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on behalf of herself and others aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ELIA DEYANIRA ALANIS, on behalf of herself and other aggrieved employees, Plaintiff, vs. SIMPLEHUMAN LLC; and DOES 1 to 100, inclusive, Defendants.	Case No.: 21STCV42954 *[Assigned for All Purposes to: Hon. Steven J. Kleifield, Dept. 57]* **DECLARATION OF MELISSA A. HUETHER IN SUPPORT OF JOINT STIPULATION REQUESTING APPROVAL OF SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)**

DECLARATION OF MELISSA A. HUETHER

I, Melissa A. Huether, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am an attorney at Lavi & Ebrahimian, LLP and am co-counsel for Plaintiff Elia Deyanira Alanis (“Plaintiff”), aggrieved employees, and the State of California as private attorney general. Based on my assignment to this case and familiarity with the file in this matter; I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto. I am a member in good standing of all State and Federal District Courts of California. I am submitting this declaration in support of the Parties’ Joint Stipulation Requesting Approval of Settlement Pursuant to the Private Attorneys General Act of 2004 (“PAGA”).

EXPERIENCE OF COUNSEL

2. The attorneys at our office are experienced and qualified to evaluate the PAGA claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses.

3. I, and the law firm of Lavi & Ebrahimian, LLP, have almost exclusively practiced in the area of labor and employment law.

4. I graduated from Loyola Law School, Los Angeles in 2017. I have been in practice with the law firm of Lavi & Ebrahimian, LLP since April 2021, focusing almost exclusively in the area of employment law and specifically wage and hour class actions. Prior to joining Lavi & Ebrahimian, I litigated exclusively wage and hour class and PAGA actions on behalf of employees throughout California. I have been involved in numerous cases in all aspects from pre-filing through settlement, including California and Federal class actions, PAGA representative actions, and collective actions. I was also recently named a Southern California Super Lawyer Rising Star for 2022.

5. I am also familiar with the practice the partner assigned to this case, Mr. Joseph Lavi. Mr. Lavi graduated from law school in 2000 and has been practicing ever since. Mr. Lavi and I have handled numerous cases in all aspects of employment and labor law, including state and federal class actions, wrongful termination, discrimination, harassment, and retaliation cases. Mr. Lavi and I have tried labor and employment cases in California state and federal courts. Additionally, Mr. Lavi has argued before various Court of Appeals, on employment issues such as validity of Arbitration Agreements, Application of Res Judicata in class action cases as well as other employment issues. Mr. Lavi has also been a panelist and/or speaker for various Employment Law Continuing Legal Education Panels on issues of employment law trials, how to proceed and conduct trials as well as proving and winning punitive damages. Mr. Lavi has been named a Southern California Super Lawyer in the area of Plaintiff's employment litigation-class action from 2011-2021. Mr. Lavi and I have settled numerous wage and hour class actions and we are currently Plaintiff's counsel in numerous others. Some of the class actions that Mr. Lavi has handled against

employers on wage and hour issues and have been approved as class counsel consisted of Kaiser Permanente which settled for $6,510,000.00; Hustler Casino which settled for $980,000.00; Chevron Stations Inc., which settled for $4,500,000.00; Commerce Casino which settled for $1,575,000.00; BP West Cost Products, which settled for $4,000,000.00; Kaiser Permanente which settled for $3,600,000.00, Fuddruckers (as lead counsel) which settled for $900,000.00; Movado Retail Group, Inc. (as lead counsel) which settled for $728,000.00, Chuck-E-Cheese's (as lead counsel) which settled for $1,900,000.00; Aero-Electric Connector, Inc. (as lead counsel) which settled for $1,500,000.00; Clougherty Packing, LLC (as lead counsel) which settled for $4,250,000.00; and Gruma Corporation (as lead counsel) which Defendant's petition to the United States Supreme Court in the matter was denied and the matter settled for $2,300,000.00. There are numerous other class actions that Mr. Lavi and I have settled as well as pending ones. We have been approved as class counsel by both federal and state Courts. Mr. Lavi, myself, and the other attorneys at Lavi & Ebrahimian who are available to assist us in this case if needed are fully capable of adequately and fairly representing Plaintiff and the proposed class in this matter. Lavi & Ebrahimian, LLP, has been appointed Class Counsel in over fifty contested proceedings including the following:

a. *Ischak v. Kaiser Foundation Hospitals, Inc.*, Los Angeles Superior Court Case No. BC343535;

b. *Santana v. El Pollo Loco, Inc.*, Los Angeles Superior Court Case No. BC369846;

c. *Edlin, et al. v. Fuddruckers, Inc.*, United States District Court, Central District of California, Case No. CV-07-3678-ABC;

d. *Chavez, et al. vs. CEC Entertainment, Inc. d/b/a Chukee-Cheeses*, Los Angeles Superior Court Case No. BC380996;

e. *Bustamante, et al. v. Teamone Employment Specialists*, Los Angeles Superior Court Case No. BC383266;

f. *Cervantes, et al. v. Kaiser Foundation Hospitals, Inc.*, Alameda Superior Court Case No. RG 0265835;

g. *Seng Savang v. Club One Casino*; Fresno Superior Court Case No. 05CECG02189;

h. *Norman, et al. v. Movado Retail Group, Inc.*, United States District Court, Central District of California, Case No. CV08-06691 SVW (PLA)

i. *Shand v. G.A.L.A., Inc. dba Giorgio Armani*, Los Angeles Superior Court Case No. BC342588;

g. *Solis v. Plycraft Industries, Inc.*, Los Angeles Superior Court Case No. BC374816;

h. *Campos v. HWB Carwash, Inc.*, Los Angeles Superior Court Case No. BC378990;

i. *Acosta, et al. v. Texwood Industries*, United States District Court, Central District of California, Case No. CV07-3237-DDP (PLAX);

h. *Arevalo v. Gruma Corporation*, Los Angeles Superior Court Case No. BC410322;

j. *Burrola v. American Promotional Events*, Los Angeles Superior Court Case No. BC412315;

k. *Cortez v. Trader Distribution Services*, Los Angeles Superior Court Case No. BC397208;

l. *Cueva v. Allied Industries, Inc.*, Los Angeles Superior Court Case No. BC399431;

m. *Del Toro v. Petco Animal Supplies, Inc.*, San Diego Superior Court Case No. 37-2009-00103626-CU-OE-CTL;

n. *Garcia v. Home Cooking, Inc.*, Los Angeles Superior Court Case No. BC451148;

o. *Alcantar v. Amerimax Building Products, Inc.*, United States District Court, Central District of California, Case No. CV 10-8916 DDP (CWx);

p. *Arancivias v. Clougherty Packaging, LLC dba Farmer John*, Los Angeles Superior Court Case No. BC432406;

q. *Barajas v. Menzies Aviation, Inc.*, United States District Court, Central District of California, Case No CV-10-02315-JEM;

r. *Barrera v. BHFC Operating, LLC dba Bottega Louie*, Los Angeles Superior Court Case No. BC462603;

s. *Camacho v. American Textile Maintenance Co.*, Los Angeles Superior Court Case No. BC452570;

t. *Cortes v. Monsanto Company*, Ventura Superior Court Case No. 56-2010-00366952-CU-OE-VTA;

u. *Escobar v. Aero-Electric Connector, Inc.*, Los Angeles Superior Court Case No. BC421009;

v. *Gomez v. Bacara Resort & Spa*, Santa Barbara Superior Court Case No. 1341987;

w. *Gonzalez v. Ashley Furniture Industries, Inc.*, Los Angeles Superior Court Case No. BC425708

x. *Gonzalez v. Burrtec Waste Industries, Inc.*, Los Angeles Superior Court Case No. BC436879;

y. *Gutierrez v. Visterra Credit Union*, Riverside Superior Court Case No. RIC10020183;

z. *Hernandez v. Kruse & Son, Inc.*, Los Angeles Superior Court Case No. BC411849;

aa. *Lopez v. Tecno Industrial Engineering*, Los Angeles Superior Court Case No. BC411134;

bb. *Lowanga v. Continental Currency Services, Inc*., Orange County Superior Court Case No. 30-2011-0044011-CU-OE-CXC;

cc. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central District of California, Case No. CV 10-0415 ODW (FMOx)

dd. *Lozada v. Classic Party Rentals, Inc.*, Los Angeles Superior Court Case No. BC443792;

ee. *Madrid v. OPI Products, Inc.*, Los Angeles Superior Court Case No. BC451489;

ff. *Martinez v. J. Fletcher Creamer & Son, Inc.*, United States District Court Case No. CV 10-0968-PSG-FMOX;

gg. *Martinez v. Administaff Companies II, L.P.*, Los Angeles Superior Court Case No. BC425799;

hh. *Martinez v. Morgans Hotel Group Management, LLC*, Los Angeles Superior Court Case No. BC446744;

jj. *Sanchez v. La Brea Bakery, Inc.*, Los Angeles Superior Court Case No. BC456420;

ii. *Montenegro v. Ruggeri Marble and Granite, Inc.*, United States District Court, Central District of California, Case No. CV-10-00711 JFW (PLAx);

kk. *Reed v. 99 Cents Only Stores*, Los Angeles Superior Court Case No. BC436793;

ll. *Santos v. Noble Management Group-California, LLC*, United States District Court, Central District of California, Case No. CV 10-2594 DSF (VBKx)

mm. *Taylor v. U.S. Healthworks Holding Company, Inc.*, Orange County Superior Court Case No. 30-2011-00473505;

nn. *Valencia Diaz v. Gene Wheeler Farms, Inc.*, Los Angeles Superior Court Case No. BC436235;

oo. *Zad-Behtooie v. Valley Village*, Los Angeles Superior Court Case No. BC451490;

pp. *Bell v. Aidells Sausage Company, Inc.*, Alameda Superior Court Case No. RG10523946;

qq. *Negrete v. Cenveo, Inc.*, United States District Court, Central District of California, Case No. CV 11-09543 DSF (MRWx);

rr. *Bejar v. Exopack-Ontario, Inc.*, Orange County Superior Court Case No. 30-2011-00518396-CU-OE-CXC;

ss. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central District of California, Case No. CV 10-0415 ODW (FMOx);

tt. *Sparks v. Larry Flynt dba Hustler Casino*, Los Angeles Superior Court Case No. BC320172;

uu. *Morris v. Chevron Stations, Inc.*, Los Angeles Superior Court Case No. BC361380;

vv. *Marino v. BP West Coast Products, LLC*, Los Angeles Superior Court Case No. BC357987.

6. The attorneys at our law firm and I have performed substantial work and diligently investigated and prosecuted this case to a successful conclusion. Plaintiff's Counsel believes this settlement to be fair, reasonable, and adequate.

7. Based upon my experience and after factoring in the risks explained below, I believe that the proposed settlement is fair and reasonable. As such and for the reasons set forth below, I believe that the Parties' proposed PAGA Settlement should be approved.

PROCEDURAL AND FACTUAL HISTORY

8. On September 17, 2021, Plaintiff submitted a letter to the California Labor and Workforce Development Agency ("LWDA") to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA") of Plaintiff's intent to seek civil penalties under PAGA for violations of the Labor Code.

9. On November 22, 2021, Plaintiff filed a representative PAGA action complaint alleging a single claim pursuant to PAGA for the following claims against Defendants: (1) failure to pay wages for all hours worked at the legal minimum wage; (2) failure to pay wages for all overtime hours worked at the overtime rate of pay; (3) failure to pay wages to hourly non-exempt employees to compensate them for workdays Defendants failed to provide legally required and compliant meal periods; (4) failure to pay wages to hourly non-exempt employees to compensate them for workdays Defendants failed to provide legally required and compliant rest periods; (5) failure to indemnify for losses and expenditures incurred as part of employment; (6) failure to timely pay earned wages during employment; (7) failure to provide complete and accurate wage statements; and(8) failure to pay all wages due and owing upon separation of employment ("the Action").

10. Thereafter, the Parties agreed to attend a private mediation session with well-respected mediator Steve Rottman, Esq., who is experienced in wage and hour class and PAGA representative actions.

11. In advance of the mediation, the Parties agreed to engage in informal discovery. The Parties subsequently exchanged informal discovery, including: a data sampling consisting of the complete timekeeping and payroll records for approximately 35 persons employed by Simplehuman in California and classified as a non-exempt, hourly employee, who worked at least one pay period for Simplehuman at any time during the PAGA Period (the "Aggrieved Employee"); information and documentation concerning the claims set forth in the Action, such as the pertinent employee handbook; the number of Aggrieved Employees and the number of current versus former employees; and the total pay periods worked by the Aggrieved Employees from September 17, 2020 through mediation.

12. On July 25, 2022, the Parties attended an all-day mediation with experienced wage-and-hour mediator Steve Rottman. A settlement was reached and a Memorandum of Understanding was executed.

13. Thereafter, the Parties negotiated and finalized the terms of a settlement memorialized in a long-form PAGA Settlement Agreement. A true and correct copy of the fully executed Settlement Agreement is attached hereto as **Exhibit 1**.

REASONABLENESS OF THE SETTLEMENT

14. In evaluating the reasonableness of the Settlement in this case and our office thoroughly evaluated the merits of this case and considered the nature and purpose of PAGA as well as comparable PAGA settlements reached by our firm, and those obtained by other firms.

15. Here, the penalties are appropriate in light of the underlying principles of PAGA, i.e., "to ensure that settlements involving penalties arising out of Labor Code Section 2699 do not undercut the dual statutory purposes of punishment or deterrence, or result in unjust, arbitrary, and oppressive, or confiscatory settlements." (See July 29, 2004 Letter by Senator Dunn to the President Pro Tem of the Senate Re SB 1809). The non-reversionary Settlement Amount of $675,000.00 represents an excellent recovery that is large enough to punish or deter Defendants. The proposed Settlement provides a fair and reasonable monetary recovery for the LWDA, should the Court so elect, the PAGA Group Members in the face of hotly disputed claims.

16. Based on the informal discovery produced by Defendants, during the period from September 17, 2020 to July 25, 2022, Defendants employed approximately 114 aggrieved employees over the course of approximately 2,952 pay periods. Based on the data, the **maximum** exposure for the PAGA claims amounted to approximately $2,664,800, assuming a violation could **be proven every pay period**. This amount was calculated based on the PAGA penalty calculation formula - (Initial violation penalty x total number of employees in the one-year PAGA period) + (subsequent violation penalty x [total number of pay periods in the one-year period – total number of employees in the one-year PAGA period]) as follows:

a. Off-the-Clock Work (Minimum Wage and Overtime Wages)

17. Plaintiff alleged that Defendant failed to compensate employees for all hours worked due to policies, practices, and/or procedures which included, but were not limited to: (1) requiring Plaintiff and other aggrieved employees to create and set up a profile on Defendants' "Paylocity"

application without being paid for the time spent setting up their profiles; (2) requiring Plaintiff and other aggrieved employees to arrive prior to the start of their shift and line up to wait to undergo and undergo off-the-clock COVID-19 temperature checks and/or medical questionnaires prior to being permitted to clock in for the start of their shift; and (3) requiring Plaintiff and other aggrieved employees to line up, stand in line, and wait to clock in using a retina scanner, which took three to five minutes each clock in.

18. The maximum penalty for the aggrieved employees for minimum wage violations is as follows: (114 employees X $100 initial violations = $11,400) + (2,952 pay periods – 114 employees = 2,838 pay periods X $100 subsequent violations = $283,800) = **$295,200**. [Penalty Amounts set by Lab. Code, § 1197.1, subds. (a)(1)-(2).)].

19. The maximum penalty for the aggrieved employees for overtime wage violations is as follows: (114 employees X $100 initial violations = $11,400) + (2,952 pay periods – 114 employees = 2,838 pay periods X $250 subsequent violations = $709,500) = **$720,900**. [Penalty Amounts set by Lab. Code, § 558, subds. (a)(1)-(2)].

b. Meal Break Violations

20. Plaintiff alleged that Defendant failed to properly provide Plaintiff and other aggrieved employees with 30-minute second meal periods during shifts that were longer than 10 hours.

21. The maximum penalty for the aggrieved employees is as follows: (114 employees X $100 initial violations = $11,400) + (2,952 pay periods – 114 employees = 2,838 pay periods X $100 subsequent violations = $283,800) = **$295,200**. [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2)].

c. Rest Break Violations

22. Plaintiff alleged that Defendant failed to provide a third rest period when he and other aggrieved employees worked shifts exceeding ten (10) hours.

23. The maximum penalty for the aggrieved employees is as follows: (114 employees X $100 initial violations = $11,400) + (2,952 pay periods – 114 employees = 2,838 pay periods X

$100 subsequent violations = $283,800) = **<u>$295,200</u>**. [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).].

a. <u>Indemnification</u>:

24. Plaintiff alleged that she and other aggrieved employees were required to use their personal cell phones to download and use an application called "Paylocity" to clock in and clock out from their shifts.

25. The maximum penalty for the aggrieved employees is as follows: 114 employees X $100 initial violations = $11,400) + (2,952 pay periods – 114 employees = 2,838 pay periods X $100 subsequent violations = $283,800) = **<u>$295,200</u>.** [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).].

26. <u>Wage Statements</u>: 2,952 pay periods X $250 = **<u>$738,000</u>**. [Penalty Amounts set by Lab. Code, § 226.3.]

27. <u>Waiting Time Penalties</u>: 51 former employees X $100 initial violations = **<u>$5,100</u>** [Penalty Amounts set by Lab. Code, § 2699, subd. (f)(2).]

28. Defendants, however, presented compelling arguments in defense of Plaintiff's claims for civil penalties pursuant to PAGA. Defendants' defenses to Plaintiff's claims were as follows:

29. With regard to Plaintiff's minimum wage and overtime wage claims, Defendant would likely contend that it properly paid wages for all hours worked and any unpaid work was undertaken without the consent or permission of Defendant. Defendants would also likely argue that any time spent waiting to clock in or clock out and time spent undergoing COVID-19 related health screenings was de minimis and therefore did not need to be paid. With regard to Plaintiff's meal period claim, Defendant would likely argue that its meal period policies during the relevant time period were legally complaint, and that any violation of California meal break law was at the volition of the aggrieved employees and not the result of an unlawful policy of Defendant. Further, Defendant would likely argue that the majority of shifts did not qualify for a second meal period and therefore most shifts did not have a violation. With respect to Plaintiff's rest period claim,

Defendant would likely contende that there is no evidence that employees suffered from non-compliant rest periods and that to the extent employee took rest periods that were on-premises, late, short, or missed altogether, they did so voluntarily and without Defendant's knowledge. With regard to Plaintiff's reimbursement claim Defendant would likely argue that it stopped requiring employees to use the application to clock in September 2021 and which is the start of the PAGA period and thus there is little to no liability. Regarding Plaintiff's wage statement and waiting time claims, because they were wholly derivative of the Plaintiff's primary claims, as explained above, they would fail for the same reasons.

30. Defendant would further argued that a significant factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and subject to potentially significant reduction by the Court. Defendant maintains that given their good faith attempts to comply with the Labor Code, and *de minimis* defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id*. *See als*o, Labor Code §§ 203, 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties for wage statement violations from $2,800,000 to $500,000, because "the aggrieved employees suffered no injury" as a result of the violations, the defendants "were not aware" their wage statements violated the law, and the defendants "took prompt steps to correct all violations once notified."); *Fleming v. Covidien, Inc*. (C.D. Cal. Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000).

31. Importantly, Defendant would argue, PAGA does not permit an unmanageable trial. As the California Supreme Court has explained, the requirement for manageability of individualized issues at trial is rooted in due process concerns. *Duran v. U.S. Bank Nat'l Assn*. (2014) 59 Cal. 4th 1, 29, 35 (explaining manageability "principles derive from both class action rules and principles of due process" and noting manageability is not limited to class certification and that "the court's obligation to manage individual issues does not disappear"). The California Supreme Court acknowledged in *Williams v. Superior Court* (2017) 3 Cal. 5th 531, that trials of PAGA claims must

be manageable. *Williams*, 3 Cal. 5th at 559 (acknowledging manageability requirements generally apply in PAGA actions by explaining that "proof of a uniform policy is one way a plaintiff might seek to render trial of the action manageable"). *Accord Esparza v. Safeway, Inc*. (2019) 36 Cal. App. 5th 42, 50 (2019) (noting role trial plans have in addressing manageability of non-class, PAGA actions; explaining plaintiffs "filed a PAGA trial plan narrowing their PAGA cause of action"). The PAGA Group consists of multiple job categories, in multiple departments, with multiple job functions. Defendant argued that there was wide variation in practices between each job category and therefore a PAGA trial would not be manageable.

32. Finally, Defendant also could argue any potential exposure for PAGA penalties would be limited. Defendant argued that even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. First, as mentioned above, courts to consider the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. Moreover, Defendant argued that Plaintiff is not entitled to recover PAGA penalties at the subsequent violation rate of $200 per pay period. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, Defendant argued that even if the Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $100 rate, as opposed to the $100 and $200 per pay period rate at maximum, and there is a likelihood that a further

reduction of the penalty to $5 per pay period as approved in *Carrington* would apply given Defendants' compliance with the Labor Code as discussed above. Therefore, Defendants argued that more likely maximum value of the claims would be closer to **$295,200** ($100 initial penalty x 2,952 pay periods).

33. Therefore, the realistic value of the PAGA claims amounted to approximately $295,200. The settlement reached in this matter was $225,000 or approximately 76% of the realistic value in this case.

34. In light of the foregoing, Plaintiff's counsel took into consideration the defenses raised and applied the appropriate discounts to arrive at a reasonable settlement amount.

35. In further support of the Settlement's reasonableness, the scope of the release of the PAGA Settlement is necessarily strictly confined to those PAGA civil penalties asserted in the Action or any other claims, under PAGA only, that could have been asserted in the Action for PAGA only based on the facts alleged, including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code governing: minimum wage, overtime wages, meal breaks, rest breaks, failure to provide wage statements, failure to timely pay wages, and reasonable workplace temperatures.

36. Moreover, the proposed Settlement, even with deductions, provides a substantial sum to the Aggrieved Employees. The Settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by California state courts, which often range between $7,500.00 and $15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g., Penaloza v. PPG Industries Inc.*, Case No. BC471369, 2013 WL 2917624 at *2 (Super. Ct. L.A. County, May 20, 2013) (approving PAGA penalties of $5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, Case No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County, March 12, 2013) (approving PAGA penalties of $10,000.00 for class of approximately 3,000 members).

37. Finally, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63. Because the proposed Settlement is neither unjust nor ignores the public interest, it should be approved.

38. Accordingly, the gross PAGA penalty payment is highly reasonable in light of the risks and uncertainties associated with the PAGA claims in this case. The Settlement commits Defendant to pay a sum large enough to punish Defendant for alleged violations and to deter such alleged conduct in the future. At the same time, in light of the alleged violations and defenses thereto, it is not so large as to be unjust, oppressive or confiscatory. Based upon the foregoing, the proposed settlement is fair, reasonable, and in the best interest of the state of California and the PAGA Group Members.

ATTORNEYS' FEES

39. Under the terms of the Settlement Agreement, Plaintiff's Counsel is requesting $75,000.00 in attorney's fees. This amount is equal to approximately 33 1/3% or one third of the $225,000.00 agreed upon by the parties as the Gross Settlement Amount.

40. California state and federal courts have recognized that in actions creating a common fund benefiting others as well as a plaintiff, an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits provided by the litigation. (*Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 577 F.2d 759, 769.) Such "fee spreading" assures that all those benefited by the litigation pay their fair share of obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.)

41. In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein Counsel obtained a $19 million non-reversionary settlement on behalf of the class, the California Supreme Court approved the use of the percentage of fund or common fund method to award one-third of the settlement amount or $6,333,333.33 to Counsel for attorneys' fees. The Court stated:

> Whatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method - including relative 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. (*Laffitte*, 1 Cal.5th at 503.)

42. Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." (*Boeing*, 444 U.S. at 478.) The Supreme Court explained: "The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants' expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." (Id.) Thus, the common fund doctrine ensures that each beneficiary of the settlement contributes proportionately to the payment of the attorneys' fees recovered from monetary payments that the prevailing party recovered in the lawsuit. (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing Wininger v. SI Mgmt. L.P. (9th Cir. 2002) 301 F.3d 1115.)

43. In common fund cases, the percentage approach is preferable to the lodestar because: (1) it aligns the interests of Counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Laffitte*, 1 Cal.5th at 486-487; see *Lealao*, 82 Cal.App.4th at 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375, 1378-79.)

44. A percentage of the common fund is appropriate here given that PAGA actions are on behalf of a large number of aggrieved employees, similar to a class action. As noted above in *Laffitte*, this method is preferred to the lodestar method. Plaintiff's counsel has been acting on behalf of the aggrieved employees for a significant amount of time on a contingent fee basis and has achieved a positive result for both the group of aggrieved employees and the State of California. The settlement was reached quickly efficiently which has resulted in less of the Court's resources being used to litigate the action. The lodestar (described below) is merely a cross check on the reasonableness of the percentage sought.

45. Furthermore, California appellate courts, while not expressly announcing a "benchmark," have instead found fees in the thirty-three (33%) percent range appropriate. (*See, Laffitte II,* 1 Cal.5th at 506 (affirming award of 33% of the common fund); *Chavez v. Ne(flix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (2008)("[e]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"); *Laffitte* v. *Robert Half Intern. Inc.* (2014) 180 Cal.Rptr.3d 136, 149 ("the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits.") Among other things, a 33 1/3% award is appropriate because "the amount of attorney's fees typically negotiated in comparable litigation should be considered in the assessment of a reasonable fee in representative actions .... Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class ... actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior." *Lealao v. Beneficial* California, *Inc.* (2000) 82 Cal.App.4th 19, 47 (emphasis added). Here, the legal marketplace for PAGA only settlements that result in a common fund provide for a fee award in the range of 33 1/3%.

46. Plaintiff's Counsel has spent a considerable amount of time extensively investigating, researching, and litigating this matter, including but not limited to the following:

a. Reviewing Plaintiff's documents, speaking to Plaintiff, preparing the Notice to the LWDA, drafting and preparing the complaint, and legal research into the viability of Plaintiff's claims;

b. Reviewing and researching Defendant's Answer;

c. Reviewing data and documents produced in informal discovery by Defendant;

d. Preparing for and attending mediation;

e. Preparing the Settlement Agreement and papers for approval;

f. Negotiating and corresponding with Defendant's counsel in reaching the settlement at issue before the Court; preparing and appearing for approval.

47. Mr. Lavi and I and other attorneys at Lavi & Ebrahimian made every effort to litigate this action in an efficient and cost-effective manner. Given his years of experience, his trial and appellate experience, and the focus of his practice, if Mr. Lavi were to charge for his type of work by the hour, his current hourly rate would be $750 per hour. My hourly rate would be $500 per hour. This rate is the firm's current billing rate and is supported by the extensive and specialized experience in these types of cases and recognized expertise described. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to both Mr. Lavi's and mine. Based on that information, I believe that our rates are fully consistent with the market rate for attorneys with comparable expertise, experience and qualifications. Based on the information I have, I further believe that our rates are reasonable and appropriate fees for Los Angeles attorneys with comparable expertise, experience, and qualifications.

48. I have spent at least 20 hours on this. My hourly rate is $500 per hour. This is in line with the rate charged by associates in the area and the Laffey Matrix which states a rate of $468 for attorneys out of law school for four (4) to seven (7) years. My lodestar amount to date is at least **$10,000.00**. I graduated from the Loyola Law School, Los Angeles in 2017 and have been practicing law since December 2017. Given my experience and the focus of my practice, if I were to charge for my type of work by the hour my rate would be $500 per hour. A $500 rate is warranted

based on my years of experience in a highly specialized area of law and is in line with the Laffey Matrix. (Huether Decl. Ex. 6 available at http://www.laffeymatrix.com/see.html.) California Courts have applied the Laffey Matrix with adjustments to the specific California locality where the Counsel's office is located based on "Locality Pay Tables." (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695-696 [affirming fee award based on Laffey Matrix with upward 9 percent rate adjustment from D.C. area compared to San Francisco Bay Area based on Locality Pay Tables]; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365 F.Supp.2d 912, 921-922 [using Laffey Matrix with upward adjustment of 9 percent for San Francisco based on difference between D.C. Area 's +15.98 locality pay compared to San Francisco's +26.39 percent locality pay differential from the federal courts' "Judiciary Salary Plan Pay Tables."].) Here, Plaintiffs' Counsels' offices are located in Los Angeles County. For 2018, the Locality Pay Tables (and Judiciary Salary Plan Pay Tables referred to in *In re HPL Techs., Inc.*), state a 2.35 percent increase for the Los Angeles-Long Beach, CA area which includes the following counties: Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino County, Santa Barbara County, and Ventura County. (Ex. 7, 8 [2018 Locality Pay Tables for Washington-Baltimore-Arlington and Los Angeles-Long Beach, CA available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/]; Ex. 9, 10 [Judiciary Salary Plan Pay Tables available at http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates]; Ex. 11 [2018 Locality Pay Area Definitions defining counties within Los Angeles-Long Beach, CA area available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/locality-pay-area-definitions/].) In applying the 2.35 locality increase for attorneys working in Kern County, Los Angeles County, Orange County, Riverside County, San Bernardino County, Santa Barbara County, and Ventura County over the Washington-Baltimore area stated in the Laffey Matrix, the Laffey Matrix states the following relevant rates: $468 for attorneys 4 to 7 years out of law school, $676 for attorneys 8 to 10 years out of law school, $764 for attorneys 11 to 19 years out of law school, and $920 for attorneys 20 plus years out of law school.

49. I am informed that Mr. Lavi has spent at least 25 hours on this matter for a lodestar amount of at least **$18,750.00**.

50. I am also informed that Pooja V. Patel has spent numerous hours working on this matter. Ms. Patel, who has been practicing since 2019, has spent at least 30 hours working on this matter and at her rate of $500 an hour, her total lodestar is $**15,000.00**.

51. I am also informed that Vincent C. Granberry has spent numerous hours working on this matter. Mr. Granberry, who has been practicing since 2011, has spent at least 44 hours working on this matter and at his rate of $650 an hour, his total lodestar is **$28,600.00**.

52. I am also informed that former associate Cecile Vue has spent numerous hours working on this matter. Ms. Vue, who has been practicing since 2021, has spent at least 15 hours working on this matter and at his rate of $450 an hour, his total lodestar is **$6,750.00**.

53. Therefore, collectively counsel's lodestar amounts to **$79,100.00** with more lodestar to be incurred through approval and administration and distribution of the settlement. PAGA counsel seeks only $75,000 in attorneys' fees for the work performed in the action and work yet to be performed.

54. The requested attorneys' fees are justified here due to the contingent nature of the representation, the risks involved, the complexity of the issues, the high quality of legal work performed, and the excellent results obtained. After initially calculating the combined lodestar, the Court may adjust the lodestar based on several factors in order to "fix a fee at the fair market value for the particular action." *Ketchum v. Moses* (2001) Cal.4th 1122, 1132; *Graham v. Daimler Chrysler Corp*. (2004) 34 Cal.4th 553, 574. These additional factors include the contingent risk of litigation, the novelty and complexity of the issues, and exceptional results obtained. *Ketchum*, 24 Cal.4th at 1132, *Serrano III*, 20 Cal.3d at 48.

55. Moreover, the case involved significant risks of non-payment of attorneys' fees and non-recovery of costs if the settlement was not granted approval, or of Plaintiff did not prevail. California courts consider the risks counsel takes in litigating a case where they may not prevail on the merits in granting attorneys' fees awards. *See Graham v. Daimler Chrysler Corp*., 34 Cal.4th

553, 583 (Cal. 2004). Thus, not only are Plaintiff's Counsel's rates reasonable and typical, but the attorneys' fees requested are also fair and reasonable.

COSTS

56. Our firm maintains all records regarding costs expended on each case. I have reviewed the records of costs expended in this matter. According to our records, our firm has incurred $14,633.17 in costs in this matter at this time. This amount includes, but is not limited to, costs associated with the costs associated with filing of the papers filed and responded to in this matter, LA Court Connect appearances, expert witness, and mediation. Therefore, the total costs incurred of $14,633.17, which is less than the Parties agreed Plaintiff's Counsel could seek in the Settlement Agreement and will result in an increase in the Net Settlement Amount payable to the State of California and Aggrieved Employees. Attached as **Exhibit 2** is a true and correct record of the costs incurred to date by Lavi & Ebrahimian, LLP.

SUBMISSION TO THE LWDA

57. The Settlement was submitted to the LWDA in accordance with Labor Code § 2699(l)(2). The proof of electronic submission is attached hereto as **Exhibit 3**.

EXHIBITS

58. Attached as Exhibit 1 to this declaration is a true and correct copy of the operative settlement agreement.

59. Attached as Exhibit 2 to this declaration is a true and correct copy of the Lavi & Ebrahimian Costs.

60. Attached as Exhibit 3 to this declaration is a true and correct copy electronic submission confirmation from the LWDA.

61. Attached as Exhibit 4 to this declaration is a true and correct copy of printouts from the 2014 National Law Journal sampling of California firm billing rates.

62. Attached as Exhibit 5 to this declaration is a true and correct copy of the 2008 National Law Journal sampling of billing rates.

63. Attached as Exhibit 6 to this declaration is a true and correct printout of the Laffey Matrix available at http://www.laffeymatrix.com/see.html.

64. Attached as Exhibit 7 to this declaration is a true and correct copy of the 2020 Locality Pay Table for Washington-Baltimore-Arlington available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/.

65. Attached as Exhibit 8 to this declaration is a true and correct copy of the 2020 Locality Pay Table for Los Angeles-Long Beach, CA available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2018/general-schedule/.

66. Attached as Exhibit 9 to this declaration is a true and correct copy of the Judiciary Salary Plan Pay Table for Washington-Baltimore-Arlington available at http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates.

67. Attached as Exhibit 10 to this declaration is a true and correct copy of the Judiciary Salary Plan Pay Table for Los Angeles-Long Beach, CA available at http://www.uscourts.gov/careers/compensation/judiciary-salary-plan-pay-rates.

68. Attached as Exhibit 11 to this declaration is a true and correct copy of 2020 Locality Pay Area Definitions defining counties within Los Angeles-Long Beach, CA area available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2020/locality-pay-area-definitions/.

69.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct this 30th day of December 2022, at Beverly Hills, California.

Melissa Huether

Melissa A. Huether