

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

RICARDO TREJO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOTAL DISTRIBUTION SERVICE, INC.,
a California limited liability company; and
DOES 1 through 100,

Defendants.

Case No. 56-2021-00553039-CU-OE-VTA

*[Assigned for all purposes to the Hon. Jeffrey
Bennett, Dept. 21]*

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

Date: May 10, 2022
Time: 8:30 a.m.
Dept.: 21
Reservation: 2625631

Action Filed: April 9, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on May 10, 2022, at 8:30 a.m., at the Ventura County
3 Superior Court, located at 800 South Victoria Avenue, Ventura, California 93009, Plaintiff
4 Ricardo Trejo (“Plaintiff”), individually and on behalf of other aggrieved employees, hereby
5 moves this Court for entry of an Order as follows:

- 6 1. Granting approval pursuant to Labor Code § 2699(l) of the proposed Settlement
7 Agreement of claims brought by Plaintiff pursuant to the Private Attorneys General
8 Act (“PAGA”) of 2004, California Labor Code § 2698 *et seq.*;
- 9 2. Appointing Simpluris as the third-party Settlement Administrator, and approving an
10 award of \$3,000.00 in anticipated costs to Simpluris for its settlement administration
11 services;
- 12 3. Approving as to form and content the proposed Notice of PAGA Settlement and
13 Release of Claims, and directing that it be distributed to the allegedly aggrieved
14 employees pursuant to the terms of the Settlement Agreement;
- 15 4. Directing the distribution of the Maximum Settlement Amount
16 (\$130,000.00) pursuant to the terms of the Settlement Agreement;
- 17 5. Approving an award of one-third of the Maximum Settlement Amount
18 (\$43,333.33) in attorneys’ fees to Haines Law Group, APC as Plaintiff’s counsel;
- 19 6. Approving an award of \$31,588.34 in actual litigation costs reimbursement;
- 20 7. Approving an enhancement award of \$5,000.00 to Plaintiff for his service to the
21 aggrieved employees and the State of California; and
- 22 8. Approving the payment of \$35,308.75 to the California Labor & Workforce
23 Development Agency for its share of PAGA civil penalties.

24 ///

25 ///

26 ///

1 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
2 the declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham, and Eric
3 Springer of Simpluris, and all exhibits attached thereto; the Settlement Agreement; all other
4 pleadings and papers on file in this action; and on any further oral or documentary evidence or
5 argument presented at the time of hearing.

6
7 Dated: April 14, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

8
9 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

TABLE OF CONTENTS

I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	2
A. The Parties.....	2
B. Procedural History.....	3
C. Plaintiff’s Allegations and Defendant’s Defenses	3
III. THE PROPOSED SETTLEMENT.....	6
A. “Aggrieved Employees” Defined.....	6
B. Essential Terms of the Settlement.....	6
1. Attorneys’ Fees and Costs	7
2. Settlement Administration Costs	7
3. Plaintiff’s Enhancement Award.....	7
4. Payment to the LWDA and Aggrieved Employees	7
5. Funding and Distribution of the Settlement.....	8
IV. ARGUMENT.....	9
A. Standards for Approval of a PAGA Settlement	9
B. This Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Claims	11
1. Factors in Evaluating a Representative PAGA Settlement.....	12
a) The Strength of Plaintiff’s Case.....	13
b) Risk, Expense, Complexity, and Duration of Further Litigation.....	13
c) Amount Offered in Settlement Given Realistic Value of Claims.....	13
d) Discovery Completed and the Status of Proceedings	15
e) The Experience and Views of Counsel.....	15
C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of the MSA	16
D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate, and Reasonable	18
E. The Court Should Approve the Requested Administration Costs.....	19

1	F. This Court Should Approve Plaintiff’s Requested Enhancement Award Because it is	
2	Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts and the Risks Assumed on	
3	Behalf of the Aggrieved Employees	19
4	V. CONCLUSION	20

TABLE OF AUTHORITIES

Federal Cases

<i>Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.</i>	
455 F.2d 101, 109 (7th Cir. 1972)	12
<i>Dunleavy v. Nadler</i>	
213 F.3d 454 (9th Cir. 2000)	15
<i>Hanlon v. Chrysler Corp.</i>	
150 F.3d 1011 (9th Cir. 1998)	11
<i>Harris v. Marhoefer</i>	
24 F.3d 16 (9th Cir. 1994)	18
<i>Hesse v. Sprint Corp.</i>	
598 F.3d 581 (9th Cir., 2010)	11
<i>In re Corrugated Container Antitrust Litigation</i>	
643 F.2d 195 (5th Cir. 1981)	11
<i>In re Immune Response Securities Litigation</i>	
497 F.Supp.2d 1166 (S.D. Cal. 2007)	18
<i>In re Pacific Enterprises Securities Litigation</i>	
47 F.3d 373 (9th Cir. 1995)	15, 16
<i>In re Syncor ERISA Litig.</i>	
516 F.3d 1095 (9th Cir. 2008)	11
<i>International Brotherhood of Teamsters, Local 2785 v. Federal Motor Carrier Safety Administration</i>	
986 F.3d 841 (9th Cir. 2021)	5
<i>Linney v. Cellular Alaska Partnership</i>	
151 F.3d 1234 (9th Cir. 1998)	15
<i>Officers for Justice v. Civil Service Com.</i>	
688 F.2d 615 (9th Cir., 1982)	9
<i>Van Vranken v. Atlantic Richfield Co.</i>	
901 F. Supp. 294 (N.D. Cal. 1995)	19

Federal Rules

29 USC § 213(b)(1)	5
Fed. R. Civ. Proc. R. 23(e)	10

State Cases

<i>Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.</i>	
(2009) 46 Cal.4th 993	10
<i>Amaral v. Cintas Corp. No. 2</i>	
(2008) 163 Cal.App.4th 1157	6, 13
<i>Arias v. Sup. Ct.</i>	
(2009) 46 Cal.4th 969	10
<i>Bell v. Farmers Ins. Exch.</i>	
(2004) 115 Cal.App.4th 715	19
<i>Brinker Restaurant Corp. v. Superior Court</i>	
(2012) 53 Cal.4th 1004	4, 5
<i>Carrington v. Starbucks Corporation</i>	
(2018) 30 Cal.App.5th 504	6, 15
<i>Chavez v. Netflix, Inc.</i>	
(2008) 162 Cal. App. 4th 43	16
<i>Clark v. Am. Residential Serv. LLC</i>	
(2009) 175 Cal.App.4th 785	12-13
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	12
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i>	
(2014) 59 Cal. 4th 348	5
<i>Kaanaana v. Barrett Business Services, Inc.</i>	
(2018) 29 Cal.App.5th 778	4
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	11, 12, 13, 16
<i>Laffitte v. Robert Half Int'l, Inc.</i>	
(2016) 1 Cal.5th 480	16-17
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
(1980) 103 Cal.App.3d 573	11
<i>Mallick v. Sup. Ct.</i>	
(1979) 89 Cal.App.3d 434	12
<i>Maria P. v. Riles</i>	
(1987) 43 Cal.3d 1281	16
<i>Price v. Starbucks Corp.</i>	
(2011) 192 Cal.App.4th 1136	5

1	<i>Reed v. United Teachers Los Angeles</i>	
2	(2012) 208 Cal.App.4th 322	11
3	<i>Serrano v. Priest</i>	
4	(1977) 20 Cal.3d 25	16
5	<i>Stambaugh v. Superior Court</i>	
6	(1976) 62 Cal.App.3d 231	11
7	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
8	(2012) 203 Cal.App.4th 1112	6, 15
9	<i>Wershba v. Apple Computer, Inc.</i>	
10	(2001) 91 Cal.App.4th 224	12, 16
11	<i>Westside Community for Independent Living, Inc. v. Obledo</i>	
12	(1983) 33 Cal.3d 348	16
13	<u>State Statutes and Rules</u>	
14	13 Cal. Code Regs. § 1200.....	5
15	Cal. Labor Code § 2699(g)	16
16	Code of Civil Procedure § 1021.5(a)	16
17	Labor Code § 2699(e)(2)	6
18	Labor Code § 2699(f)(2)	14
19	<u>Unpublished Cases</u>	
20	<i>Altamirano v. Shaw Industries, Inc</i>	
21	2015 WL 4512372 (N.D. Cal. 2015)	15
22	<i>Amalgamated Transit Union Local 1309</i>	
23	AFL-CIO v. Laidlaw Transit Services, Inc.	
24	No. 05cv1199–IEG–CAB 2009 WL 2448430 (S.D. Cal. 2009)	14
25	<i>Ashker v. Sayre</i>	
26	No. 05-03759 CW	
27	2011 WL 825713 (N.D. Cal. 2011)	18
28	<i>Casida v. Sears Holdings Corp.</i>	
	2012 WL 253217 (E.D. Cal. Jan. 26, 2012)	9
	<i>In re TD Ameritrade Account Holder Litig.</i>	
	Case Nos. C 07-2852 SBA	
	C 07-4903 SBA	
	2011 WL 4079226, at *9 (N.D. Cal. Sept. 13, 2011)	9

<i>Mendez v. Tween Brands, Inc.</i>	
2010 WL 2650571 (E.D. Cal. Jul. 1, 2010)	9, 10
<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i>	
2010 WL 1340777 (N.D. Cal. Apr. 2, 2010)	10
<i>Trang v. Turbine Engine Components Technologies Corp.</i>	
No. CV 12–07658 DDP (RZx)	
2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ricardo Trejo (“Plaintiff”) an “aggrieved employee” under the Private Attorneys
4 General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”), moves this Court for an
5 Order granting approval of the PAGA Settlement Agreement and Release (“Settlement
6 Agreement” or “Settlement”)¹ with Defendant Total Distribution Service, Inc. (“Defendant”).²
7 The proposed Settlement, under which Defendant has agreed to pay a non-reversionary amount
8 of \$130,000.00, will dispose of Plaintiff’s representative PAGA claim filed on behalf of the State
9 of California LWDA and approximately 69 “aggrieved employees,” defined as all current and
10 former non-exempt employees who performed work for Defendant in California at any time
11 between February 2, 2020 and March 20, 2022 (the “PAGA Period”).

12 This PAGA action seeks civil penalties predicated on Defendant’s alleged (i) failure to
13 pay minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide all meal periods;
14 (iv) failure to maintain accurate records; (v) failure to issue accurate, itemized wage statements;
15 (vi) failure to timely pay wages each pay period; and (vii) failure to pay all final wages at
16 termination. Notably, the relief provided under the Settlement, and the claims released thereunder,
17 are *solely* for the payment of civil penalties under the PAGA.

18 In deciding whether to grant approval of the Settlement, the primary issue is whether the
19 Settlement is fair, reasonable, and adequate. As set forth herein, the proposed Settlement
20 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it (1) is the
21 product of extensive arm’s-length negotiations, (2) was negotiated by attorneys experienced in
22 wage-and-hour issues with the assistance of an experienced, neutral mediator, (3) was negotiated
23 after the Parties undertook sufficient investigation to evaluate the relative strength and value of
24

25 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt, filed
26 concurrently with this Motion. The Notice of PAGA Settlement and Release of Claims (“Notice”) is
27 attached as Exhibit A to the Settlement Agreement.

28 ² Concurrently with the filing of this Motion, Plaintiff provided the California Labor & Workforce
Development Agency (“LWDA”) with notice of the proposed Settlement, as well as copies of this Motion
and all papers filed in support hereof. *See* Schmidt Decl., ¶ 26; Exhibit 4.

1 the PAGA claim, and (4) reflects a reasoned compromise based directly on the relative strength
2 and value of the PAGA claim, the risks, expense, complexity and likely duration of further
3 litigation, and the risks that further litigation could result in a lesser recovery.

4 After deducting amounts for requested attorneys' fees (\$43,333.33), attorney costs
5 (\$31,588.34), Plaintiff's enhancement award (\$5,000.00), settlement administration costs
6 (\$3,000.00), and the LWDA's share of the amount designated as civil penalties per Labor Code
7 § 2699(i) (\$35,308.75), the Settlement provides for distribution of approximately \$11,769.58 in
8 civil penalties to the aggrieved employees, an average of \$170.57 on a per capita basis.

9 The Maximum Settlement Amount ("MSA") represents a reasonable recovery for the
10 State of California and the aggrieved employees when considering the limited release of PAGA
11 claims based on the factual allegations in Plaintiff's operative complaint. Additional litigation
12 may have resulted in a smaller recovery, or even no recovery at all, based on the defenses asserted
13 by Defendant and the significant litigation risks involved. Further, the amounts requested for
14 attorneys' fees and costs, Plaintiff's enhancement award, and settlement administration costs are
15 fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed]
16 Judgment and Order Granting Plaintiff's Motion for Settlement Approval of Claims Brought
17 Under the PAGA, Reasonable Attorneys' Fees and Costs, and Enhancement Award, submitted
18 herewith.

19 **II. SUMMARY OF THE LITIGATION**

20 **A. The Parties**

21 Defendant operates a trucking business that provides shipping and logistics services for
22 companies such as Amazon and Costco. Schmidt Decl., ¶ 8. Plaintiff worked for Defendant as a
23 local driver from July 20, 2015, to June 8, 2020. *Id.* Plaintiff's job duties consisted of making
24 intrastate deliveries of cargo containers. Declaration of Ricardo Trejo ("Trejo Decl."), ¶ 2.
25 Plaintiff, like all aggrieved employees, was employed by Defendant as non-exempt employee
26 during the PAGA Period and was subject to Defendant's wage and hour policies and practices.
27 *Id.*

1 **B. Procedural History**

2 On February 2, 2021, Plaintiff provided written notice of his intent to file a claim for
3 PAGA civil penalties to the LWDA and Defendant. Schmidt Decl., ¶ 9; Exhibit 2 (LWDA
4 Letter). On April 9, 2021, Plaintiff filed this representative action alleging that Defendant:
5 (1) failed to pay the minimum wage for all hours worked (Labor Code §§ 204, 1182.12, 1194,
6 1194.2, 1197, 1198); (2) failed to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194,
7 1198); (3) failed to provide all lawful meal periods (Labor Code §§ 226.7, 512, 558, 1198);
8 (4) failed to provide accurate and compliant itemized wage statements (Labor Code § 226 *et*
9 *seq.*); (5) failed to pay all final wages upon separation (Labor Code §§ 201-203); (6) failed to
10 pay all earned wages at least twice during each calendar month (Labor Code § 204); and
11 (7) failed to maintain accurate records (Labor Code §§ 558, 1174). *Id.*

12 On January 19, 2022, the Parties attended a full-day mediation session with Steven J.
13 Serratore, Esq., a respected wage and hour mediator. Schmidt Decl., ¶ 10. In connection with
14 mediation, Defendant produced timekeeping and payroll records for 30% of the non-exempt
15 employees who worked during the during the PAGA Period. *Id.* Plaintiff and his retained expert,
16 who holds a Ph.D. in labor economics, analyzed these records and created a comprehensive
17 exposure analysis for the PAGA claim. *Id.* During mediation, the Parties debated the legal bases
18 for their claims and defenses and their respective data analyses. *Id.* At the conclusion of
19 mediation, Mr. Serratore provided a mediator’s proposal to fully resolve the PAGA claim, which
20 the Parties ultimately accepted. *Id.* Over the following months, the Parties negotiated the final
21 terms and executed the proposed Settlement now before this Court for approval. *Id.*

22 **C. Plaintiff’s Allegations and Defendant’s Defenses**

23 Plaintiff alleges that Defendant failed to compensate aggrieved employees for work that
24 was performed while clocked out but while employees were still subject to Defendant’s control.
25 *See* Labor Code §§ 1197 and 1182.12 (establishing the right of employees to be paid minimum
26 wages for all hours worked, defined as “the time during which an employee is subject to the
27 control of an employer, and includes all the time the employee is suffered or permitted to work,
28 whether or not required to do so.”). Specifically, Defendant required Plaintiff and other aggrieved

1 employees to clock out for supposed meal periods to avoid inspection citations at the container
2 port. Schmidt Decl., ¶ 11. However, while waiting in line at the port, employees were required to
3 remain in the company truck during meal periods so that they could move the truck forward as
4 the line progressed – resulting in employees not being relieved of duty during meal periods. *Id.*
5 Defendant then failed to pay employees all minimum and overtime wages for this on-duty meal
6 period time. *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 799
7 (“The right to be free from employer control for a 30-minute meal period, and the right to be paid
8 for time worked during that meal period, are distinct rights with distinct remedies. The remedy
9 for an employer violation of the former right is the hour of premium pay provided under section
10 226.7. The remedy for the latter is payment of wages for time worked...”).

11 Plaintiff also alleges that Defendant maintained an unlawful policy/practice of requiring
12 employees to delay or skip first and second meal periods while in line at the container port, an
13 allegation supported by the timekeeping records. *See Brinker Restaurant Corp. v. Superior Court*
14 (2012) 53 Cal.4th 1004, 1041 (“We conclude that, absent waiver, section 512 requires a first meal
15 period no later than the end of an employee’s fifth hour of work...”); *see also Donohue v. AMN*
16 *Services, LLC* (2021) 11 Cal.5th 58, 77 (“If time records show missed, short, or delayed meal
17 periods with no indication of proper compensation, then a rebuttable presumption [of a meal
18 violation] occurs.”) Specifically, Plaintiff alleges that employees were not provided adequate time
19 in their schedule to take 30 minute meal periods before the end of the fifth and tenth hour of work.
20 Schmidt Decl., ¶ 12. As a result, employees were required to delay their meal periods or even
21 forego them entirely to get to their destination on time. *Id.* Plaintiff’s expert determined that
22 76.17% of meal periods for shifts over 6.0 hours reflect late (commencing after the fifth hour of
23 work), short (less than 30 minutes), or not recorded at all. *Id.* Plaintiff’s expert also determined
24 that over 99% of shifts in excess of 10.0 hours do not reflect a compliant second meal period. *Id.*

25 As a result of Defendant’s alleged failures to pay all minimum and overtime wages as well
26 as meal period premium wages, Plaintiff alleges that Defendant failed to issue accurate and
27 itemized wage statements and failed to pay all wages owed to employees upon their separation of
28 employment. *See Labor Code §§ 226(a), 201-203.*

1 Defendant first contends that the upcoming U.S. Supreme Court decision in *Viking River*
2 *Cruises, Inc. v. Moriana*, Case No. 20-1573, will overturn *Iskanian* and require dismissal of this
3 PAGA lawsuit. *See Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348
4 (holding that “an employment agreement [which] compels the waiver of representative claims
5 under the PAGA, is contrary to public policy and unenforceable as a matter of state law.”)
6 Defendant also maintains that aggrieved employees are exempt from overtime claims under the
7 Federal Motor Carrier Exemption (“FMCE”), and that their California meal period claims are
8 preempted by the Federal Motor Carrier Safety Administration’s (“FMCSA”) hours of service
9 rules.³ Schmidt Decl., ¶ 15. The Ninth Circuit recently upheld the FMCSA’s determination that
10 California’s meal and rest period laws, as applied to “property-carrying commercial motor vehicle
11 drivers,” are preempted by federal hours of service rules. *International Brotherhood of Teamsters,*
12 *Local 2785 v. Federal Motor Carrier Safety Administration* (9th Cir. 2021) 986 F.3d 841.

13 Notwithstanding a complete bar to Plaintiff’s claims, Defendant contends that it has never
14 required employees to work off the clock during meal periods. Schmidt Decl., ¶ 17. Instead,
15 Defendant provides employees with autonomy to schedule and take their meal periods as they
16 please during the day. *Id.* Defendant does not police meal periods. *See Brinker, supra*, 53 Cal.4th
17 at 1040 (“[T]he employer is not obligated to police meal breaks and ensure no work thereafter is
18 performed.”) To the extent that any employee took a meal period later than the fifth or tenth hour
19 of work, or the timekeeping records do not reflect a second meal period, Defendant contends that
20 the decision to delay or waive a meal period was the sole choice of the employee, not Defendant’s
21 policy/practice. Schmidt Decl., ¶ 17.

22 Because Plaintiff’s underlying causes of action will fail, Defendant contends that the
23 PAGA claim will also fail. *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147.
24 Defendant also maintains that given its good faith defenses, this Court would exercise its
25

26 ³ Under the Federal Motor Carrier Exemption, overtime pay is not required for drivers of trucks in excess
27 of 10,000 pounds who also transport goods over state borders. 29 USC § 213(b)(1). Additionally, truckers
28 who drive trucks weighing more than 26,001 pounds or weighing between 10,000 and 26,001 pounds
(while engaged in interstate commerce) are exempt from overtime pay under California law. 13 Cal. Code
Regs. § 1200.

discretion to substantially reduce any PAGA penalties awarded. *See* Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming trial court’s reduction of PAGA penalties to 10% of calculated exposure after bench trial). Further, Defendant argues that Plaintiff could only seek PAGA penalties at the \$100 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, since Defendant had never been put on notice by a court or the Labor Commissioner that its practices violated the Labor Code until Plaintiff initiated this action. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 (finding “initial” violation rate applies until employer has been notified that it is violating a Labor Code provision).

III. THE PROPOSED SETTLEMENT

A. “Aggrieved Employees” Defined

Aggrieved employees are defined as, “all Defendant’s current and former non-exempt employees in the State of California from February 2, 2020, through March 20, 2022.” *See* Settlement, § I.(h).

B. Essential Terms of the Settlement

Defendant will pay a MSA of \$130,000.00. Settlement, §§ I.(l); II.C.(a). After deducting amounts for requested attorneys’ fees and costs, Plaintiff’s enhancement award, and settlement administration costs, the remaining Net Settlement Amount (“NSA”) distributable to the aggrieved employees and the LWDA is estimated to be \$47,078.33. *Id.*, § II.C.(a)(4). This non-reversionary Settlement does not require aggrieved employees to submit a claim form to reap the financial benefits of the Settlement. *Id.* The monetary terms of the Settlement are as follows:

Maximum Settlement Amount:	\$130,000.00
Minus Court-approved attorneys’ fees (1/3):	\$43,333.33
Minus Court-approved attorneys’ costs:	\$31,588.34
Minus Court-approved enhancement award:	\$5,000.00
Minus settlement administrator costs:	\$3,000.00
Net Settlement Amount:	\$47,078.33
Minus LWDA’s 75% Share:	\$35,308.75
Total Paid to Aggrieved Employees:	\$11,769.58

1 **1. Attorneys' Fees and Costs**

2 Plaintiff's counsel requests one-third of the MSA (\$43,333.33) in attorneys' fees, and
3 \$31,588.34 in actual litigation costs. Settlement, § II.C.(a)(1).

4 **2. Settlement Administration Costs**

5 The Parties agree to engage Simpluris as the Settlement Administrator. *See* Settlement,
6 § II.C.(a)(2). Simpluris will be responsible for calculating the settlement checks, mailing the
7 settlement checks, and giving notice to the aggrieved employees in English and Spanish, among
8 other duties. *Id.* Simpluris estimates incurring \$3,000.00 in costs in connection with the
9 administration of this settlement. *See* Declaration of Eric Springer ("Springer Decl."), Exhibit B.

10 **3. Plaintiff's Enhancement Award**

11 Plaintiff requests an enhancement award totaling \$5,000.00 in recognition of his efforts
12 to initiate this case on behalf of the State of California and the other aggrieved employees, his
13 contributions to the prosecution of this case, and his efforts in bringing this case to a successful
14 resolution. Settlement, § II.C.(a)(3); *see also* Trejo Decl., ¶ 2-4.

15 **4. Payment to the LWDA and Aggrieved Employees**

16 From the NSA, 75% (\$35,308.75) will be distributed to the LWDA, and 25%
17 (\$11,769.58) will be distributed to the aggrieved employees. Settlement, §II.C.(a)(4); *see also*
18 Labor Code § 2699(i) ("[C]ivil penalties recovered by aggrieved employees shall be distributed
19 as follows: 75 percent to the [LWDA]...and 25 percent to the aggrieved employees."). 100% of
20 the individual payments to the aggrieved employees will be reported using IRS Form-1099s, since
21 all funds received under Section 2699 are civil penalties that do not trigger payroll taxes or
22 withholdings. *See* Settlement, § II.C.(e).

23 Individual Settlement Payments will be determined based on the number of each
24 aggrieved employees' "Qualifying Pay Periods." *See* Settlement, § II.C.(a)(4)(i). A "Qualifying
25 Pay Period" is defined as any pay period in which an aggrieved employee was employed as non-
26 exempt employee by Defendant between February 2, 2020, and March 20, 2022, as determined
27 by Defendant's records. *Id.* From there, the 25% amount to be distributed to aggrieved employees
28 will be divided by the total number of Qualifying Pay Periods for all aggrieved employees during

1 the PAGA Period, each aggrieved employee will then be paid an amount equal to the Qualifying
2 Pay Period Amount multiplied by that aggrieved employee's total number of Qualifying Pay
3 Periods. *See* Settlement, § II.C.(a)(4)(ii).

4 Further, Plaintiff's expert's data analysis determined that there were approximately 5,072
5 aggregate pay periods worked by the aggrieved employees during the PAGA Period. Schmidt
6 Decl., ¶ 20. The average recovery is estimated to be approximately \$170.57 and the highest
7 possible recovery, should an aggrieved employee have been employed for the entirety of the
8 PAGA Period, is estimated to be approximately \$257.58. *Id.*

9 **5. Funding and Distribution of the Settlement**

10 Defendant will fund the entire Maximum Settlement Amount within 30 days after the
11 Court enters a final order adopting and approving of the Settlement Agreement in this action. *See*
12 Settlement, § II.C.(b). Defendant will transmit to the Maximum Settlement Amount to Simpluris,
13 to be held by Simpluris in a low-risk interest bearing account, until distribution following the
14 "Effective Date." *Id.* The "Effective Date" will occur no later than 30 calendar days after the
15 Court signs the final order approving the Settlement Agreement (assuming no objections or
16 appeals). *See* Settlement, § I.(j).

17 Within 10 business days after the Court enters the final order approving the Settlement
18 Agreement, Defendant will provide Simpluris with a list which include each aggrieved
19 employees' full name, last known address, social security number, dates of employment, and the
20 numbers of pay periods he or she worked. *See* Settlement, § II.(C)(b). Within 10 business days of
21 receiving the list, Simpluris will run a skip trace to obtain updated address information for every
22 aggrieved employee and disburse aggrieved employee payments, will disburse attorneys' fees and
23 costs to Plaintiff's counsel, and will send a check to the LWDA for its 75% share of PAGA civil
24 penalties. *See* Settlement, § II.(C)(b). All funds not claimed within 180 days of mailing of
25 payment shall be sent to Court Appointed Special Advocates ("CASA") of Ventura County, a
26 501(c)(3) nonprofit organization providing legal assistance and aid to abused and neglected
27 children. *Id.*

1 **IV. ARGUMENT**

2 **A. Standards for Approval of a PAGA Settlement**

3 The settlement of a PAGA claim requires court approval. *See* Labor Code § 2699(l)
4 (stating, the “court shall review and approve any penalties sought as part of a proposed settlement
5 agreement pursuant to this part.”). The Court must be mindful that “[s]ettlement is a compromise,
6 which balances the possible recovery against the risks inherent in litigating further.” *In re TD*
7 *Ameritrade Account Holder Litig.*, Case Nos. C 07-2852 SBA, C 07-4903 SBA, 2011 WL
8 4079226, at *9 (N.D. Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a
9 yielding of absolutes and an abandoning of highest hopes,’” as “it is the very uncertainty of
10 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
11 settlements.” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624-25 (9th Cir., 1982). As
12 such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
13 merits,” or “judged against a hypothetical or speculative measure of what might have been
14 achieved.” *Id.*

15 Although the operative PAGA statute does not set forth the criteria by which a PAGA
16 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
17 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
18 representative basis...is not considered a class action but a law enforcement action, and therefore
19 does not have to meet the requirements of [a class action].” *See Casida v. Sears Holdings Corp.*,
20 2012 WL 253217, at *3 (E.D. Cal. Jan. 26, 2012); *Mendez v. Tween Brands, Inc.*, 2010 WL
21 2650571, at *4 (E.D. Cal. Jul. 1, 2010). A court’s review of a PAGA settlement necessarily
22 implicates the following unique features that render the approval process distinct from approval
23 of a class action settlement under C.C.P. § 382 and C.R.C. Rule 3.769.

24 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
25 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus
26 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a
27 PAGA suit consists of civil penalties, not individual or class damages,” and while a “[PAGA]
28 action is ... designed to protect the public and penalize the employer for past illegal conduct,” a

1 reviewing Court must be mindful of the fact that settlement of a PAGA claim involves a
2 compromise. *Mendez, supra*, 2010 WL 2650571, at *4. “Unlike class actions, these civil penalties
3 are not meant to compensate unnamed employees because the action is fundamentally a law
4 enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4 (N.D.
5 Cal. Apr. 2, 2010). The Court must not lose sight of the fact that “[u]nlike a class action seeking
6 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
7 parties to recover civil penalties for the government that otherwise may not have been assessed
8 and collected by overburdened state enforcement agencies.” *Id.*

9 Second, consistent with the fact that unnamed employees have no property interest in a
10 PAGA claim,⁴ “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
11 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
12 1340777, at *5. This renders the approval process of a PAGA settlement distinct from a class
13 action settlement, as there is no need for the Court to employ the “two-step approval process”
14 required under F.R.C.P. Rule 23 (“Rule 23”) and C.R.C. Rule 3.769 (“Rule 3.769”).⁵

15 Finally, unlike class action settlements under Rule 23(e) and Rule 3.769, the scope of
16 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
17 binding not only on the named employee Plaintiff but also on government agencies and any
18 aggrieved employee not a party to the proceeding...the non-party employees, because they were
19 not given notice of the action or afforded any opportunity to be heard, would not be bound by the
20 judgment as to remedies other than civil penalties.” *See Arias v. Sup. Ct.* (2009) 46 Cal.4th 969,
21 986-87. Thus, the scope of a release in a PAGA settlement is confined to the PAGA penalties
22 alleged in the complaint and to the claims that were, or could have been, alleged pursuant to
23

24
25 ⁴ As held by the California Supreme Court, “[PAGA] does not create property rights or any other
26 substantive rights” as “[i]t is simply a procedural statute allowing an aggrieved employee to recover civil
27 penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement
28 agencies.” *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003.

⁵ The “two-step” approval process of Rule 23(e) is required to facilitate “notice” to absent class members,
as Rule 23(e) expressly requires notice and an opportunity for absent class members to exclude themselves
or object. *See Fed. R. Civ. Proc. R. 23(e)*. Rule 3.769 contains similar rules for State court class actions.

1 PAGA based on the factual allegations in the complaint.⁶ In the case at hand, as the only claims
2 at issue are PAGA claims, those will be the only claims extinguished because of this Settlement.

3 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate,**
4 **and Reasonable Compromise of Disputed Claims**

5 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v.*
6 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class and
7 representative PAGA settlements involve a court approval process that exists to prevent fraud,
8 collusion, and unfairness to absent individuals. *See Malibu Outrigger Bd. of Governors v.*
9 *Superior Court* (1980) 103 Cal.App.3d 573, 578-79. California law generally follows the same
10 standards applicable under Rule 23. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
11 1998) (stating that Rule 23(e) requires the trial court to determine “whether a proposed settlement
12 is fundamentally fair, adequate, and reasonable”). To be approved, a settlement must be “fair,
13 reasonable and adequate to all concerned.” *Reed v. United Teachers Los Angeles* (2012) 208
14 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in
15 complex representative litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
16 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
17 agreement taken as a whole is fair and is not the product of fraud or collusion between the
18 negotiating parties. *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of
19 fairness when the settlement agreement was negotiated at arm’s length by experienced counsel.
20 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130. Because this Settlement is
21 fair, adequate, and reasonable, Plaintiff respectfully requests that the Court grant approval.
22
23
24

25 ⁶ This is contrasted with the much broader release permitted in a class action context, which may release
26 all underlying Labor Code violations based on “any matter or fact” alleged in the complaint. *See In re*
27 *Corrugated Container Antitrust Litigation*, 643 F.2d 195, 221 (5th Cir. 1981) (“The weight of authority
28 establishes that ... a court may release not only those claims alleged in the complaint and before the court,
but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set
forth or referred to in’ the complaint.”); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir., 2010) (“we
have held that federal district courts properly released claims not alleged in the underlying complaint where
those claims depended on the same set of facts as the claims that gave rise to the settlement.”).

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

2 A settlement is presumptively fair where it is reached through arm’s-length bargaining,
3 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
4 and counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
5 1794, 1802; *see also Kullar, supra*, 168 Cal.App.4th at 130. In deciding whether to approve a
6 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
7 under the circumstances of the case. *Mallick v. Sup. Ct.* (1979) 89 Cal.App.3d 434, 438. In
8 exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,
9 adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant
10 factors for the Court to consider include, but are not limited to:

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

16 *Id.* These factors require balancing and are non-exhaustive. Trial courts should therefore tailor
17 the factors to each case and give due regard to “what is otherwise a private consensual agreement
18 between the parties.” *Id.* In the context of a PAGA settlement, the third and eighth factors (risk
19 of maintaining class action status and reaction of class members to settlement) are inapplicable.

20 “In the context of a settlement agreement, the test is not the maximum amount Plaintiff
21 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
22 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
23 250. Because settlements inherently involve compromise, settlements providing for narrower
24 relief than can be obtained if the suit were successfully litigated can be reasonable because “the
25 public interest may indeed be served by a voluntary settlement in which each side gives ground
26 in the interest of avoiding litigation.” *Air Lines Stewards, etc., Local 550 v. Am. Airlines, Inc.*,
27 455 F.2d 101, 109 (7th Cir. 1972). Further, courts review the discovery conducted by the parties
28 to aid in assessing whether the parties sufficiently developed the claims and 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

1 is in controversy and the realistic range of outcomes of the litigation.” *Clark v. Am. Residential*
2 *Serv. LLC* (2009) 175 Cal.App.4th 785, 801. This requirement exists so that parties can provide
3 the trial court with “a meaningful and substantiated explanation of the manner in which the factual
4 and legal issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

5 **a) The Strength of Plaintiff’s Case**

6 Although Plaintiff steadfastly maintains that this action is meritorious, Plaintiff
7 acknowledges that there are substantial risks and uncertainty in proceeding to trial. Defendant
8 presented numerous defenses to Plaintiff’s underlying allegations and arguments as to why
9 Plaintiff’s claims would ultimately fail and that, even if they did not, the Court would utilize its
10 discretion to substantially reduce any award of PAGA penalties. While Plaintiff was prepared to
11 litigate his claims through trial, he faced substantial challenges in prevailing in this matter and
12 obtaining a better result than will be provided through the Settlement. Thus, this factor supports
13 approval.

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

15 Although the Parties engaged in a significant exchange of documents and information as
16 part of the informal mediation production, no formal written, or deposition discovery had been
17 conducted prior to mediation. *See* Schmidt Decl., ¶ 10. Absent settlement, the Parties will be
18 required to expend substantial time and resources completing formal discovery. Preparation for
19 trial remained, as well as the prospect of appeals in the wake of a summary judgment ruling for
20 either party, as well as appeals after trial. *Id.* This Settlement avoids these considerable costs,
21 risks, and the accompanying burden of continued litigation on the Court.

22 **c) Amount Offered in Settlement Given Realistic Value of Claims**

23 This proposed Settlement provides a fair and reasonable monetary recovery for the
24 LWDA and aggrieved employees in the face of disputed claims. Plaintiff, with the help of his
25 retained expert, analyzed Defendant’s produced data, and forecasted Defendant’s realistic
26 exposure for PAGA civil penalties as follows:

27 **PAGA Civil Penalties: \$152,160**

28 Plaintiff contends that he could prove a PAGA violation in each of the 5,072 pay periods
in the PAGA Period due to Defendant’s high meal period violation rate (76.17% for first meals

1 and 99% for second meals) and the alleged regularity of off-the-clock work during meal periods.
2 Schmidt Decl., ¶ 14. Labor Code § 2699(f)(2) provides for PAGA civil penalties in the amount
3 of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each
4 aggrieved employee per pay period for each subsequent violation. *See* Labor Code § 2699(f)(2).
5 However, courts have interpreted section 2699(f)(2) to only impose the \$200 subsequent penalty
6 after an employer has been notified that its conduct violates the Labor Code. *See, e.g., Amaral,*
7 *supra*, 163 Cal.App.4th at 1207 (finding “initial” violation rate applies until employer is notified
8 that it is violating a Labor Code provision); *Trang v. Turbine Engine Components Technologies*
9 *Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854, at *5 (C.D. Cal. Dec. 19,
10 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
11 violations unless and until a court or commissioner notifies the employer that it is in violation of
12 the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit*
13 *Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430, at *9 (S.D. Cal. 2009) (finding that
14 California law imposes the “subsequent violation penalty” only after an employer has been
15 notified its conduct violates the Labor Code). Plaintiff therefore calculates Defendant’s maximum
16 possible PAGA exposure at \$507,200 (5,072 pay periods x \$100 per violation). Schmidt Decl.,
17 ¶ 14.

18 However, as discussed above, Defendant raised numerous defenses to the merits of
19 Plaintiff’s underlying claims, and argued that even if found liable, the Court would exercise its
20 discretion to drastically reduce any potential PAGA penalties. *See* Schmidt Decl., ¶ 18. Notably,
21 there remains a legitimate possibility that the U.S. Supreme Court’s upcoming decision in *Viking*
22 *River Cruises* would prevent this action from proceeding in any forum – foreclosing the State of
23 California’s enforcement mechanism for PAGA. *Id.*, ¶ 15 Additionally, Plaintiff’s maximum
24 potential exposure valuation assumes that he would be able to prove at least one wage violation
25 or meal period violation in each and every pay period. *Id.*, ¶ 14. However, there was also a serious
26 risk Plaintiff would be unable to recover any penalties for a sizable portion of the aggrieved
27 employees due to the FMCE’s bar on overtime claims as well as the FMCSA preemption of meal
28 period claims. *Id.*, ¶ 15. Plaintiff therefore discounted the total exposure figure by 75% to account

1 for the risk of losing on the merits and the risk of the Court reducing the penalties, to arrive at a
2 realistic recovery of \$152,160. *See Thurman, supra*, 203 Cal.App.4th at 1136 (affirming reduction
3 of PAGA penalties); *Carrington, supra*, 30 Cal.App.5th 504 (affirming reduction of PAGA
4 penalties to 10% of maximum exposure).

5 Thus, the mediator's proposal for a \$130,000 MSA represents approximately 85.44% of
6 Plaintiff's reasonably forecasted recovery, which is well within the range approved by courts as
7 being fair, reasonable, and adequate, while also avoiding further expense and risk of further
8 litigation. *See Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015)
9 ("Although 15% represents a modest fraction of the hypothetical maximum recovery estimated
10 by Plaintiff, that figure is sufficient for the Court to grant preliminary approval..."); *Dunleavy v.*
11 *Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement of "roughly one-sixth of the
12 potential recovery"); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir.
13 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential
14 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
15 should be disapproved.") (internal quotations omitted).

16 **d) Discovery Completed and the Status of Proceedings**

17 The Parties engaged in a significant exchange of documents and data necessary to evaluate
18 the value of the PAGA claim prior to mediation. *See Schmidt Decl.*, ¶ 10. Defendant provided
19 Plaintiff timekeeping and payroll records for 30% of the non-exempt employees who worked
20 during the during the PAGA period. *Id.* Plaintiff's expert then analyzed the employee records and
21 created a comprehensive exposure analysis for the PAGA claim. *Id.* Thus, this factor supports
22 settlement approval.

23 **e) The Experience and Views of Counsel**

24 "Parties represented by competent counsel are better positioned than courts to produce a
25 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
26 *Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
27 by competent and experienced wage and hour class action counsel who believe this Settlement to
28 be fair and adequate for all involved. *See Schmidt Decl.*, ¶¶ 2-7; Declaration of Paul K. Haines

1 (“Haines Decl.”), ¶¶ 2-8; Declaration of Andrew J. Rowbotham (“Rowbotham Decl.”), ¶¶ 2-7.
2 Further, the proposed Settlement was reached with the input and assistance of mediator Steven J.
3 Serratore, Esq. Schmidt Decl., ¶ 10. Thus, this factor strongly supports settlement approval. *See*,
4 *Kullar, supra*, 168 Cal.App.4th at 130 (“The court undoubtedly should give considerable weight
5 to the competency and integrity of counsel and the involvement of a neutral mediator in assuring
6 itself that a settlement agreement represents an arm’s length transaction entered without self-
7 dealing or other potential misconduct.”).

8 **C. The Requested Award for Attorneys’ Fees is Reasonable as a Percentage of**
9 **the MSA**

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

19 California state and federal courts routinely award a fee award of one-third of the
20 settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11;
21 *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery”
22 method); *In re Pacific Enterprises Securities Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (affirming
23 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of
24 fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the
25 percentage of fund method survives in California class action cases...”.) Specifically, the *Laffitte*
26 Court held:

27 The recognized advantages of the percentage method—including relative
28 ease of calculation, alignment of incentives between counsel and the class, a
better approximation of market conditions in a contingency case, and the
encouragement it provides counsel to seek an early settlement and avoid

unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id., at 503 (internal citation omitted). This is consistent with Plaintiff’s counsels’ experience in similar wage-and-hour class and representative action matters. *See* Schmidt Decl., ¶ 21. Here, Plaintiff’s counsels’ fee request of \$43,333.33 (one-third of the MSA) is the same percentage sought in *Laffitte* and is fair and reasonable based on the percentage of the recovery method. *Id.*

The fee award requested here is justified because Plaintiff’s counsel achieved a monetary recovery for the aggrieved employees and the State of California in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis. Schmidt Decl., ¶ 22. Additionally, Plaintiff’s recovery for the State of California and aggrieved employees exceeds other PAGA awards approved by courts in California. *See, e.g., Penaloza, supra*, 2013 WL 2917624 (average PAGA penalties of \$7.49); *Cabrera, supra*, 2013 WL 1182822 (average PAGA penalties of \$3.33). That Plaintiff’s counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed, this case presented significant risks both on the merits and with respect to the Court’s authority to reduce an award of PAGA penalties. It is fair and reasonable to account for these risks in compensating Plaintiff’s counsel, as well as the risks involved in undertaking this litigation and expending considerable effort while working on a pure contingency basis. Since undertaking representation of Plaintiff, Plaintiff’s counsel dedicated substantial resources to this litigation, including expending \$31,588.34 in litigation costs, without receiving any compensation to date. Schmidt Decl., ¶ 22; Exhibit 3 (Expense Summary). Plaintiff’s counsels’ efforts include conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research regarding the merits and legal bases of Plaintiff’s claims, drafting and filing Plaintiff’s complaint and LWDA notice letter, reviewing documents and data produced by Defendant, meeting and conferring with Defendant’s counsel regarding Defendant’s informal document production, extensively evaluating the timekeeping and payroll data with a retained expert prior to mediation, preparing for and attending mediation, drafting a mediation brief, negotiating and drafting the long-form Settlement Agreement and Notice, preparing this Motion for settlement approval and

1 all supporting documents hereto, and otherwise litigating the case. Schmidt Decl., ¶ 21. Plaintiff's
2 counsel will spend additional time attending the hearing on this Motion and overseeing the
3 settlement administration process. *Id.* Given the potential for adverse outcomes, the contingent
4 risk borne by Plaintiff's counsel was great. The quality of Plaintiff's counsels' work, and the
5 efficacy and dedication with which it was performed, should be compensated.

6 Plaintiff's counsels' previous experience in litigating wage and hour class and
7 representative actions also supports the reasonableness of the fee request. Plaintiff's counsel is
8 well-versed in plaintiff and defense-side wage and hour class and representative action litigation,
9 and collectively brings three decades worth of wage-and-hour class and representative action
10 litigation experience. *See* Schmidt Decl., ¶¶ 2-6; *see also generally* Declarations of Haines, and
11 Rowbotham. Plaintiff's counsel has also been certified as class counsel in numerous class action
12 cases alleging wage and hour claims. *Id.* Plaintiff's counsel's experience in similar matters was
13 integral in evaluating the strengths and weaknesses of this case and the reasonableness of the
14 Settlement. Because it is reasonable to compensate Plaintiff's counsel commensurate with their
15 skill, reputation, and experience, the requested fee award of \$43,333.33 is fair, reasonable, and
16 adequate, and should therefore be approved.

17 **D. The Requested Cost Reimbursement Warrants Approval as Fair, Adequate,**
18 **and Reasonable**

19 Plaintiff's counsel incurred and respectfully requests reimbursement of \$31,588.34 in
20 actual litigation costs. Schmidt Decl., ¶ 22; Exhibit 3. Plaintiff's counsels' request is fair,
21 adequate, and reasonable, as all of these costs are documented and reasonably incurred. *Id.*
22 Moreover, the costs Plaintiff seek are the types of costs routinely approved by courts. *See, e.g.,*
23 *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover "those out-of-pocket
24 expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759
25 CW, 2011 WL 825713, at *3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and
26 exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *In re*
27 *Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 (mediation
28 expenses, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
Because the expense reimbursements requested by Plaintiff's counsel were reasonably incurred,

1 the Court should grant Plaintiff's counsels' request for reimbursement of \$31,588.34 in actual
2 litigation costs incurred.

3 **E. The Court Should Approve the Requested Administration Costs**

4 Plaintiff also requests that the Court approve \$3,000.00 in administration costs to the
5 Settlement Administrator, Simpluris. Schmidt Decl., ¶ 23; Springer Decl., Exhibit B; Settlement,
6 § II.(C)(a)(2). As detailed in the Settlement Agreement and declaration of Eric Springer,
7 submitted concurrently with this Motion, Simpluris will perform duties in connection with this
8 Settlement that are integral in effectuating the Settlement and the Notice process. Among other
9 things, Simpluris will calculate each aggrieved employee's Individual Settlement Payment,
10 update addresses contained in the employee data supplied by Defendant, format the Notice
11 Packets for mailing, mail Notice Packets to all aggrieved employees, and otherwise administer
12 the Settlement. *See generally*, Springer Decl.; Settlement, § II.(C)(b). Simpluris was selected to
13 administer this Settlement because it is an experienced and well-respected settlement
14 administrator and returned a competitive bid for the work to be performed. Schmidt Decl., ¶ 23.
15 For these reasons, Simpluris' requested costs are fair, reasonable, and adequate, and should be
16 approved.

17 **F. This Court Should Approve Plaintiff's Requested Enhancement Award**
18 **Because it is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts**
19 **and the Risks Assumed on Behalf of the Aggrieved Employees**

20 Courts routinely approve enhancement award to compensate named plaintiffs for the
21 services they provide and the risks they incur during class and representative litigation. *See, e.g.,*
22 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to
23 named plaintiff for efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.
24 1995) 901 F. Supp. 294 (approving \$50,000 enhancement award). Here, pursuant to the
25 Settlement, Plaintiff seeks an enhancement award of \$5,000.00. *See* Settlement, §§ II.(C)(a)(3).
26 This request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf
27 of the aggrieved employees. Schmidt Decl., ¶ 24. Among other things, Plaintiff searched for and
28 gathered relevant documents for use in the lawsuit and provided factual information to Plaintiff's
counsel, had regular discussions with Plaintiff's counsel regarding the claims in the lawsuit, the

1 facts and legal theories at issue in the case, including Defendant's pay and meal period practices,
2 discussed the status of the case and general case strategy with his attorneys on many occasions,
3 and helped his attorneys prepare for mediation. Trejo Decl., ¶ 3-4. Plaintiff estimates spending at
4 least 15 hours each on activities that ultimately lead to the Settlement. *Id.* Accordingly, Plaintiff's
5 enhancement award is appropriate and justified.

6 **V. CONCLUSION**

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

11 Dated: April 14, 2022

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By:



Fletcher W. Schmidt
Attorneys for Plaintiff