

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq. (SB# 272020)

3 hm@messrelianlaw.com

4 Maralle Messrelian, Esq., Of Counsel (SB#316974)

5 maralle@messrelianlaw.com

6 500 N. Central Ave., Suite 840

7 Glendale, California 91203

8 Telephone: (818) 484-6531

9 Facsimile: (818) 956-1983

10 Attorneys for Plaintiff,

11 DAVID XIQUI VASQUEZ, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF SANTA CLARA**

14 **(UNLIMITED JURISDICTION)**

15 DAVID XIQUI VASQUEZ,

16 *Plaintiff,*

17 vs.

18 THE PROVINCE LLC, PAUL REDDICK;
19 and DOES 1 to 25, inclusive,

20 *Defendants.*

Case No.: 22CV397541

21 **DECLARATION OF HAROUT**
22 **MESSRELIAN IN SUPPORT OF**
23 **PLAINTIFF'S MOTION FOR APPROVAL**
24 **OF PAGA SETTLEMENT AND RELEASE**

Action filed: May 2, 2022

Hearing Date: July 27, 2022

Hearing Time: 1:30 p.m.

Hearing Dept: 3, Hon. Patricia M. Lucas

1 working for Defendants on or around May 2021 as a kitchen cook. His employment ended on
2 or around August 7, 2021. At all times during his employment with Defendants, Plaintiff was
3 considered an hourly, non-exempt employee.

4 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
5 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
6 (“PAGA”). On October 14, 2021, Plaintiff, on behalf of himself and Defendants’ other California
7 non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”) gave written
8 notice by electronic service to the California Labor and Workforce Development Agency
9 (“LWDA”) and via certified mail to Defendants of his claims against Province. In his notice to
10 the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendants
11 (1) failed to pay for all hours worked, including but not limited to, minimum wages (California
12 Labor Code sections 510, 1194, 1197, 1197.1); (2) failed to provide all required timely and duty-
13 free meal and rest periods (California Labor Code sections 226.7 and 512); (3) failed to pay
14 wages owed every pay period (California Labor Code section 204); (4) failed to provide accurate,
15 itemized wage statements (California Labor Code section 226a); (5) failed to pay all wages owed
16 at the end of employment (California Labor section 203); (6) failed to maintain accurate records
17 (California Labor Code section 1174d); (7) failed to reimburse business expenses (California
18 Labor Code sections 2800 and 2802); (8) failed to provide sick pay(California Labor Code
19 sections 232 and 246); and (9) failed to provide Worker’s Compensation coverage (California
20 Labor Code section 3700.5). A true and correct copy of Plaintiff’s letter to the LWDA is attached
21 as **Exhibit 3**.

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

25 8. On April 19, 2022, the Parties attended a full day mediation session with the
26 Honorable Jamie Jacobs-May (Ret.) At all times, the negotiations were adversarial and
27 contentious, although still professional in nature. At the mediation, the Parties agreed to settle
28 Plaintiff’s PAGA Claim for violation of Labor Code § 2698, et seq. Before agreeing to the terms

1 of the Settlement, the Parties engaged in informal discovery regarding Defendants' policies,
2 practices, operations, time and payroll information and other topics. In advance of mediation,
3 Defendants produced Plaintiff's personnel file, including time and payroll data through data
4 sampling. Moreover, prior to the mediation, Defense counsel provided Plaintiff's counsel with
5 information and documents relating to other Aggrieved Employees, including time and payroll
6 data. Through extensive arm's length negotiations at the mediation and only after discovery and
7 investigation were performed, the Parties agreed to settlement terms.

8 9. Counsel for the Parties have further investigated the applicable law as applied to
9 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
10 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
11 Defendants are experienced in defending PAGA cases. Based on the parties' own independent
12 investigations and evaluations, the parties and their respective counsel are of the opinion that the
13 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable
14 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and
15 Defendants in light of all known facts and circumstances and the risks inherent in litigation,
16 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
17 prosper and make a large profit.

18 10. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).
19 The Court necessarily has broad discretion in making the decision to approve or reject a
20 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
21 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
22 of penalties based on the facts and circumstances of the particular case. Although the PAGA
23 does not set forth the particular standards against which a PAGA settlement should be evaluated,
24 the LWDA has provided guidance for approval that mirrors the standards for evaluating class
25 action settlements.

26 11. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
27 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
28 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved

employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as **Exhibit 11**. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

12. Upon reaching a settlement, Plaintiff filed his lawsuit in this Court on May 2, 2022 with a single representative claim for civil penalties under the PAGA (California Labor Code § 2698, *et seq.*) against Defendants so that Plaintiff may pursue the present motion for approval of the Parties' Agreement. A true and correct copy of Plaintiff's Complaint filed on May 2, 2022 is attached hereto as **Exhibit 4**.

13. Defendants deny 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.

14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved Employees, the number of total pay periods during the Release Period, all policies in effect during the Release Period, and a sampling of time records; and (3) Counsel for the Parties are experienced with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent Aggrieved Employees and there are no issues of ascertainability.

15. I considered various sources of information in the lead-up to the mediation of April 19, 2022 that enabled Plaintiff to achieve the Settlement at issue. Among other things, Plaintiff considered the following:

- Defendants produced and my staff and I reviewed Plaintiff's personnel file.

- My office requested that Defendants provide any and all policies regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, compensation plans, and complaints about working conditions in effect during the relevant time period beginning in October of 2020. Defendants produced those policies as part of their employee handbook. They are largely consistent with the Wage Order and the Labor Code.
- My office requested that Defendants provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendants provided the answers to each of these questions.
- My office requested a 20% sample of time and payroll records for the relevant time period. Defendants provided a sampling of time and pay records for 95 of their employees. This represents 76% of the total employees that Defendants employed during the PAGA Period based on data available at the time of mediation.
- My office then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.
- I analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for “off the clock” work and business expense reimbursement, especially as it relates to “manageability” arguments brought up by the defense.

16. Before mediation, Defendants disclosed that for the period of October 14, 2020 to December 1, 2021, there were approximately 125 potentially aggrieved employees and 1,632 pay periods. Based on this information, I prepared an estimate of the maximum possible civil penalties under the PAGA. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period. Under the civil penalty formulas applicable under PAGA, I estimated a maximum possible exposure of approximately \$2,040,000 for civil penalties as follows:

TYPE OF VIOLATION	LABOR CODE SECTION VIOLATED/ CIVIL PENALTY STATUTE	INITIAL PENALTY AMOUNT/ PAY PERIOD	PAY PERIODS	CIVIL PENALTIES
Unpaid Minimum Wages	1197/1197.1	\$100	1632	\$163,200.00
Unpaid Overtime	510/558	\$50	1632	\$81,600.00

Inaccurate Wage Statements	226/226.3	\$250	1632	\$408,000.00
Inaccurate Pay Records	1174/1174.5	\$500	1632	\$816,000.00
Untimely Wages	201-204/210, 2699(f)(2)	\$100	1632	\$163,200.00
Unreimbursed Expenses	2802/2699(f)(2)	\$100	1632	\$163,200.00
Unprovided Meal Breaks	512/558	\$50	1632	\$81,600.00
Unprovided Rest Breaks	1198/2699(f)(2)	100	1632	\$163,200.00
MAXIMUM CIVIL PENALTIES				\$2,040,000.00

The potential for recovery of this maximum possible civil penalties depends on circumstances that are highly unlikely and not in line with reality. It would depend on the Court stacking the maximum recoverable civil penalties for unpaid wages violations, inaccurate wage statements violations, inaccurate pay records violations, untimely wages violations, unreimbursed expenses violations, unprovided meal breaks violations, and unprovided rest breaks violations, per pay period for all 1,632 pay periods for all 125 potentially aggrieved employees during the PAGA Period. I am unaware of any California State court decision awarding a plaintiff and the other aggrieved employees he represents multiple civil penalties for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to “stack” civil penalties arising under the various Labor Code statutes. I had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one penalty for each pay period (regardless of the different Labor Code violations that potentially occurred for the same employee, during the same pay periods). Assuming that Plaintiff could prove that there was at least one violation of a Labor Code section per pay period, Plaintiff could expect to recover approximately \$81,600.00 (1,632 pay periods x \$50 = \$81,600.00).

17. The PAGA action brought forth in this case by Plaintiff had two main substantive arguments: 1) unprovided meal and rest periods, 2) failure to reimburse business expenses for the purchase of work uniforms. The other arguments for PAGA penalties, including inaccurate paystubs, not paying all wages owed every pay period and at the end of employment, and not keeping accurate time records, are all derivative claims that have no value on their own, and especially when the substantive labor code violations, like business expense reimbursement is

1 being used as a predicate. *See Naranjo v. Spectrum Security Services, Inc.*, 40 Cal App5th 444.

2 18. There are risks to Plaintiff's meal and rest period claims. Out of the 8,809 total
3 shifts recorded in the sample, 10.3% of the shifts had no meal periods, 27.9% of the shifts had a
4 late meal period and 0.3% of the shifts had meal periods that were short. This is a presumptive
5 meal period violation rate of approximately 38.3% and required a significant discount during
6 settlement negotiations. Moreover, Defendants contend that, to establish a violation for missed
7 meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*
8 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides
9 employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty
10 to "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41. Instead, a
11 plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking
12 a proper break, or otherwise failed to release the employee of all control. *Id.* "Thus, the crucial
13 issue with regard to the meal break claim is the reason that a particular employee may have failed
14 to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.
15 Determining by a review of Defendants' time records the exact reasons why a meal period
16 appears to be short or late would be difficult and pinpointing those days in which Plaintiff and
17 the PAGA Members worked during their meal periods will be a challenge. Additionally,
18 Defendants provided evidence that they provide employees with the opportunity to take meal and
19 rest breaks. Province's Employee Handbook contains legally compliant meal period and rest
20 break policies.

21 19. Defendants contend they provided their non-exempt employees with the
22 opportunity to take rest periods in accordance with California law, and, accordingly, Plaintiff's
23 rest break claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.
24 Employers are not required to record rest periods and such periods are paid. Unlike meal periods,
25 where there are often records showing whether an employee clocked out or not, there is no such
26 evidence to prove a missed rest period or that the employer refused to authorize and permit one.

27 20. There are risks to Plaintiff's claim for unreimbursed expenses. There is a risk that
28 the Court may consider Plaintiff's claims as to Defendants' alleged failure to indemnify for

1 business expenses to be individual in nature. Plaintiff alleges that Defendants did not reimburse
2 him or the other Aggrieved Employees for their purchase of work uniforms. Defendants provided
3 evidence at mediation that Province never required its employees to purchase their own uniforms.
4 Employees were only required to wear a black or white non-flammable shirt. Furthermore,
5 California's business reimbursement law does not require an employer to reimburse its
6 employees for the cost of items that are generally usable, including black or white shirts and slip-
7 resistant shoes because such items do not qualify as a "necessary expenditure." (*Townley v. BJ's*
8 *Restaurants, Inc.* (2019) 37 Cal.App.5th 179.) Uniforms are only subject to reimbursement if the
9 items are not "usual and generally usable" in the applicable industry (here, the restaurant
10 industry). As such, I had to significantly discount the value of this claim during settlement
11 negotiations.

12 21. Additionally, PAGA states a court has discretion to award a lesser amount than
13 the maximum penalty. See Lab. Code § 2699(e)(2) ("...a court may award a lesser amount than
14 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
15 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
16 oppressive, or confiscatory."). There is a substantial risk that the Court could reduce civil
17 penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and
18 intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 ("*Carrington*")
19 illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award
20 of only \$5 per violation because it was within the Court's discretion to significantly reduce
21 PAGA penalties even when there is a finding that a violation of the California Labor Code
22 occurred. The plaintiff in *Carrington* had requested penalties in excess of \$70 million and was
23 successful in proving the PAGA claim during a bench trial. However, the trial court reduced the
24 total award after trial to only \$150,000 (30,000 violations x \$5) and stated that this reduction was
25 warranted because imposing the maximum penalty would be "unjust, arbitrary, and oppressive",
26 based on Starbucks's "good faith attempts" to comply with meal break obligations and because
27 the Court found the violations were minimal. Applying the same formula here and assuming there
28 was one violation during each pay period, the award of civil penalties could not exceed \$8,160.00

1 in PAGA penalties (1,632 violations x \$5). As such, this Settlement is a great result based solely
2 on the risk the Court chooses to apply the *Carrington* formula. Defendants have also posed
3 formidable defenses to the Labor Code claims underlying Plaintiff's allegations. Thus, the chance
4 of Plaintiff recovering a higher amount than the Gross Settlement Amount is uncertain.

5 22. Further, although, class certification is not required for a PAGA claim,
6 Defendants could contend that Plaintiff should show that the PAGA claims are manageable,
7 especially as it relates to the business expense reimbursement claim for uniforms, which will
8 invariably be an individualized assessment. As such, Defendants could also convince the Court
9 to dismiss the claims due to unmanageability. In *Ortiz v. CVS Caremark Corp.*, the court
10 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal.
11 2014). The Ortiz court cited the “multitude of individualized assessments” that case would have
12 required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed
13 PAGA claims where, as here, there are a large number of allegedly aggrieved individuals whose
14 claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904,
15 at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015);
16 *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
17 (bifurcating trial of plaintiff's claim from representative claims: “in light of the number of
18 potential aggrieved employees, judicial economy favors deferring the representative portion of
19 the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13,
20 2015).

21 23. Furthermore, on September 9, 2021, the California Court of Appeal issued a
22 significant decision in *Wesson v. Staples the Office Superstore, LLC*, No. B302988, 2021 Cal.
23 App. LEXIS 743 (Ct. App. Sep. 9, 2021) (“*Wesson*”), holding that courts have authority to ensure
24 that PAGA claims are manageable, and that courts may limit or strike unmanageable PAGA
25 claims.¹

26
27
28 ¹ The *Wesson* decision marks the first time an appellate court has weighed in on whether PAGA claims
must be manageable.

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

8 25. The settlement of the representative PAGA claim involves monetary relief to all
9 Aggrieved Employees, 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 Defendants. The
16 Settlement does not require them to opt out to do so.

17 26. Furthermore, Plaintiff recognizes that continued litigation presents significant
18 risks that support a significant downward departure from Plaintiff's estimated civil penalties
19 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
20 compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved
21 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
22 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
23 reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of
24 the current economic climate, and are the product of good faith, and informed arms-length
25 negotiations between the Parties consistent with public policy and fully comply with applicable
26 provisions of law.

27 27. As such, the settlement of PAGA penalties in the gross sum of \$77,500.00, of
28 which 75% of the net amount after attorney's fees, litigation costs, and settlement administration

costs (\$38,171.63) will be paid to the LWDA and 25% (\$9,542.91) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

Individual PAGA Payments

28. Defendants represent that there are approximately 125 Aggrieved Employees during the Release Period. After deducting the requested Court-approved Attorneys' Fees (\$25,833.33) and Litigation Costs (\$7,995.04), and the Settlement Administration Costs (\$5,500.00), the Net Settlement Amount will be approximately \$38,171.63. Seventy five percent (75%) of the Net Settlement Amount will be paid to the Labor and Workforce Development Agency ("LWDA") (\$28,628.72), and twenty five percent (25%) (\$9,542.91) of the Net Settlement Amount will be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of pay periods during the Release Period. Agreement, ¶ 3.04(b). With a total of 125 Aggrieved Employees, the average estimated individual PAGA payment for each Aggrieved Employee is approximately \$76.34 (\$9,542.91 (25% of the estimated Net Settlement of \$38,171.63) / 125 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails.

Plaintiff's Individual Settlement

29. Plaintiff's individual settlement agreement was negotiated separate from the PAGA Settlement and the parties agreed that the consideration Plaintiff received pursuant to the individual settlement agreement was to settle his individual claims for wrongful termination. As part of this confidential agreement, Plaintiff also provided Defendants with a general release of all claims, whether known or unknown, including unknown claims covered by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained contact with my office and helped me gather information and evidence to prove the alleged claims and has agreed to remain involved as a PAGA representative even if the Court does not approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement to the Court *in camera* for review if the Court requests. It represents a fair resolution for Plaintiff's individual claims for

wrongful termination. *See generally* Declaration of David Xiqui Vasquez.

Attorneys' Fees and Costs

30. I represent Plaintiff on a straight contingency basis. My firm's request for \$25,833.33 in attorney fees and \$7,995.04 in litigation costs is fair and reasonable. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my experience in wage and hour class and PAGA settlements.

31. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, my request for attorney's fees of \$25,833.33 (one-third of the Gross Settlement Amount) is fair and reasonable based on my firm's lodestar as cross-checked against the percentage of the recovery.

32. To date, I have investigated and prosecuted this matter for over 33.25 hours. I also expect to perform additional work on this case if the Court grants final approval of the Settlement, including supervision of the Settlement Administrator's disbursement of the settlement funds to the Aggrieved Employees.

33. In this case, my firm has a total lodestar of approximately \$25,117.00 without the use of any multiplier, which results in a multiplier of 1.027 when compared against the \$25,833.00 request for attorneys' fees.² A general summary showing of the pre-multiplier lodestar and the total number of hours of work performed by my firm is set forth below with a

²The multiplier of 1.029 is supported by California case law. Under California law, lodestar multipliers can range from 2 to 4 or even higher. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849, *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of America Nat'l Trust & Sav. Ass'n.*, (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded) (cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora Community Redevelopment Agency v. Demeter* (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12 times estimated lodestar multiplier)).

total lodestar of approximately \$25,152.00.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
Harout Messrelian (11 th Year Attorney)	33.25	\$500 (10 th Year Atty); \$550 (11 th Year Atty)	\$17,812.50
Maralle Messrelian (5 th Year Attorney)	20.97	\$350	\$7,339.50
Totals	54.22		\$25,152.00

True and correct copies of the time records of my firm are collectively attached as **Exhibit 5** to this declaration.

34. In addition, my firm incurred substantial costs, \$7,995.04 to date, which consist of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct summary of my firm's costs and expenses incurred to date is attached as **Exhibit 6** to this declaration. I will make detailed copies of such records available to the Court for *in camera* inspection upon its request. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

35. My previous experience in litigating wage and hour actions also supports the reasonableness of the fee request. Based on past experience with similar matter, I was able to evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorney's fees of approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation, Jenn Protas of Hoge Fenton, also supports the fairness and reasonableness of the requested fee award.

36. Attached hereto as **Exhibit 7** is a true and correct copy of the biography page for Jenn Protas from the Hoge Fenton website. She defended this case.

37. Plaintiff reiterates his request that the Court award his counsel one third of the recovery as attorney fees. The award of attorney's fees sought is justified by the contingency nature of the attorney-client relationship, my experience in litigating wage and hour cases, the number of attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense

counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved Employees.

///

Settlement Administration Costs

38. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Phoenix Class Action Administration Solutions ("Phoenix"), the parties sought and reviewed bids from other reputable third-party administrator and Phoenix's bid was the lowest.

A. ILYM Group, Inc.= \$9,581.95

B. CPT Group, Inc. = \$7,750.00; and

C. Phoenix = \$ 5,500.00.

A true and correct copy of the bid from ILYM Group Inc. is attached hereto as **Exhibit 8**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 9**. A true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 10**. Thus, settlement administration costs provision should be given approval.

39. Furthermore, the Declaration of Michael E. Moore with attached exhibits, filed under separate cover, sets forth Phoenix's qualifications and costs to administer the settlement. *See generally* Declaration of Michael E. Moore. Thus, the settlement administration costs provision should be given approval.

Notice of Settlement to the LWDA

40. Pursuant to Lab. Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the LWDA at the same time the Settlement is being filed with the Court. True and correct copies of Plaintiff's submission with the LWDA and the confirmation email are collectively attached as **Exhibit 11** to this declaration.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on July 5, 2022, at Glendale, California.

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


HAROOT MESSRELIAN,
Declarant