

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 Arturo Vera Lopez

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF MONTEREY**
13 **(UNLIMITED JURISDICTION)**

14 ARTURO VERA LOPEZ,

15 *Plaintiff,*

16 vs.

17 GREEN VALLEY LANDSCAPE, INC.;
18 MITSUGU MORI; and DOES 1 to 25,
19 inclusive,

20 *Defendants.*

Case No.: 22CV003751

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

Action filed: December 2, 2022

Hearing Date: July 14, 2023

Hearing Time: 8:30 a.m.

Hearing Dept: 15, Hon. Thomas Wills

**DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
PLAINTIFF’S MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE**

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Arturo Vera Lopez (individually, “Lopez” or “Plaintiff”) in his lawsuit against Defendants Green Valley Landscape, Inc. and Mitsugu Mori (“Defendants”).

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 225 civil actions and/or claims involving representative actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases –*Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

4. A true and correct copy of the Private Attorneys General Act Settlement Agreement and Release (the “Agreement or “PAGA Settlement”) is attached hereto as **Exhibit 1**. A true and correct copy of the parties agreed upon notice to the below-defined Aggrieved

1 Employees (the “PAGA Notice”) is attached hereto as **Exhibit 2**.

2 ***Factual and Procedural Background***

3 5. Defendants own and operate Green Valley Landscape Inc. Seaside, California.
4 Plaintiff first started working for Defendants as an assistant to the landscapers over a decade
5 ago. Plaintiff’s employment ended in or around December 2021. At all times during his
6 employment with Defendants, Plaintiff was considered an hourly, non-exempt employee.

7 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
8 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
9 (“PAGA”). On March 30, 2022, Plaintiff, on behalf of himself and Defendants’ other California
10 non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”) gave written
11 notice by electronic service to the California Labor and Workforce Development Agency
12 (“LWDA”) and via certified mail to Defendants of the specific provisions of the California
13 Labor Code alleged to have been violated, including the facts and theories to support the alleged
14 violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached hereto as **Exhibit**
15 **3**.

16 7. On December 2, 2022, Plaintiff filed a lawsuit for his individual wage and hour
17 violations, disability discrimination, retaliation, wrongful termination, and the PAGA claim in
18 Monterey County Superior Court (the “Lawsuit”). A true and correct copy of the Lawsuit is
19 attached hereto as **Exhibit 4**. Regarding the PAGA claim (10th cause of action), Plaintiff
20 asserted on behalf of himself and the Aggrieved Employees that Defendants (1) failed to pay for
21 all hours worked, including but not limited to, minimum and overtime wages (California Labor
22 Code sections 510, 1194, 1197, 1197.1); (2) failed to provide all required timely and duty-free
23 meal and rest periods (California Labor Code sections 226.7 and 512); (3) failed to pay wages
24 owed every pay period (California Labor Code section 204); (4) failed to provide accurate,
25 itemized wage statements (California Labor Code section 226a); (5) failed to pay all wages owed
26 at the end of employment (California Labor section 203); (6) failed to maintain accurate records
27 (California Labor Code section 1174d); (7) failed to reimburse business expenses (California
28 Labor Code sections 2800 and 2802); and (8) failed to provide a safe and healthful work

1 environment (California Labor Code section 6400 et seq.). *Id.*

2 8. In response to Plaintiff's assertions, Defendants filed their General Denial to the
3 Complaint on January 31, 2023. A true and correct copy of Defendants' General Denial to the
4 Lawsuit is attached hereto as **Exhibit 5**.

5 9. Defendants deny any liability or wrongdoing of any kind whatsoever associated
6 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and
7 discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit.

8 10. The parties met and conferred and agreed that it may be in their mutual interests
9 to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private
10 mediation. On March 31, 2023, the parties attended a full day mediation session with Eleanor
11 Barr, Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of
12 Labor Code § 2698, *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged
13 in informal discovery regarding Defendants' policies, practices, operations, time and payroll
14 information and other topics. In advance of mediation, Defendants produced Plaintiff's
15 personnel file, including time and payroll data through data sampling. Moreover, prior to the
16 mediation, Defense counsel provided my office with information and documents relating to
17 other Aggrieved Employees, including time and payroll data. Through extensive arm's length
18 negotiations at the mediation and only after discovery and investigation were performed, the
19 Parties agreed to settlement terms. At all times, the negotiations were adversarial and
20 contentious, although still professional in nature. Now that the parties have finalized the PAGA
21 Settlement, Plaintiff submits it to this Court for approval.

22 11. Counsel for the Parties have further investigated the applicable law as applied to
23 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
24 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
25 Defendants are experienced in defending PAGA cases. Based on the parties' own independent
26 investigations and evaluations, the parties and their respective counsel are of the opinion that the
27 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable
28 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and

1 Defendants in light of all known facts and circumstances and the risks inherent in litigation,
2 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
3 prosper and make a large profit.

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

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

22 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
23 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
24 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
25 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
26 Employees, the number of total pay periods during the PAGA Period, all policies in effect during
27 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced
28 with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent

1 Aggrieved Employees and there are no issues of ascertainability.

2 15. I considered various sources of information in the lead-up to the mediation of
3 March 31, 2023 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
4 Plaintiff considered the following:

- 5 • Defendants produced and my staff and I reviewed Plaintiff's personnel file.
- 6 • My office requested that Defendants provide any and all policies regarding overtime and
7 double-time wages, off the clock work, expense reimbursement, meal periods, rest
8 breaks, meal period waivers and agreements, compensation plans, and complaints about
9 working conditions in effect during the relevant time period beginning in March of 2021.
10 Defendants produced those policies as part of their employee handbook.
- 11 • My office requested that Defendants provide the total number of employees, paychecks,
12 and the pay cycles during the relevant period. Defendants provided the answers to each
13 of these questions.
- 14 • My office requested a 20% sample of time and payroll records for the relevant time
15 period. and randomly chose 28 employee IDs out of 138 IDs provided by Defendants.
16 This represents 20% of the total employees that Defendants employed during the PAGA
17 Period based on data available at the time of mediation. Defendants provided the
18 sampling of time and pay records.
- 19 • My office then retained a professional data analyst, James Toney, to examine the records
20 and determine the meal period violation rates, if there was any pay discrepancy in
21 timesheet hours versus paid hours, and if there was any rounding/time shaving issues.
22 Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection
23 upon its request.
- 24 • I analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims
25 for "off the clock" work and business expense reimbursement, especially as it relates to
26 "manageability" arguments brought up by the defense.

27 16. Before mediation, Defendants disclosed that for the period of March 30, 2021 to
28 October 13, 2022, there were approximately 138 potential Aggrieved Employees (later
determined to be 144) and 1,980 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, Plaintiff's counsel estimated a maximum possible exposure of

approximately \$1.5 million 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	1980	\$198,000
Unpaid Overtime	510/558	\$50	1980	\$99,000
Inaccurate Wage Statements	226/226.3	\$250	1980	\$495,000
Inaccurate Pay Records	1174/1174.5	\$500	138 ees	\$69,000
Untimely Wages	201-204/210, 2699(f)(2)	\$100	1980	\$198,000
Unreimbursed Expenses	2802/2699(f)(2)	\$100	1980	\$198,000
Unprovided Meal Breaks	512/558	\$50	1968	\$98,400
Unprovided Rest Breaks	1198/2699(f)(2)	\$100	1968	\$196,800
MAXIMUM CIVIL PENALTIES				\$1,552,200

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 1,980 pay periods for all 138 potential 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 \$99,000.00 (1,980 pay periods x \$50 = \$99,000.00).

1 17. The PAGA action brought forth in this case by Plaintiff had two main substantive
2 arguments: 1) unprovided meal and rest periods, 2) failure to reimburse business expenses for
3 the purchase of work uniforms. In *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the
4 California Supreme Court held that rounding time punches for meal periods is inconsistent with
5 the purpose of the Labor Code provisions and the California Wage Orders governing meal
6 periods. Here, Green Valley Landscape was rounding the employees' meal periods and not
7 recording actual time for meal periods. Under the civil penalty formulas applicable under PAGA,
8 Plaintiff estimated a maximum exposure of approximately \$394,200 for civil penalties for
9 Plaintiff's strongest disputed claims of failure to provide meal and rest periods and failure to
10 reimburse for business expenses. Plaintiff's analysis, which Defendants vehemently dispute,
11 revealed a 99.4% violation rate for either late, short, or interrupted meal periods. As such, with
12 the 99.4% violation rate, the maximum exposure would be \$98,400, which is calculated as \$50
13 penalty multiplied by 1968 pay periods (99.4% of the 1980 pay periods). Plaintiff extrapolated
14 the same 99.4% rate for rest break violations, which would equate to an exposure of \$196,800
15 (\$100 penalty per pay period multiplied by 1968 pay periods). In terms of the expense
16 reimbursement issue, Plaintiff discounted this violation rate by 50%. At a 50% violation rate, the
17 penalties would amount to \$99,000, which is calculated as \$100 penalty multiplied by 990 pay
18 periods (50% of the 1980 pay periods). As such, a GSA of \$230,000 here is a great result. The
19 other arguments for PAGA penalties, including inaccurate paystubs, not paying all wages owed
20 every pay period and at the end of employment, and not keeping accurate time records, are all
21 derivative claims that have no value on their own, and especially when the substantive labor code
22 violations, like business expense reimbursement is being used as a predicate. *See Naranjo v.*
23 *Spectrum Security Services, Inc.*, 40 Cal App5th 444.

24 18. There are risks to Plaintiff's meal and rest period claims. Defendants contend that
25 all of their employees did in fact take their meal breaks and that, to establish a violation for
26 missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker*
27 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides
28 employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty

1 to “police meal breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. Instead, a
2 plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking
3 a proper break, or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial
4 issue with regard to the meal break claim is the reason that a particular employee may have failed
5 to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.
6 Determining by a review of Defendants’ time records the exact reasons why a meal period
7 appears to be short or late would be difficult and pinpointing those days in which Plaintiff and
8 the Aggrieved Employees worked during their meal periods will be a challenge. Additionally,
9 Defendants provided evidence that they provide employees with the opportunity to take meal and
10 rest breaks. Green Valley’s Employee Handbook contains legally compliant meal period and rest
11 break policies.

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

18 20. There are risks to Plaintiff’s claim for unreimbursed expenses. Plaintiff alleges
19 that Defendants did not reimburse him or the other Aggrieved Employees for their purchase of
20 work uniforms. There is a risk that the Court may consider Plaintiff’s claims as to Defendants’
21 alleged failure to indemnify for business expenses to be individual in nature. As such, I had to
22 significantly discount the value of this claim during settlement negotiations.

23 21. Additionally, PAGA states a court has discretion to award a lesser amount than
24 the maximum penalty. *See Lab. Code* § 2699(e)(2) (“...a court may award a lesser amount than
25 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
26 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
27 oppressive, or confiscatory.”). There is a substantial risk that the Court could reduce civil
28 penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence of willful and

1 intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily discounted award of only \$5 per violation because it was within the Court’s discretion to significantly reduce
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
PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of \$70 million and was successful in proving the PAGA claim during a bench trial. However, the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated that this reduction was warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break obligations and because the Court found the violations were minimal. Applying the same formula here and assuming there was one violation during each pay period, the award of civil penalties could not exceed \$9,900.00 in PAGA penalties (1,980 violations x \$5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is uncertain.

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

1 number of potential aggrieved employees, judicial economy favors deferring the representative
2 portion of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal.
3 May 13, 2015).

4 23. Furthermore, on September 9, 2021, the California Court of Appeal issued a
5 significant decision in *Wesson v. Staples the Office Superstore, LLC*, No. B302988, 2021 Cal.
6 App. LEXIS 743 (Ct. App. Sep. 9, 2021) (“*Wesson*”), holding that courts have authority to ensure
7 that PAGA claims are manageable, and that courts may limit or strike unmanageable PAGA
8 claims. The *Wesson* decision marks the first time an appellate court has weighed in on whether
9 PAGA claims must be manageable.

10 24. The Parties further recognize that the issues presented in the representative PAGA
11 claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and
12 that further litigation will cause inconvenience, distraction, disruption, delay, and expense
13 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
14 from continued litigation, especially in the pandemic era where further and extensive litigation
15 may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
16 Plaintiff’s attorneys, other Aggrieved Employees, and the State of California.

17 25. The settlement of the representative PAGA claim involves monetary relief to all
18 Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is
19 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
20 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
21 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
22 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees
23 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
24 civil penalties can pursue any damages they believe they are owed by the Defendants. The
25 Settlement does not require them to opt out to do so.

26 26. Furthermore, Plaintiff recognizes that continued litigation presents significant
27 risks that support a significant downward departure from Plaintiff’s estimated civil penalties
28 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable

1 compromise amount for these claims and is in the best interest of Plaintiff and the Aggrieved
2 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
3 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
4 reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of
5 the current economic climate, and are the product of good faith, and informed arms-length
6 negotiations between the Parties consistent with public policy and fully comply with applicable
7 provisions of law.

8 27. As such, the settlement of PAGA penalties in the gross sum of \$230,000.00, of
9 which 75% of the net amount after attorney's fees, litigation costs, and settlement administration
10 costs (\$102,554.87) will be paid to the LWDA and 25% (\$34,184.95) will be distributed to the
11 Aggrieved Employees, is reasonable and appropriate under the circumstances.

12 *Individual PAGA Payments*

13 28. Defendants represent that there are approximately 144 Aggrieved Employees
14 during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees
15 payment (\$80,500.00) and PAGA Counsel's Costs payment (\$9,010.18), and the Settlement
16 Administration Costs (\$3,750.00), the Net Settlement Amount will be approximately
17 \$136,739.82. Seventy five percent (75%) of the Net Settlement Amount will be paid to the Labor
18 and Workforce Development Agency ("LWDA") (\$102,554.87), and twenty five percent (25%)
19 (\$34,184.95) of the Net Settlement Amount will be paid to the Aggrieved Employees on a pro-
20 rata basis based upon their respective number of pay periods during the PAGA Period.
21 Agreement, ¶¶ 5, 7.

22 29. With a total of 144 Aggrieved Employees, the average estimated individual
23 PAGA payment for each Aggrieved Employee is approximately \$237.40 (\$34,184.95 (25% of
24 the estimated Net Settlement of \$136,739.82) / 144 Aggrieved Employees). This is a great result
25 given the uncertainties this lawsuit entails.

26 *Plaintiff's Individual Settlement*

27 30. Plaintiff negotiated an individual settlement agreement separate from the PAGA
28 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual

1 settlement agreement was to settle his individual wage and hour claims, disability
2 discrimination, retaliation, and wrongful termination claims. *See generally* Declaration of
3 Arturo Vera Lopez.

4 31. Plaintiff's individual settlement agreement does not provide for any additional
5 attorney's fees or costs to my firm.

6 32. As part of this confidential agreement, Plaintiff also provided Defendants with a
7 general release of all claims, whether known or unknown, including unknown claims covered
8 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved
9 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained
10 contact with my office and helped me gather information and evidence to prove the alleged
11 claims and has agreed to remain involved as a PAGA representative even if the Court does not
12 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has
13 no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement
14 to the Court *in camera* for review if the Court requests. It represents a fair resolution for
15 Plaintiff's individual wage and hour claims and claims for disability discrimination, retaliation,
16 and wrongful termination. *See generally* Declaration of Arturo Vera Lopez.

17 33. The PAGA statute does not forbid service awards. Courts frequently award them
18 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
19 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
20 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
21 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
22 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
23 with our office on many occasions by phone, explaining what his employment at Green Valley
24 Landscape was like, explaining what his employment at Green Valley Landscape had in
25 common with other employees who worked for Green Valley Landscape, explaining his claims
26 to me and my staff, and communicating with me and my staff about the settlement agreement
27 and related documents. Despite this, Plaintiff is **not** asking for a service award for his
28 involvement and the time he spent assisting my firm with the PAGA action. *See generally*

1 Declaration of Arturo Vera Lopez

2 *Attorneys' Fees and Costs*

3 34. I represent Plaintiff on a straight contingency basis. My firm's request for
4 \$80,500.00 in attorney fees and \$9,010.18 in litigation costs is fair and reasonable. It is an
5 accepted practice in wage and hour class action settlements to award attorneys' fees to Plaintiff's
6 counsel based on a percentage of the total settlement value agreed upon by the parties. California
7 courts have long recognized that an appropriate method for awarding attorneys' fees in class
8 actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48-
9 49 ["when a number of persons are entitled in common to a specific fund, and an action brought
10 by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
11 such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba v. Apple*
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82
13 Cal.App.4th 19, 26-30.)

14 35. California courts have the discretion to employ (or decline to employ) a "lodestar
15 cross-check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.*
16 (2016) 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has
17 now made clear that this cross-check is not required and approved one-third of the class action
18 settlement fund as reasonable attorney fees as "[t]he percentage of the fund method survives in
19 California class action cases...." *Id.* at 574. As other courts have acknowledged since *Laffitte*,
20 "California courts routinely award attorneys' fees of one-third of the common fund." *Lopez v.*
21 *Mgmt. & Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need
22 not "engage in a full-blown lodestar analysis when the primary basis remains the percentage
23 method..." The lodestar calculation is merely a "useful perspective on the reasonableness of a
24 given percentage award." *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638
25 ("Trial courts 'also retain the discretion to forgo a lodestar cross-check and use other means to
26 evaluate the reasonableness of a requested percentage fee.'" ¹ *Id.* (citing *Laffitte*)).

27
28 ¹ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to
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

1 36. “[R]egardless whether the percentage method or the lodestar method is used, fee
2 awards in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.*
3 (2008) 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995)
4 47 F.3d 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe*
5 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total
6 fund amount).) This is also consistent with my experience in wage and hour class and PAGA
7 settlements.

8 37. Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for
9 awarding fees, notwithstanding courts’ clear preference for the percentage method, my request
10 for attorney’s fees of \$80,500.00 (35% of the Gross Settlement Amount) is fair and reasonable
11 based on my firm’s lodestar as cross-checked against the percentage of the recovery. I will make
12 detailed copies of the total number of hours of work performed by my firm and the pre-multiplier
13 lodestar to the Court upon its request. I also expect to perform additional work on this case if
14 the Court grants final approval of the Settlement, including supervision of the Settlement
15 Administrator’s disbursement of the settlement funds to the Aggrieved Employees.

16 38. In addition, my firm incurred substantial costs, \$9,010.18 to date, which consist
17 of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct
18 summary of my firm’s costs and expenses incurred to date is attached as **Exhibit 6** to this
19 declaration. I will make detailed copies of such records available to the Court for *in camera*
20 inspection upon its request. As the evidence submitted herewith shows, all of these costs are
21 documented and reasonably incurred. Accordingly, they warrant the Court’s approval.

22 39. My previous experience in litigating wage and hour actions also supports the
23 reasonableness of the fee request. Based on past experience with similar matter, I was able to
24 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.
25 Because it is reasonable to compensate me commensurate with my skill, reputation, and
26 experience, attorney’s fees of approximately one-third of the Gross Settlement Amount is

27
28

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 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
2 litigation, Sharilyn Payne of NOLAND, HAMERLY, ETIENNE & HOSS, also supports the
3 fairness and reasonableness of the requested fee award.

4 40. Attached hereto as **Exhibit 7** is a true and correct copy of the biography page for
5 Sharilyn Payne from the NOLAND, HAMERLY, ETIENNE & HOSS website. She defended
6 this case.

7 41. Plaintiff reiterates his request that the Court award his counsel 35% of the
8 recovery as attorney fees. The award of attorney's fees sought is justified by the contingency
9 nature of the attorney-client relationship, my experience in litigating wage and hour cases, the
10 number of attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense
11 counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost
12 reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved
13 Employees.

14 ***Settlement Administration Costs***

15 42. With regard to the settlement administration costs provision, it is reasonable.
16 Before agreeing to ILYM Group, Inc. ("ILYM"), the parties sought and reviewed bids from
17 other reputable third-party administrator and ILYM's bid was the lowest.

18 A. ILYM Group, Inc.= \$3,750.00

19 B. Phoenix Class Action Administration Solutions = \$6,000.00; and

20 C. Simpluris, Inc.= \$ 7,972.82; and

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

25 43. Furthermore, the Declaration of Lisa Mullins with attached exhibit, filed under
26 separate cover, sets forth ILYM's qualifications and costs to administer the settlement. *See*
27 *generally* Declaration of Lisa Mullins. Thus, the settlement administration costs provision
28 should be given approval.

- 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

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.


HAROUT MESSRELIAN,
Declarant