

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq. (SB# 272020)

3 hm@messrelianlaw.com

4 500 N. Central Ave., Suite 840

5 Glendale, California 91203

6 Telephone: (818) 484-6531

7 Facsimile: (818) 956-1983

8 Attorneys for Plaintiff JEFFREY TREJO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF KERN**
11 **(UNLIMITED JURISDICTION)**

12 JEFFREY TREJO,

13 *Plaintiff,*

14 *v.*

15 STRATOLAUNCH, LLC and DOES 1 to 25,
16 inclusive,

17 *Defendant(s)*

Case no.: BCV-22-101385

**NOTICE OF PLAINTIFF'S MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: June 6, 2022

Hearing Date: November 8, 2022

Hearing Time: 8:30a.m.

Hearing Dept: H, Hon. Bernard C.
Barmann, JR

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Harout Messrelian; and
3. [Proposed] Order and Judgment
Approving PAGA Settlement.

1 TO ALL PARTIES, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT
2 AGENCY, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on November 8, 2022 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard, in Bakersfield Court Division H of the Kern County Superior Court,
5 located at 1215 Truxtun Avenue, Bakersfield, CA 93301, Plaintiff Jeffrey Trejo ("Plaintiff" or
6 "Trejo") will and hereby does move this Court for an order approving the Settlement Agreement
7 and Release of PAGA Claims (the "Agreement" or "PAGA Settlement") and entering the
8 [Proposed] Order and Judgment Approving PAGA Settlement.

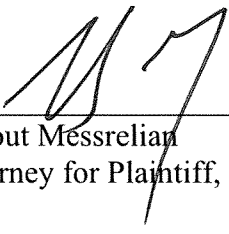
9 The PAGA Settlement is on behalf of Trejo and all current and former non-exempt or
10 hourly-paid employees who worked for Defendant Stratolaunch, LLC at any of its California
11 locations at any time from July 1, 2020 through March 17, 2022 (the "PAGA Settlement
12 Members"). Plaintiff alleges that Defendant is liable to him and other PAGA Settlement Members
13 for (1) failure to pay for all hours worked, including but not limited to, minimum wages and
14 overtime; (2) failure to provide all required timely and duty-free meal and rest periods; (3) failure
15 to pay wages owed every pay period; (4) failure to provide accurate, itemized wage statements;
16 (5) failure to pay all wages owed at the end of employment; (6) failure to maintain accurate
17 records; and (7) failure to reimburse business expenses.

18 The Motion is based on this Notice of Motion and Motion, the attached Memorandum of
19 Points and Authorities, the declaration of Harout Messrelian, the PAGA Settlement, all papers and
20 pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral
21 and documentary evidence as may be presented in connection with the hearing on the Motion.

22 Respectfully submitted,

23 MESSRELIAN LAW INC.

24 Dated: October 4, 2022

25 By: 
26 Harout Messrelian
27 Attorney for Plaintiff, Jeffrey Trejo
28

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq. (SB# 272020)

3 hm@messrelianlaw.com

4 500 N. Central Ave., Suite 840

5 Glendale, California 91203

6 Telephone: (818) 484-6531

7 Facsimile: (818) 956-1983

8 Attorneys for Plaintiff JEFFREY TREJO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF KERN**
11 **(UNLIMITED JURISDICTION)**

12 JEFFREY TREJO,

13 *Plaintiff,*

14 v.

15 STRATOLAUNCH, LLC and DOES 1 to 25,
16 inclusive,

17 *Defendant(s)*

Case no.: BCV-22-101385

18 **MEMORANDUM OF POINTS AND**
19 **AUTHORITIES IN SUPPORT OF**
20 **PLAINTIFF'S MOTION FOR APPROVAL**
21 **OF PAGA SETTLEMENT**

22 Action filed: June 6, 2022
23 Hearing Date: November 8, 2022
24 Hearing Time: 8:30am
25 Hearing Dept: H, Hon. Bernard C.
26 Barmann, JR

TABLE OF CONTENTS

1		
2	TABLE OF AUTHORITIES	iv
3	I. INTRODUCTION	1
4	II. FACTUAL AND PROCEDURAL BACKGROUND.....	1
5	A. Plaintiff’s PAGA Claim.....	1
6	B. Mediation With Henry Bongiovi, Esq.....	2
7	C. Plaintiff’s Lawsuit.....	2
8	III. OVERVIEW OF SETTLEMENT	3
9	A. “PAGA Settlement Members” Definition	3
10	B. Monetary Terms Of The Settlement	3
11	C. Funding and Distribution of the Settlement.....	3
12	D. Individual PAGA Payments and Uncashed Checks	4
13	E. Release of Claims For PAGA Settlement Members Limited To Those That Could 14 Reasonably Arise From the Facts Alleged In The Action.....	4
15	IV. ARGUMENT	5
16	A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT	5
17	B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA	6
18	C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE IT IS 19 FAIR, REASONABLE AND ADEQUATE.....	6
20	1. The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm’s Length 21 Negotiations Between The Parties.	7
22	2. The Parties Conducted Sufficient Investigation And Discovery To Allow Counsel 23 And The Court To Act Intelligently.....	8
24	3. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further 25 Litigation.....	9
26	4. Each PAGA Settlement Member Will Be Paid Based on the Potential Extent of His or 27 Her Injury Compared to Other PAGA Settlement Members.....	12
28	5. Counsel For Parties Are Experienced in Similar Litigation	13

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

6. The Proposed Attorneys’ Fees and Costs Are Fair, Adequate, and Reasonable and
Should Be Approved..... 13

7. The Proposed Settlement Administration Costs Are Fair and Reasonable and Should
Be Approved. 14

V. CONCLUSION..... 155

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Amey v. Cinemark USA Inc.</i> (N.D.Cal. May 13, 2015) 2015 WL 2251504	11
<i>Austin v. Foodliner, Inc.</i> (N.D.Cal. May 10, 2019) 2019 U.S. Dist. LEXIS 79638	14
<i>Bowers v. First Student, Inc.</i> (C.D.Cal. Apr. 23, 2015) 2015 WL 1862914	11
<i>Carrington v. Starbucks</i> (2018) 30 Cal.App.5th 504	10,11
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7
<i>Farm Raised Salmon Cases</i> (2008) 42 Cal.4th 1077	14
<i>Gutilla v. Aerotek, Inc.</i> (E.D.Cal. Mar. 21, 2017) 2017 U.S. Dist. LEXIS 41655	5, 7
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	5,6
<i>In re Executive Life Ins. Co.</i> (1995) 32 Cal.App.4th 344	6
<i>In re Synacor ERISA Litigation,</i> (9th Cir. 2008) 516 F.3d 1095	6
<i>Juarez v. Villafan</i> (E.D.Cal. Aug. 24, 2017) 2017 U.S. Dist. LEXIS 137205	5,7
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	13,14
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	13

1	<i>Litty v. Merrill Lynch & Co.</i>	
2	(C.D.Cal. Nov. 10, 2014) 2014 WL 5904904	11
3	<i>Lopez v. Mgmt. & Training Corp.</i>	
4	(S.D.Cal. Apr. 20, 2020) 2020 U.S. Dist. LEXIS 70029	13
5	<i>Moorer v. Noble L.A. Events, Inc.</i>	
6	(2019) 32 Cal.App.5th 736	6
7	<i>Neary v. Regents of University of California</i>	
8	(1992) 3 Cal.4th 273	6
9	<i>Officers for Justice v. Civil Service Com.</i>	
10	(9th Cir. 1982) 688 F.2d 615	5
11	<i>Ortiz v. CVS Caremark Corp.</i>	
12	(N.D.Cal. Mar. 18, 2014) 2014 WL 1117614	11
13	<i>Principe v. Ukropina (In re Pacific Enter. Sec. Litig.)</i>	
14	(9th Cir. 1995) 47 F.3d 373	14
15	<i>Ramirez v. Benito Valley Farms, LLC</i>	
16	(N.D.Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137272	5, 7
17	<i>Rincon v. West Coast Tomato Growers, LLC</i>	
18	(S.D.Cal. Feb. 12, 2018) 2018 U.S. Dist. LEXIS 22886	5, 7
19	<i>Salazar v. Sysco Cent. Cal., Inc.</i>	
20	(E.D.Cal. Feb. 2, 2017) 2017 U.S. Dist. LEXIS 14971	5
21	<i>Serrano v. Priest</i>	
22	(1977) 20 Cal.3d 25	13
23	<i>Smith v. H.F.D. No. 55, Inc.</i>	
24	(E.D.Cal. Apr. 19, 2018) 2018 U.S. Dist. LEXIS 67192	5, 7
25	<i>Stafford v. Dollar Tree Stores, Inc.</i>	
26	(E.D.Cal. Nov. 20, 2014) 2014 WL 6633396	11
27	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
28	(2012) 203 Cal.App.4th 1112	10
	<i>Wershba v. Apple Computer, Inc.</i>	
	(2001) 91 Cal.App.4th 224	13
	///	

1	<i>Wesson v. Staples the Office Superstore, LLC</i>	
2	(Cal.Ct. App. Sept. 9, 2021) 2021 Cal. App. LEXIS 743	11
3	<i>Western Heritage Ins. Co. v. Frances Todd, Inc.</i>	
4	(2019) 33 Cal.App.5th 976	14
5	<i>Williams v. MGM-Pathe Communs. Co.</i>	
6	(9th Cir. 1997) 129 F.3d 1026	14
7	Statutes	
8	Lab. Code, section 201.....	5
9	Lab. Code, section 202.....	5
10	Lab. Code, section 203	5
11	Lab. Code, section 204.....	5
12	Lab. Code, section 210	5
13	Lab. Code, section 226	1, 5, 9
14	Lab. Code, section 226.3	5
15	Lab. Code, section 226.7	1,5
16	Lab. Code, section 510.....	1,5
17	Lab. Code, section 512.....	1,5
18	Lab. Code, section 1174	2,5
19	Lab. Code, section 1194	1,5
20	Lab. Code, section 1197.....	1, 5
21	Lab. Code, section 1197.1.....	1
22	Lab. Code, section 1198.....	5
23	Lab. Code, section 2699	<i>passim</i>
24	Lab. Code, section 2699.3	1
25	Lab. Code, section 2802.....	2, 5

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

Rules

California Rules of Court, rule 8.1115 14

Other

IWC Wage Order No. 4-2001 5, 8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jeffrey Trejo (“Plaintiff” or “Trejo”) submits this memorandum of points and
4 authorities in support of his motion for approval of the Settlement Agreement and Release of
5 PAGA Claims (the “Agreement” or “PAGA Settlement”)¹ for the civil penalties claim he brought
6 against Defendant Stratolaunch, LLC (“Stratolaunch” or “Defendant”) under the Labor Code
7 Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiff brings
8 this motion because Labor Code section 2699(l) of the PAGA requires Court-approval of any
9 civil penalties sought as part of a proposed settlement agreement. Through this motion, Plaintiff
10 respectfully requests for this Court to approve the PAGA Settlement.

11 **II. FACTUAL AND PROCEDURAL BACKGROUND**

12 Stratolaunch designs, manufactures, and launches aerospace vehicles and technologies.
13 Plaintiff first started working for Stratolaunch in or around August of 2020 as a “Composite
14 Fabricator”. His employment ended on or around June 2021. At all times during his employment
15 with Defendant, Plaintiff was considered an hourly, non-exempt employee. HM, ¶ 5.

16 **A. Plaintiff’s PAGA Claim**

17 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the
18 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On
19 July 1, 2021, Plaintiff, on behalf of himself and Defendant’s other California non-exempt or
20 hourly paid employees (hereafter collectively the “PAGA Settlement Members”) gave written
21 notice by electronic service to the California Labor and Workforce Development Agency
22 (“LWDA”) and via certified mail to Defendant of his claims against Stratolaunch. In his notice
23 to the LWDA, Plaintiff asserted on behalf of himself and the PAGA Settlement Members that
24 Defendant (1) failed to pay for all hours worked, including but not limited to, minimum wages
25 and overtime (California Labor Code sections 510, 1194, 1197, 1197.1); (2) failed to provide all
26 required timely and duty-free meal and rest periods (California Labor Code sections 226.7 and

27
28 ¹ The PAGA Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of Harout Messrelian
 (“HM”), which is submitted herewith under a separate cover.

512); (3) failed to pay wages owed every pay period (California Labor Code section 204); (4) failed to provide accurate, itemized wage statements (California Labor Code section 226a); (5) failed to pay all wages owed at the end of employment (California Labor section 203); (6) failed to maintain accurate records (California Labor Code section 1174d); and (7) failed to reimburse business expenses (California Labor Code sections 2800 and 2802). HM, ¶ 6, Ex. 3.

B. Mediation With Henry Bongiovi, Esq.

Prior to Plaintiff commencing a civil action against Defendant, the parties met and conferred and agreed that it may be in their mutual interests to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation. HM, ¶ 7.

On March 17, 2022, the parties attended a full day mediation session with Henry Bongiovi, Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor Code § 2698, *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendant produced Plaintiff's personnel file, including time and payroll data. Moreover, prior to the mediation, Defense counsel provided Plaintiff's counsel with information and documents relating to other PAGA Settlement Members, including time and payroll data through data sampling. Through extensive arm's length negotiations at the mediation and only after discovery and investigation were performed, the Parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval. HM, ¶ 8.

C. Plaintiff's Lawsuit

Upon reaching a settlement, Plaintiff filed his lawsuit in this Court on June 6, 2022 with a single representative claim for civil penalties under the PAGA (California Labor Code § 2698, *et seq.*) against Defendant so that Plaintiff may pursue the present motion for approval of the Parties' Agreement. HM, ¶ 12, Ex. 4.

Defendant denies any liability or wrongdoing of any kind whatsoever associated with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit. HM, ¶ 13.

1 **III. OVERVIEW OF SETTLEMENT**

2 **A. "PAGA Settlement Members" Definition**

3 The PAGA Settlement Members are all current and former non-exempt or hourly-paid
4 employees who worked for Defendant Stratolaunch, LLC at any of its California locations at any
5 time during the PAGA Release Period. Agreement, ¶ 11. The PAGA Release Period means the
6 period of time from July 1, 2020 through March 17, 2022. Agreement, ¶ 10.

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

8 Defendant has agreed to pay a total of \$50,000.00 ("Gross Settlement Amount" or "GSA")
9 to settle the PAGA lawsuit, from which all settlement payments for the Net Settlement Amount,
10 the LWDA payment, Court approved attorneys' fees and costs, and Settlement Administration
11 Costs shall be paid. Each PAGA Settlement Member will receive a portion of the civil penalties
12 on a pro-rata basis calculated based on the total number of pay periods each PAGA Settlement
13 Member worked as a non-exempt hourly employee in California during the PAGA Release
14 Period. Agreement, ¶ 21. The GSA will be divided as follows:

- 15 1. Attorneys' fees amounting to \$16,650.00 (33.3% of the GSA), and
16 Litigation Costs of \$7,526.81 (the Agreement provides up to \$8,000);
- 17 2. "Settlement Administration Costs" of \$3,250.00 to Phoenix Class Action
18 Administration Solutions ("Phoenix" or "Settlement Administrator") to
administer the Settlement;
- 19 3. Approximately \$22,573.19 ("Net Settlement Fund"), divided as follows:
20 a. \$16,929.89 to the LWDA (75%); and
21 b. \$5,643.30 to the PAGA Settlement Members (25%)

22 Agreement, ¶ 18.

23 **C. Funding and Distribution of the Settlement**

24 No later than ten (10) days following the date on which the Court issues an order
25 approving the Settlement of the PAGA Action, Defendant shall provide the Settlement
26 Administrator with a list of the names and addresses of all of the PAGA Settlement Members.
27 Agreement, ¶ 20.

28 No later than fourteen (14) days following the date on which the Court issues an order

1 approving the Settlement of the PAGA Action, Defendant shall deposit the Gross Settlement
2 Amount with the Settlement Administrator. Agreement, ¶ 23.

3 Within seven (7) days after the Gross Settlement Amount is funded, the Settlement
4 Administrator shall: pay to the LWDA an amount equivalent to seventy-five percent (75%) of
5 the Net Settlement Amount; distribute to PAGA Settlement Members their individual portion of
6 the Net Settlement Amount (the “Individual Payment”); distribute to Plaintiff’s Counsel their
7 Court-approved attorneys’ fees and costs; and deduct an amount equivalent to the Administrative
8 Fees. Agreement, ¶¶ 25-28.

9 The Settlement Administrator will send the Individual Payment to the PAGA Settlement
10 Members by postmarked First Class U.S. Mail, along with a letter explaining the settlement
11 (Exhibit 2 to HM Declaration). For any Individual Payment that is returned as undeliverable, the
12 Settlement Administrator shall use the best available technology accessible (e.g., skip tracing,
13 address verification, etc.) to locate the PAGA Settlement Member and re-mail the Individual
14 Payment. Agreement, ¶¶ 29-30.

15 **D. Individual PAGA Payments and Uncashed Checks**

16 The Individual Payments issued to PAGA Settlement Members will remain valid for one
17 hundred eighty (180) days. Any settlement checks remaining uncashed after one hundred eighty
18 (180) days will be distributed to Controller of the State of California to be held pursuant to the
19 Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that PAGA
20 Settlement Member. Agreement, ¶ 32. With regard to the individual PAGA payments to the
21 PAGA Settlement Members, the Settlement Administrator will prepare and issue IRS Form 1099s
22 to PAGA Settlement Members who received a payment. Agreement, ¶ 33.

23 **E. Release of Claims For the PAGA Settlement Members Limited To Those That**
24 **Could Reasonably Arise From the Facts Alleged In The Action.**

25 The PAGA Settlement will release Defendant, and all of its joint employers, staffing
26 agencies, subsidiary companies, affiliates, holding companies, predecessors, successors, partners,
27 limited partners, owners, past, present and future members of Defendant’s Board of Directors,
28 shareholders, insurers, legal representatives, assigns, former and current employees, independent
contractors, officers, directors, attorneys, agents, and related/affiliated entities, parent entities,
subsidiary entities, parties or other representatives of any kind. Agreement, ¶ 13.

1 The Released Claims include: any and all claims, whether known or unknown, to recover
2 civil penalties pursuant to PAGA for any alleged violations by Defendant of California Labor
3 Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,
4 1194, 1197, 1198, and 2802, and any category of violations identified in California Labor Code
5 section 2699.5 and the related applicable IWC Wage Order provision, for the PAGA Release
6 Period. Agreement, ¶ 12.

7 **IV. ARGUMENT**

8 **A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

9 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
10 Court necessarily has broad discretion in making the decision to approve or reject a settlement
11 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
12 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
13 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2).
14 Although the PAGA does not set forth the particular standards against which a PAGA settlement
15 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
16 for evaluating class action settlements. HM, ¶ 10; *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*,
17 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's
18 guidance, that approval of PAGA settlements may be had where the statutory requirements of
19 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and
20 adequate). The established standards for evaluating whether class action settlements are fair,
21 reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA
22 settlements and have been adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist.
23 LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (*citing Officers for Justice v. Civil Serv. Comm'n of City*
24 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms,*
25 *LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (*citing Hanlon v. Chrysler Corp.*,
26 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7,
27 n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal.
28 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal.
2018).

1 In making the determination whether a settlement taken as a whole is fair, reasonable,
2 and adequate, the Court should be careful to still give “proper deference to the private consensual
3 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
4 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
5 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
6 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors
7 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
8 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents*
9 *of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
10 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

11 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
12 **PAGA**

13 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
14 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
15 follows: 75 percent to the LWDA, and the remaining 25 percent to the PAGA Settlement
16 Members. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code,
17 § 2699(i). The parties’ Settlement so provides. HM, ¶ 11, Ex. 1. Second, the LWDA must be
18 given notice of the settlement so that it may be heard before the Court decides whether to grant
19 approval. Cal. Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently
20 with the filing of this motion. HM, ¶¶ 11, 35, Ex. 9. As a result, Plaintiff has met all procedural
21 statutory requirements for settling a PAGA action.

22 **C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE**
23 **IT IS FAIR, REASONABLE AND ADEQUATE**

24 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the
25 Court may consider several factors, including:
26 the strength of the Plaintiff’s case, the risk, expense, complexity and
27 likely duration of further litigation, the risk of maintaining class
28 action status through trial, the amount offered in settlement, the
extent of discovery completed and the stage of the proceedings, and
the experience and views of counsel.

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

9 The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The
10 parties reached the Settlement through arm’s-length bargaining with the aid of a respected
11 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
12 the Court to act intelligently. Plaintiff requested and Defendant provided the number PAGA
13 Settlement Members, the total number of pay periods during the PAGA Release Period, all
14 policies in effect during the PAGA Release Period, and a significant sampling of time records;
15 and (3) Counsel for the Parties are experienced with PAGA cases. HM, ¶ 14. Moreover, neither
16 Plaintiff nor Plaintiff’s Counsel have any conflicts of interest with the absent PAGA Settlement
17 Members and there are no issues of ascertainability. HM, ¶ 14. For the reasons discussed below,
18 this Court should approve the PAGA Settlement.

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

21 The PAGA Settlement was reached only after litigation and arms’ length negotiations
22 between experienced attorneys, which included a full day mediation with Henry Bongiovi, Esq.
23 At all times, the negotiations were adversarial and contentious, although still professional in
24 nature. HM, ¶ 8.

25 Counsel for the Parties have further investigated the applicable law as applied to the facts
26 discovered regarding Plaintiff’s claims, the defenses thereto, and the Labor Code violations
27 claimed by Plaintiff. Plaintiff’s counsel is experienced in prosecuting PAGA lawsuits. Counsel
28 for the Defendant are experienced in defending PAGA cases. Based on the parties’ own
independent investigations and evaluations, the parties and their respective counsel are of the

1 opinion that the Settlement for the consideration and on the terms set forth in the Agreement is
2 fair, reasonable and adequate and is in the best interests of Plaintiff, the PAGA Settlement
3 Members, the State, and Defendant in light of all known facts and circumstances and the risks
4 inherent in litigation, especially in this post pandemic era, where businesses are struggling to
5 remain afloat, much less prosper and make a large profit. HM, ¶ 9.

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

8 Plaintiff considered various sources of information in the lead-up to and during the
9 mediation of March 17, 2022 that enabled him to achieve the PAGA Settlement at issue. HM, ¶
10 15. Among other things, Plaintiff considered the following:

- 11 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 12 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
13 overtime and double-time wages, expense reimbursement, meal periods, rest breaks,
14 meal period waivers and agreements, compensation plans, and complaints about working
15 conditions in effect during the relevant time period beginning in July of 2020. Defendant
16 produced those policies as part of their employee handbook. They are largely consistent
17 with the Wage Order (No. 4) and the Labor Code.
- 18 • Plaintiff's counsel requested that Defendant provide the total number of employees,
19 paychecks, and the pay cycles during the relevant period. Defendant provided the
20 answers to each of these questions.
- 21 • Plaintiff's counsel requested sample of time and payroll records for the relevant time
22 period. Defendant provided a sampling of time and pay records for 24 of its employees.
23 This represents approximately 17% of the total employees that Defendant employed
24 during the PAGA Release Period based on data available at the time of mediation.
- 25 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
26 the records and determine the meal period violation rates, if there was any pay
27 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
28 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.
- Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal/ rest break violations, overtime/alternative work week schedules, and business expense reimbursement, especially as it relates to "manageability" arguments brought up by the defense.

HM, ¶ 15.

1 **3. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further**
2 **Litigation**

3 Before mediation, Defendant disclosed that for the period of July 1, 2020 to March 17,
4 2022, there were approximately 145 PAGA Settlement Members and 3,238 pay periods. HM, ¶
5 16.

6 Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a maximum
7 potential exposure of approximately \$126,750 for civil penalties for what Plaintiff contends are
8 Plaintiff's strongest disputed claims for unprovided meal and rest periods. Plaintiff's analysis,
9 which Defendant vehemently denies, revealed a 26.1% violation rate for either short, late, or no
10 meal periods for shifts that were over 5 hours long. With a 26.1% violation rate, the maximum
11 civil penalties for meal period violations would be approximately \$42,250 [845 pay periods
12 (26.1% of 3,238 total pay periods) x \$50 penalty]. As far as the claim for rest breaks, since
13 Defendant did not keep track of rest periods, Plaintiff extrapolated the same 26.1% meal period
14 violation rate and attributed that to rest periods. As such, with a 26.1% violation rate, the
15 maximum civil penalties for rest break violations would be approximately \$84,500 [845 pay
16 periods x \$100 penalty]. HM, ¶ 17.

17 Furthermore, Plaintiff's counsel is unaware of any California State court decision
18 awarding a plaintiff and the other aggrieved employees he represents multiple civil penalties for
19 the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff
20 faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code
21 statutes. Furthermore, judges have awarded extremely small sums to PAGA claimants in the past.
22 In addition, Defendant would make an argument that at the time of mediation in March of 2022,
23 under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal App5th 444 (Cal. App. 2d Dist., Sept.
24 26, 2019) and other similar cases, that meal period or rest period violations are not a predicate for
25 civil penalties for improper wage statements and untimely final wages under Labor Code Sections
26 201-203, 226, 223.6, and 2699. HM, ¶ 18.

27 There are risks to Plaintiff's meal and rest break claims. Defendant provided evidence that
28 it provides employees with the opportunity to take meal and rest breaks and that it had valid
 second meal break waivers in place. Stratolaunch's Employee Handbook contains legally

1 compliant meal period and rest break policies. HM, ¶ 19. Additionally, unlike meal periods, where
2 there are often records showing whether an employee clocked out or not, there is no such evidence
3 to prove a missed rest period or that the employer refused to authorize and permit one. *Id.*

4 There are risks to Plaintiff's claim for overtime wages. Prior to mediation, Defendant
5 provided evidence that all its non-exempt employees worked pursuant to a 9/80 Alternative
6 Workweek Schedule. HM, ¶ 20.

7 There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that
8 Defendant did not reimburse him or the other PAGA Settlement Members for use of their own
9 personal cell phones and their own tools. Defendant provided evidence at mediation that
10 Stratolaunch paid the PAGA Settlement Members two times the minimum wage, and as such, the
11 PAGA Settlement Members did not need to be reimbursed for their tools expenses. As far as use
12 of personal cell phones, there is the risk that the Court may consider Plaintiff's claims as to
13 Defendant's alleged failure to indemnify for business expenses to be individual in nature. HM, ¶
14 21.

15 Additionally, PAGA states a court has discretion to award a lesser amount than the
16 maximum penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the
17 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
18 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
19 oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012)
20 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
21 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
22 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
23 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
24 discounted award of only \$5 per violation because it was within the Court's discretion to
25 significantly reduce PAGA penalties even when there is a finding that a violation of the
26 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
27 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
28 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated

1 that this reduction was warranted because imposing the maximum penalty would be “unjust,
2 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
3 obligations and because the Court found the violations were minimal. Applying the same formula
4 here and assuming there was one violation during each pay period, the award of civil penalties
5 could not exceed \$16,190.00 in PAGA penalties (3,238 violations x \$5). As such, this Settlement
6 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
7 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
8 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
9 Amount is uncertain. HM, ¶ 22.

10 Moreover, Defendant could also convince the Court to dismiss the claims due to
11 unmanageability. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because
12 it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). The Ortiz court cited the
13 “multitude of individualized assessments” that case would have required in ordering dismissal.
14 *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, as here,
15 there are a large number of allegedly aggrieved individuals whose claims require individual
16 assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D. Cal. 2014);
17 *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also Stafford v.*
18 *Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating trial of
19 plaintiff’s claim from representative claims: “in light of the number of potential aggrieved
20 employees, judicial economy favors deferring the representative portion of the PAGA claim”);
21 *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). HM, ¶ 23.

22 Furthermore, on September 9, 2021, the California Court of Appeal issued a significant
23 decision in *Wesson v. Staples the Office Superstore, LLC*, No. B302988, 2021 Cal. App. LEXIS
24 743 (Ct. App. Sep. 9, 2021) (“*Wesson*”), holding that courts have authority to ensure that PAGA
25 claims are manageable, and that courts may limit or strike unmanageable PAGA claims.² HM,
26 ¶ 23.

27 ² The *Wesson* decision marks the first time an appellate court has weighed in on whether PAGA claims
28 must be manageable.

1 The Parties further recognize that the issues presented in the PAGA Action are likely only
2 to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation
3 will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
4 maximum potential benefits to the PAGA Settlement Members and Plaintiff from continued
5 litigation, especially in the pandemic era where further and extensive litigation may cause
6 businesses to shut down, resulting in no monetary compensation to Plaintiff, Plaintiff's attorneys,
7 other PAGA Settlement Members, and the State of California. HM, ¶ 24.

8 The settlement of the representative PAGA claim involves monetary relief to all PAGA
9 Settlement Members, Plaintiff, his attorneys, and the State of California. The Settlement is
10 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
11 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
12 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
13 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees
14 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
15 civil penalties can pursue any damages they believe they are owed by the Defendant. The
16 Settlement does not require them to opt out to do so. HM, ¶ 25.

17 As such, the settlement of PAGA penalties in the gross sum of \$50,000.00, of which 75%
18 of the net amount after attorney's fees, litigation costs, and settlement administration costs
19 (\$16,929.89) will be paid to the LWDA and 25% (\$5,643.30) will be distributed to the PAGA
20 Settlement Members, is reasonable and appropriate under the circumstances. HM, ¶ 26.

21 **4. Each PAGA Settlement Member Will Be Paid Based on the Potential Extent of**
22 **His or Her Injury Compared to Other PAGA Settlement Members**

23 Each PAGA Settlement Member will receive a portion of the civil penalties on a pro-rata
24 basis depending on the number of pay periods Defendant employed them for during the PAGA
25 Release Period. Agreement, ¶ 21; HM, ¶ 27. With a total of 145 PAGA Settlement Members, the
26 average estimated individual PAGA payment for each Aggrieved Employee is approximately
27 \$38.92 (\$5,643.30 (25% of the estimated Net Settlement of \$22,573.19)/145 PAGA Settlement
28 Members). This is a great result given the uncertainties this lawsuit entails. HM, ¶ 27.

///

1 **5. Counsel for the Parties Are Experienced in Similar Litigation**

2 Plaintiff's counsel has considerable experience in wage and hour litigation and is
3 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with
4 litigation, and viability of possible affirmative defenses. Similarly, Defendant's counsel,
5 Chandra Beaton from LightGabler, has vast experience in handling employment matters and
6 wage and hour litigation. See HM, ¶¶ 2, 31-32, Ex. 6.

7 **6. The Proposed Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable**
8 **and Should Be Approved.**

9 Of the \$50,000.00 allocated towards the GSA, Plaintiff's counsel requests \$16,650.00
10 (33.3% of the GSA) in attorney's fees and \$7,526.81 in litigation expenses, which is fair and
11 reasonable under the common fund theory. HM, ¶ 28.

12 It is an accepted practice in wage and hour class action settlements to award attorneys'
13 fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the
14 parties. California courts have long recognized that an appropriate method for awarding attorneys'
15 fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20
16 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an
17 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
18 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba*
19 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*
20 (2000) 82 Cal.App.4th 19, 26-30.) HM, ¶ 28.

21 Indeed, the California Supreme Court has also now held that the award of attorneys' fees
22 in common fund wage and hour class action settlements should start with the percentage method.
23 See *Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal. 5th 480, 505 ("*Laffitte*") ("We join the
24 overwhelming majority of federal and state courts in holding that when class action litigation
25 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
26 powers awards class counsel a fee out of that fund, the court may determine the amount of a
27 reasonable fee by choosing an appropriate percentage of the fund created"). As other courts have
28 acknowledged since *Laffitte*, "California courts routinely award attorneys' fees of one-third of
the common fund." *Lopez v. Mgmt. & Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez*

1 court explained that it need not “engage in a full-blown lodestar analysis when the primary basis
2 remains the percentage method...” The lodestar calculation is merely a “useful perspective on the
3 reasonableness of a given percentage award.” *Id. See also Austin v. Foodliner, Inc.*, 2019 U.S.
4 Dist. LEXIS 79638 (“Trial courts ‘also retain the discretion to forgo a lodestar cross-check and
5 use other means to evaluate the reasonableness of a requested percentage fee.’”³ *Id.* (citing
6 *Laffitte*)).

7 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
8 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
9 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
10 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
11 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
12 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
13 settlements. The award of attorneys’ fees sought is also justified by the contingency nature of the
14 attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in
15 payment and cost reimbursement, and the great results Plaintiff’s Counsel has achieved for the
16 PAGA Settlement Members. HM, ¶ 29.

17 In addition, Plaintiff’s Counsel incurred substantial costs, \$7,526.81 to date, including the
18 costs of a mediator, to aid in the representation of the PAGA Settlement Members. HM, ¶ 30, Ex.
19 5. As the evidence submitted herewith shows, all of these costs are documented and reasonably
20 incurred. *Id.* Accordingly, they warrant the Court’s approval.

21 **7. The Proposed Settlement Administration Costs Are Fair and Reasonable and**
22 **Should Be Approved.**

23 With regard to the settlement administration costs provision, it is reasonable. Before
24 agreeing to Phoenix Class Action Administration Solutions, the Parties sought and reviewed bids
25 from another reputable third-party administrator which provided a higher bid. HM, ¶ 33, Exs. 7-
26

27 ³ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to
28 unpublished decisions from the lower federal courts. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn.
18 [“Citing unpublished federal opinions does not violate our rules.”]). Like published decisions of the lower federal
courts, unpublished decisions are not binding on us even on questions of federal law, but they are persuasive
authority. (*Western Heritage Ins. Co. v. Frances Todd, Inc.* (2019) 33 Cal.App.5th 976, 989, fn. 6.)

1 8. Thus, the settlement administration costs provision should be given approval.

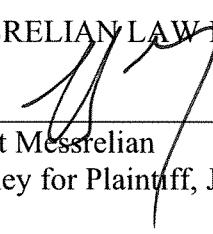
2 **V. CONCLUSION**

3 For the reasons stated above, this Court should grant the Plaintiff' Motion in its entirety
4 and adopt the proposed order submitted concurrently herewith.

5 Respectfully submitted,

MESSRELIAN LAW INC.

7 Dated: October 4, 2022

8 By: 
9 Harout Messrelian
10 Attorney for Plaintiff, Jeffrey Trejo