and former hourly, non-exempt employees of  
13 Defendant La Jolla Beach and Tennis Club Partners L.P. who worked in California at any time from  
14 December 15, 2019 through December 31, 2021.”

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

21 This proposed PAGA Settlement that ASC will pay a **non-reversionary** Gross Settlement  
22 Amount (“GSA”) of \$270,000.00. After deducting amounts for requested attorneys’ fees (one-third of  
23 the GSA, currently estimated at \$90,000.00), requested actual costs incurred by Plaintiff’s counsel  
24 (\$23,025.49), an enhancement award for Plaintiff (\$5,000.00), and settlement administration costs  
25 (\$4,000.00) to Phoenix Settlement Administrators (“PSA”), the Settlement provides for distribution of  
26 civil penalties in the amount of \$147,974.51. Pursuant to Labor Code section 2699(i), 75% of

27  
28 <sup>1</sup> The PAGA Settlement Agreement (“Settlement”) is attached to the Declaration of Scott M. Lidman as Exhibit 2. The Proposed Notice of PAGA Settlement and Release of Claims is attached to the Settlement as Exhibit A. All defined terms in this Motion have the same definitions as used in the Settlement.

1 \$147,974.51 (or \$110,980.88) will be distributed to the LWDA and 25% of \$147,974.51 (or \$36,993.63)  
2 will be distributed to the Aggrieved Employees on a *pro rata* basis. The amounts requested for attorneys'  
3 fees and costs, Plaintiff's enhancement award, and settlement administration costs are fair, adequate, and  
4 reasonable, particularly in light of the recovery obtained. Because there are approximately 792  
5 Aggrieved Employees, the average individual payment to each Aggrieved Employees is estimated to  
6 approximately \$46.71 (and will vary based on an employee's actual length of employment).

7 The GSA of \$270,000.00 represents a fair and reasonable recovery for the State of California and  
8 Aggrieved Employees considering the limited scope and time period of the release. The release in the  
9 Settlement does not impact any underlying Labor Code claims any of the Aggrieved Employees may  
10 have. Further litigation may have resulted in a smaller recovery or even no recovery at all based on the  
11 defenses asserted by LJBTC and given the significant litigation risks involved.

12 In light of the foregoing, this Court should enter the [Proposed] Order Granting Approval of  
13 Settlement submitted concurrently herewith

## 14 **II. SUMMARY OF THE LITIGATION**

### 15 **A. The Parties**

16 LJBTC is a private social club located on the shores of the La Jolla area of San Diego, California.  
17 See Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff, a former hourly employee, was  
18 employed by LJBTC as a Sous Chef from approximately 1979 through on or about July 22, 2020 when  
19 LJBTC permanently laid Plaintiff off. See Declaration of Felix De La Rosa Fuentes ("Fuentes Decl."), ¶  
20 2.

### 21 **B. Procedural History**

22 On December 15, 2020, Plaintiff provided written notice to the LWDA and LJBTC asserting  
23 claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor  
24 Code including: ((1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed;  
25 (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all rest periods;  
26 (5) failure to provide accurate, itemized wage statements; and (6) failure to timely pay all wages upon  
27 termination. Lidman Decl., ¶ 11; Exh. 1. Also on December 15, 2020, Plaintiff filed the instant case as  
28 a putative class action against Defendant alleging the above-referenced causes of action on behalf of

1 himself and a putative class.

2 On February 22, 2021, after exhausting his administrative remedies, Plaintiff filed a First  
3 Amended Complaint (“FAC”) which added an Eighth Cause of Action under the PAGA. *Id.* On March  
4 5, 2021, pursuant to Plaintiff’s request, the Court dismissed Plaintiff’s class and individual allegations  
5 (due to the existence of an arbitration agreement) but retained his representative claim under PAGA, the  
6 sole claim remaining in this case and the sole claim which forms the basis of the Settlement. *Id.*

7 A copy of this motion, including the settlement agreement, has been submitted to the LWDA on  
8 the same date that Plaintiff filed this motion. *Id.* at ¶ 39, Exhibit 5.

9 **C. Informal Discovery, Mediation, and Arms-Length Negotiations**

10 Prior to mediation, LJBTC produced substantial information and documents pertaining to Plaintiff  
11 and other Aggrieved Employees, including sampling of timekeeping records and payroll data, employee  
12 handbooks, wage and hour policies and other relevant documents and information for the underlying  
13 claims. Lidman Decl., ¶ 12. Plaintiff’s retained expert (who holds a Ph.D. in economics) then analyzed  
14 the payroll data and time records produced by LJBTC. *Id.* After the detailed review of the payroll and  
15 time records analysis and other documents and policies produced by LJBTC, Plaintiff’s Counsel drew on  
16 their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.*  
17 This discovery allowed the parties to assess the merits and value of Plaintiff’s claims, if a settlement could  
18 not be reached. *Id.*

19 On November 30, 2021, the Parties participated in mediation with Tripper Ortman, Esq., a well-  
20 respected wage and hour class and representative action mediator. Lidman Decl., ¶¶ 12-13. During  
21 mediation, the Parties vigorously debated their opposing legal positions and the likelihood of Plaintiff’s  
22 ability to proceed on a representative basis. Lidman Decl., ¶ 13. Ultimately, the Parties reached a  
23 settlement, the terms of which were subsequently finalized in writing after mediation. Lidman Decl., ¶  
24 13, Exh. 2.

25 **III. ARGUMENT**

26 **A. Standard For Approval Of A PAGA Settlement**

27 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute,  
28 which states that the “court shall review and approve any penalties sought as part of a proposed settlement  
agreement pursuant to this part.” *See* Lab. Code § 2699(l). Notably, the PAGA statute does not set

1 expressly forth the criteria by which a PAGA settlement is to be judged.

2 In evaluating the adequacy of the settlement amount, the Court’s focus is not concerned with the  
3 amount(s) that “aggrieved employees” are to receive, but rather, must focus on the total settlement  
4 amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil  
5 penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.*, 2010 WL 2650571 (E.D.  
6 Cal. Jul. 1, 2010) at \*4. “Unlike class actions, these civil penalties are not meant to compensate unnamed  
7 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders*  
8 *Foods, Inc.*, 2010 WL 1340777 at \*4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a PAGA] action is  
9 ... designed to protect the public and penalize the employer for past illegal conduct” (*Mendez*, 2010 WL  
10 2650571 at \*4), a reviewing Court must take into account the fact that settlement of a PAGA claim – like  
11 any settlement – involves a “compromise” that stops short of rendering findings of liability and damages.  
12 The Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief  
13 for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for  
14 the government that otherwise may not have been assessed and collected by overburdened state  
15 enforcement agencies.” *Ochoa-Hernandez*, at \*4.

16 Second, consistent with the fact that unnamed employees have no property interest in a PAGA  
17 claim,<sup>2</sup> “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have the ability  
18 to opt-out of the representative PAGA claim.” *Ochoa-Hernandez* at \*5.

19 **B. This Court Should Approve The Settlement Because It Is A Fair, Adequate, And**  
20 **Reasonable Compromise Of Disputed Claims**

21 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*  
22 *Court* 62 Cal.App.3d 231, 236 (1976). To be approved, a settlement must be “fair, reasonable and  
23 adequate to all concerned.” *Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012). The  
24 Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole  
25 is fair and is not the product of fraud or collusion between the negotiating parties. *See, e.g., Hanlon*,

---

26  
27 <sup>2</sup> As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of 2004 does not  
28 create property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved  
employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law  
enforcement agencies.” *See Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46 Cal. 4th 993, 1003  
(2009).

1 *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement agreement was  
2 negotiated at arm's length by experienced counsel. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th  
3 116, 130 (2008).

4 Here, the GSA secured by Plaintiff is greater than other PAGA penalty awards approved as  
5 reasonable within California state courts, which often range between \$7,500.00 and \$15,000.00 for  
6 PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty  
7 payments on a per person basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013  
8 WL 2917624 at \*2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of \$5,000.00 to  
9 class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL  
10 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of \$10,000.00 for class  
11 of approximately 3,000 members). Because this Settlement is fair, adequate, and reasonable, Plaintiff  
12 respectfully requests that the Court approve the Settlement

13 **1. Factors in Evaluating a Representative PAGA Settlement**

14 A settlement is presumptively fair where it is reached through arm's-length bargaining, based on  
15 sufficient discovery and investigation to allow counsel and the court to act intelligently, and counsel is  
16 experienced in similar litigation. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). Relevant  
17 factors for the Court to consider in determining whether the settlement is "fair, adequate, and reasonable"  
18 include, but are not limited to:

19 [T]he strength of Plaintiff's case, the risk, expense, complexity and likely  
20 duration of further litigation, the risk of maintaining class action status  
21 through trial, the amount offered in settlement, the extent of discovery  
22 completed and the stage of the proceedings, the experience and views of  
23 counsel, the presence of a governmental participant, and the reaction of the  
24 class members to the proposed settlement.  
25 *Dunk*, 48 Cal.App.4th at 1801.<sup>3</sup>

26 "In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might  
27 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the  
28 circumstances." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements  
inherently involve compromise, even settlements providing for substantially narrower relief than likely

---

<sup>3</sup> As explained above, in the context of a representative PAGA settlement, the third and eighth factors (risk of maintaining class action status and reaction of class members to settlement) are inapplicable.

would be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received through it to aid them in assessing whether the parties sufficiently developed the claims and their supporting factual bases before reaching settlement. *See Kullar, supra*, 168 Cal.App.4th at 129-31. Information is sufficient where it allows the parties and the court to form “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Serv. LLC*, 175 Cal.App.4th 785, 801 (2009). This requirement exists so that the parties can provide the court with “a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated.” *Kullar*, 168 Cal.App.4th at 132.

**a) Overview of the Proposed Settlement**

**i. “Aggrieved Employees” Defined**

Aggrieved Employees are defined as, “all current and former hourly, non-exempt employees of Defendant La Jolla Beach and Tennis Club Partners L.P. who worked in California at any time from December 15, 2019 through December 31, 2021.” The Aggrieved Employees, including Plaintiff, worked a total of 14,472 pay periods worked by the Aggrieved Employees during the PAGA Period of December 15, 2019 through December 31, 2021. *See Settlement*, ¶ III.3.

**ii. Essential Terms Of The Settlement**

This Settlement provides for LJBTC to pay a Gross Settlement Amount of \$270,000.00. Settlement, ¶ III.2. After deducting amounts for requested attorneys’ fees, attorneys’ costs, Plaintiff’s requested enhancement award, and settlement administration costs, the Settlement provides for distribution of the remaining Net Settlement Amount (“NSA”) to Aggrieved Employees and the LWDA distributed as follows: 75% to the LWDA and 25% to Aggrieved Employees pursuant to Labor Code 2699(i). Settlement, ¶ III.4.

|                                             |                                 |
|---------------------------------------------|---------------------------------|
| <b>Gross Settlement Amount:</b>             | <b>\$270,000.00<sup>4</sup></b> |
| Minus Court-approved attorneys' fees (1/3): | \$90,000.00                     |
| Minus Court-approved attorneys' costs:      | \$23,025.49                     |
| Minus Court-approved enhancement award:     | \$5,000.00                      |
| Minus settlement administrator costs:       | \$4,000.00                      |
| <b>Net Settlement Amount:</b>               | <b>\$147,974.51</b>             |

|                               |                     |
|-------------------------------|---------------------|
| <b>Net Settlement Amount:</b> | <b>\$147,974.51</b> |
| 75% to LWDA                   | \$110,980.88        |
| 25% to Aggrieved Employees    | \$36,993.63         |

The payment of the GSA shall be made within 30 calendar days of Court approval of the settlement. *See* Settlement, ¶ III.3. Within 10 business days of the court signing the approval order, Defendant shall provide the Settlement Administrator with information for Aggrieved Employees in order to calculate and distribute checks to Aggrieved Employees. *See* Settlement, ¶ IV.2. Upon receipt of this information, the Settlement Administrator will prepare and circulate an anonymized spreadsheet containing the estimated individual settlement payments to each Aggrieved Employee for the Parties approval. The Settlement Administrator shall also determine whether the Escalator Clause in Section III.3 has been triggered. Within two business days of receiving the Parties' approval, the Settlement Administrator shall mail copies of the explanatory letter to all Aggrieved Employees with their checks. *See* Settlement, ¶ IV.3. The Settlement does not require Aggrieved Employees to submit a claim form to reap financial benefit from the Settlement. *Id.* Any checks remaining uncashed for more than 180 days will be tendered to the State Controller's Office under the unclaimed property fund laws in the names of the Aggrieved Employees to whom the checks were issued. *See* Settlement, ¶ IV.4.

### iii. Payment to the LWDA and Aggrieved Employees

The entire NSA shall be designated as PAGA civil penalties. Of the NSA, 75% of the NSA will be distributed to the LWDA and 25% will be distributed to the Aggrieved Employees pursuant to Labor Code § 2699(i). Based on these distributions, the amount to be paid to the LWDA will be \$110,980.88 and the amount paid to Aggrieved Employees is estimated to be \$36,993.63. *Lidman Decl.*, ¶ 16. This

<sup>4</sup> Defendant represents that there are an estimated 14,472 pay periods worked by the Aggrieved Employees during the PAGA Period of December 15, 2019 through December 31, 2021. If the total number of pay periods exceeds 14, 472 by more than ten percent (i.e., more than 15,919.2), then the Gross Settlement Amount shall be increased by the same percentage by which the number of pay periods exceeds 15,919.2. *See* Settlement, ¶ III.3.

portion of the NSA shall be paid to all Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period and **will be reported on an IRS Form 1099**. Settlement, ¶ III.5.b.; Lidman Decl., ¶ 15. The average payment to an Aggrieved Employee is estimated to be \$46.71.

**b) Risk, Expense, Complexity, and Duration of Further Litigation**

The Parties conducted an extensive exchange of informal documents and information for mediation which allowed Plaintiff to thoroughly evaluate the claims. *See* Lidman Decl., ¶¶ 12-13. Had the Parties not settled, they would need to engage in formal discovery, potential cross-summary judgment motions, preparation for trial as well as the prospect of appeals in the wake of a summary judgment ruling for either party, and/or post trial-motions. As a result, the Parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks, the accompanying expense, and protracted litigation.

**c) Strength of Plaintiff's Case and Realistic Value of Claims**

Here, Aggrieved Employees' claims arise from LJBTC's timekeeping and meal and rest period policies and practices. Although he maintains that the PAGA action is meritorious, Plaintiff acknowledges that his position includes real risks and uncertainty, especially in the face of LJBTC's numerous defenses on the merits discussed below. While Plaintiff maintains he could rebut these defenses, Plaintiff nonetheless faced several substantial challenges in prevailing in this matter, and this risk factor weight in favor of approving the Settlement. Plaintiff estimate LJBTC's realistic exposure, based on these defenses and risks, follows:

Civil Penalties Owed for Failing to Pay for All Time Worked: Plaintiff alleges that LJBTC failed to compensate Plaintiff and other non-exempt employees for all of their time worked by utilizing time-shaving and/or rounding practices that were not even-handed over time and would result in the underpayment of wages to the Aggrieved Employees. Lidman Decl., ¶ 16. Plaintiff believes that this violation occurred in each and every pay period during the relevant time period, which is approximately 13,672 pay periods. Accordingly, pursuant to Labor Code section 1197.1, Plaintiff calculated Defendants' exposure at \$3,299,200.00 ((792 x \$100 initial violation) + (12,880 x \$250 subsequent violation)). *Id.*

LJBTC counter that it compensated Plaintiff and all other non-exempt employees for all their time

1 worked. Lidman Decl., ¶ 17. LJBTC also contends that its practices were lawful, employees kept track  
2 of and reported their own time, and any unpaid time was *de minimis* and therefore non-compensable. *Id.*  
3 LJBTC also argues that only the initial violation rate could apply, if at all. In light of these defenses and  
4 LJBTC’s argument that the Court would exercise its discretion to reduce any civil penalty due to its good  
5 faith efforts to comply with applicable law, Plaintiff discounted the maximum recovery on this claim by  
6 85% to account for the risk that Defendant could prevail in their defenses, to arrive at a projected total of  
7 \$494,880. *Id.*

8 Civil Penalties Owed for Failing to Provide Legally Compliant Meal Periods: Plaintiff alleges that  
9 as a result of the work demands imposed by LJBTC, their meal periods often did not start before the end  
10 of their fifth hour of work, meaning the meal periods were late or otherwise short or unlawful in violation  
11 of Labor Code section 512. Lidman Decl., ¶ 18. Plaintiff also alleges that LJBTC would manually alter  
12 time records to: (i) reflect meal periods not actually taken, and/or (ii) reflect meal periods taken at a time  
13 earlier than actually taken. *Id.* Therefore, Plaintiff alleges that every relevant pay period had at least one  
14 meal period violation. *Id.* Accordingly, pursuant to Labor Code section 558, Plaintiff calculated ASC’s  
15 maximum exposure at \$1,327,600.00. ((792 x \$50 initial violation) + (12,880 x \$100 subsequent  
violation)). *Id.*

16 LJBTC counters that it has always provided non-exempt employees with an opportunity to take  
17 legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping  
18 records were solely the result of employee choice, rather than any policy or practice of Defendant.  
19 Lidman Decl., ¶ 19. LJBTC points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53  
20 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal  
21 periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting  
22 “ensure” standard). *Id.* LJBTC further contends it paid its non-exempt employees meal period premiums  
23 when a legally compliant meal period was not provided. *Id.* LJBTC also contends that Plaintiff could  
24 not recover the \$100 civil penalty for “subsequent violations” because it did not have notice of any initial  
25 violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell Wage and*  
26 *Hour Actions*, 2016 WL 2755938, at \*7 (E.D. Cal. April 8, 2016). Lastly, LJBTC contends that the Court  
27 would use its discretion provided for in the PAGA to reduce the maximum penalty exposure due to its  
28 good faith efforts to comply with applicable law. In light of these defenses, Plaintiff discounted the  
maximum recovery on this claim by 90% to account for the risk that LJBTC could prevail in its defenses,

1 to arrive at a projected total of \$132,760. Lidman Decl., ¶ 19.

2 Civil Penalties Owed for Failing to Authorize and Permit Rest Periods: Plaintiff alleges that  
3 LJBTC failed to authorize and permit all legally required rest periods. Lidman Decl., ¶ 20. Specifically,  
4 Plaintiff alleges that LJBTC's rest period policy as written in its Employee Handbook, up until June 2021,  
5 states that its employees must remain on company premises. *Id.* Therefore, Plaintiff alleges there was at  
6 least one rest period violation in every pay period up until June 2021 or 9,532 pay periods. As such,  
7 pursuant to Labor Code section 558, Plaintiff calculated LJBTC's exposure at \$913,600 (792 x \$50 initial  
8 violation) + (8,740 x \$100 subsequent violations)). *Id.*

9 LJBTC counters contends it has always maintained and enforced lawful rest period policies and  
10 practices, Plaintiff and other non-exempt employees were authorized and permitted to take all off-duty  
11 rest periods in compliance with California law, and despite its policy employees were always allowed to  
12 leave the premises. Lidman Decl., ¶ 21. LJBTC also contends that its written rest period policy changed  
13 in 2021 and for the entire relevant time period it allowed its non-exempt employees to leave the work  
14 premises during rest periods, consistent with its prior practices. *Id.* LJBTC also contends that Plaintiff  
15 could not recover the \$100 civil penalty for "subsequent violations" because it did not have notice of any  
16 initial violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *In re Taco Bell*  
17 *Wage and Hour Actions*, 2016 WL 2755938, at \*7 (E.D. Cal. April 8, 2016). Lastly, LJBTC contends  
18 that the Court would use its discretion provided for in the PAGA to reduce the maximum penalty exposure  
19 due to its good faith efforts to comply with applicable law especially since LJBTC changed its rest period  
20 policy in 2021. In light of these defenses, Plaintiff discounted the maximum recovery on this claim by  
21 90% to account for the risk that LJBTC could prevail in its defenses, to arrive at a projected total of  
22 \$91,360. *Id.*

23 Civil Penalties for Derivative Wage Statement Violations: As Plaintiff's PAGA claim was based  
24 on the underlying failure to pay all wages and meal and rest period premiums and deficient wage  
25 statements, Plaintiff asserts PAGA penalties for each Aggrieved Employee for each pay period in the  
26 PAGA limitations period. Lidman Decl., ¶ 22. Therefore, pursuant to Labor Code § 226.3 and only  
27 applying the initial violation rate of \$100, the estimated exposure is \$1,367,200 (13,672 x \$100 initial  
28 violation). *Id.*

LJBTC argues that Plaintiff's underlying claims will fail and, as a result, the wholly derivative

1 wage statement claim will also fail. Lidman Decl., ¶ 23. *See Price v. Starbucks Corp.* (2011) 192  
2 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA  
3 claims also fail.”). LJBTC also vehemently argues that a meal and rest period claims cannot support a  
4 claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App.  
5 5th 444, review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (*see, e.g.,*  
6 *Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at \*\*8-  
7 9). Further, LJBTC contend that the “second violation” should not be applied where the LWDA has not  
8 previously cited ASC. Finally, LJBTC also argues that since the primary allegations in this case are that  
9 LJBTC failed to pay all wages and provide all meal and rest periods, imposing multiple penalties based  
10 on different Labor Code section under derivative theories of liability for the same conduct would be  
11 inappropriate and unfair. As such, Plaintiff discounted that figure by 85% to account for the risk of losing  
12 on the merits and for the risk of the Court reducing penalties, to arrive at a realistic recovery for Aggrieved  
13 Employees of \$205,080. *See, e.g., Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction of  
14 PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047  
15 at \*5 (C.D Cal. Aug. 12, 2011) (reducing PAGA penalties by more than 82%); *Id.*

16 Civil Penalties for Failing to Timely Pay Wages Upon Termination: Plaintiff alleges that LJBTC  
17 is liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay meal  
18 period premiums. Lidman Decl., ¶ 24. Based on the data provided by LJBTC, all of the 397 Aggrieved  
19 Employees have separated their employment with LJBTC during the relevant time period who could be  
20 entitled to waiting time penalties. *Id.* Therefore, Plaintiff calculated LJBTC’s maximum exposure for  
21 waiting time penalties at approximately \$39,700.00 (397 former employees x \$100). *Id.*

22 LJBTC asserts it has strong defenses to the waiting time claim because there exist good-faith  
23 disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 25. *See*  
24 *also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition  
25 of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good  
26 faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over  
27 contested wages owed). LJBTC also argues that meal and rest period claims cannot support a claim for  
28 waiting time penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444,

review granted and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at \*\*8-9). In light of these defenses, Plaintiff discounted the maximum recovery on this claim by 80% to account for the risk that LJBTC could prevail in its arguments, to arrive at a projected total of \$7,940. *Id.* Based on the sum of the foregoing estimated figures, Plaintiff predicts the realistic total recovery for the Aggrieved Employees to be approximately \$932,020. Lidman Decl., ¶ 26.

The proposed settlement of \$270,000.00 therefore represents approximately 29% of the realistic total recovery for Aggrieved Employees and avoids the risks of proceeding through trial. *Id.* “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted). Plaintiff acknowledges that there was substantial uncertainty and risk as to these claims. Approval is appropriate since this settlement will provide tangible, monetary relief to Aggrieved Employees and the State of California.

**d) The Experience and Views of Counsel**

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995).

Here, Plaintiff’s Counsel collectively brings over four decades of wage-and-hour class and representative action experience. See Lidman Decl., ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-7; and Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶¶ 2-8. They have been certified as class counsel in numerous cases alleging wage and hour claims. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against ASC and the reasonableness of the Settlement. Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. Because it is reasonable to compensate Plaintiff’s Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the GSA is reasonable. Other factors show that the amount of fees requested is reasonable. This case involved legal

1 issues regarding the propriety of civil PAGA penalties, an unsettled area of law. LJBTC was also  
2 represented by respected counsel with extensive wage-and-hour litigation experience. This factor  
3 strongly supports settlement approval. *See, Kullar, supra*, 168 Cal.App.4th at 130 (“The court  
4 undoubtedly should give considerable weight to the competency and integrity of counsel and the  
5 involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s length  
6 transaction entered without self-dealing or other potential misconduct.”).

7 **C. Requested Award of Attorneys’ Fees/Costs Are Fair and Reasonable**

8 Plaintiff, as the prevailing party in settlement, is entitled to recover attorneys’ fees and costs for  
9 these claims. *See* Cal. Labor Code § 2699(g) (“Any employee who prevails in any action shall be entitled  
10 to an award of reasonable attorney’s fees and costs.”); Cal. Code of Civil Procedure § 1021.5(a). A fee  
11 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*  
12 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*  
13 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number  
14 of persons are entitled in common to a specific fund, and an action brought by a plaintiff...for the benefit  
15 of all results in the creation or preservation of that fund, such plaintiff...may be awarded attorney’s fees  
16 out of the fund.”)

17 Fee awards of roughly one-third of the settlement fund are routinely awarded in California state  
18 and federal courts in class and representative PAGA actions.<sup>5</sup> Indeed, the California Supreme Court  
19 approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.*,  
20 1 Cal.5th 480, 506 (2016) (“the percentage of fund method survives in California class action cases...”).  
21 This is also consistent with Plaintiff’s Counsel’s experience in similar wage-and-hour class and PAGA  
22 matters. *See* Lidman Decl., ¶ 27. Here, Plaintiff’s Counsel’s fee request of \$90,000.00 (one-third of the  
23 GSA) is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage of the  
24 recovery method.

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27 <sup>5</sup> *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008); *see also, In re Pacific Enterprises Securities Litig.*,  
28 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award); *Chavez v. Saticoy Lemon Ass’n*, Case No. 56-2015-  
00468600-CU-OE-VTA, 2015 WL 5561118 (Ventura Cty. Super. Ct., Aug. 29, 2015) (approving attorneys’ fees  
of one-third of settlement fund in representative PAGA settlement).

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

8 Lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez, supra*, 162 Cal. App.  
9 4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L. County Planning etc. Interest*  
10 *v. Bd. of Supervisors*, 76 Cal. App. 3d 241, 251 (1977) (approving multiplier of approximately 12.8). In  
11 this case, Plaintiff’s Counsel have a lodestar of \$150,365.00 without the use of any multiplier, which is  
12 approximately 1.67 times more than the \$90,000.00 fee request. *See* Lidman Decl., ¶ 30. A general  
13 summary showing the number of hours of work performed by each attorney and paralegals is set forth in  
14 the Lidman Declaration filed concurrently herewith. The billing rates used are reasonable in light of the  
15 hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith.  
16 *Id.*, at ¶31, Exh. 3.

17 The fee award requested here is justified because it is lower than lodestar. Further, the fee award  
18 requested here is justified because Plaintiff’s Counsel achieved a fair civil penalty recovery for the State  
19 and the Aggrieved Employees in an uncertain and risky case, while bearing the substantial burdens of  
20 representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v.*  
21 *Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency  
22 case, significant risk and the absence of supporting precedents, are proper considerations in awarding  
23 attorneys’ fees). Additionally, Plaintiff’s recovery for the State of California and Aggrieved Employees  
24 exceeds other PAGA awards approved by courts in California. *See, e.g., Boyd v. Bank of Am. Corp.*, 2014  
25 WL 6473804 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment); *Penaloza, supra*, 2013  
26 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA  
27 penalties of \$3.33). That Plaintiff’s Counsel achieved these results without engaging in a protracted legal  
28 battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength  
of the results achieved.

1 As discussed above, this case carried substantial risks on the merits and with respect to the  
2 propriety of “stacking penalties” based on a single primary allegation and the Court’s authority to reduce  
3 an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating  
4 Plaintiff’s Counsel, as well as the risks involved in undertaking this litigation and expending considerable  
5 effort while working on a pure contingency basis.

6 Indeed, since undertaking representation of Plaintiff, Plaintiff’s Counsel dedicated substantial  
7 resources to this litigation, including expending a total of \$23,025.49 (including costs associated with the  
8 instant motion) in actual litigation costs, without receiving any compensation to date. Lidman Decl., ¶  
9 36, Exh. 4. Plaintiff’s Counsel conducted legal research regarding the merits of Plaintiff’s claims, the  
10 ability to recover penalties under the PAGA, and LJBTC’s potential defenses. *Id.* Plaintiff’s Counsel  
11 also analyzed the data and information produced informally prior to mediation and prepared an exposure  
12 analysis on the PAGA penalties. *Id.* Plaintiff’s Counsel also expended significant additional effort in  
13 preparing subsequent settlement documents, this Motion for settlement approval, and supporting  
14 declarations, and will oversee the settlement administration process. *Id.* Given the considerable potential  
15 for adverse outcomes in this case, the contingent risk borne by Plaintiff’s Counsel was great. The quality  
16 of Plaintiff’s Counsel’s work, and the efficacy and dedication with which it was performed, should be  
17 compensated.

18 Thus, Plaintiff’s Counsel submit that the requested fee award is fair, reasonable and adequate and  
19 should be approved. Plaintiff’s request for reimbursement of actual litigation costs of \$23,025.49 is also  
20 fair and reasonable. As the evidence submitted herewith shows, all of Plaintiff’s litigation costs are  
21 documented and reasonably incurred. *See* Lidman Decl., ¶36, Exh. 4.

22 **D. Notice and Requested Settlement Administration Costs Are Fair and Reasonable**

23 The parties agreed to engage Simpluris as the settlement administrator. *See* Settlement, ¶ I.19.  
24 Under the Settlement, Parties have agreed to have the proposed Notice of PAGA Settlement and Release  
25 (“Notice”), subject to Court approval, be sent with the settlement checks to inform the Aggrieved  
26 Employees about the scope of the released claims and their responsibility for any taxes payable on the  
27 amount received. The PAGA does not require notice and the Aggrieved Employees do not have the right  
28

1 to opt-out. The Notice which is attached as Exhibit A to the Settlement and Exhibit A to the [Proposed]  
2 Order is only being provided as a courtesy.

3 Simpluris shall be responsible for translating and mailing the Notice in both English and Spanish  
4 and calculating and distributing the settlement checks, among other duties. The parties have designated  
5 \$4,000.00 as settlement administration costs. Settlement, ¶ III.4.c. Simpluris's quote is attached as  
6 Exhibit B to the Declaration of Eric Springer on behalf of Simpluris in support of Motion for Approval  
7 of PAGA Settlement filed concurrently herewith.

8 **E. Plaintiff's Requested Enhancement Award is Fair, Adequate, and Reasonable**

9 Courts routinely approve enhancement awards to compensate named Plaintiff for the services  
10 they provide and the risks they incur during class and representative litigation. *Cellphone Termination*  
11 *Fee Cases*, 186 Cal. App. 5th 1380, 1393-94 (2010) ("These awards 'are discretionary, [citation], and are  
12 intended to compensate class representatives for work done on behalf of the class, to make up for financial  
13 or reputational risk undertaken in bringing the action, and, sometimes, to *recognize their willingness to*  
14 *act as a private attorney general.*'")<sup>6</sup>

15 Here, pursuant to the Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See*  
16 Settlement, ¶ III.4.b. Plaintiff will request the Court award an enhancement award of \$5,000.00 in  
17 recognition of his unique contributions to the prosecution of this case and his efforts in bringing this case  
18 to a successful and significant resolution. *Id.*; Fuentes Decl., ¶¶ 3-10. This request is reasonable given  
19 Plaintiff's efforts in this case and the risks he undertook on behalf of the Aggrieved Employees. Plaintiff  
20 provided substantial factual information to Plaintiff's Counsel, attended numerous meetings with  
21 Plaintiff's Counsel and numerous hours expended by him assisting in the litigation of this action. Fuentes  
22 Decl., ¶¶ 3-10. Further, Plaintiff put his future employment prospects at risk by becoming a class  
23 representative, as the fact that he filed a lawsuit "is searchable on the internet and may become known to  
24 prospective employers when evaluating" them for employment. *Guippone v. BH S&B Holdings, LLC*,  
25 2011 U.S., Dist. LEXIS 126026, \*20 (S.D.N.Y. Oct. 28, 2011). Accordingly, Plaintiff's request is

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26  
27 <sup>6</sup> California courts, including many judges in Los Angeles Superior Court, routinely award enhancement payments  
28 in PAGA-only, non-class actions. *See Canul v. Basmat, Inc.*, Case No. BC674940, Judge Beaudet of this Court  
(Dept. 50) approved a PAGA-only settlement including a \$5,000 enhancement award to the named plaintiff. *See*  
*also, Pickett v. 99 Cents Only Stores, et al*, Case No. BC473038, Judge Hiroshige of this Court (Dept. 54) approved  
a \$12,500 enhancement payment to each of two named plaintiffs in a PAGA only settlement.

appropriate and justified as part of the Settlement.

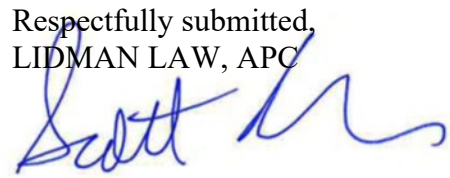
**IV. CONCLUSION**

For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety and adopt the [Proposed] Order and Judgment Granting Plaintiff's Motion for Settlement Approval of Claims Brought Under the Private Attorneys General Act and Reasonable Attorneys' Fees, Costs, and Enhancement Award submitted concurrently herewith.

Dated: February 8, 2022

Respectfully submitted,  
LIDMAN LAW, APC

By:



\_\_\_\_\_  
Scott M. Lidman  
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