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JUAN MIGUEL PERALES, and all others similarly situated

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14
15 **FOR THE COUNTY OF STANISLAUS**
16 **(UNLIMITED JURISDICTION)**

17 JUAN PERALES, on behalf of himself and as an
18 “Aggrieved Employee” on behalf of other
19 “Aggrieved Employees” under the Private
Attorneys General Act of 2004,

20 Plaintiff,

21 v.

22 SHIPS PIZZA, INC, a California corporation;
23 CENTRAL VALLEY PIZZA LLC, a California
24 limited liability company; TEAM CENTRAL
25 VALLEY, INC, a California corporation; GREG
DEGRANDIS, an individual; and DOES 1-50,
inclusive,

26 *Defendant(s).*
27

Case No. CV-22-004216

**PLAINTIFF JUAN MIGUEL
PERALES’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Hearing Date: April 4, 2025
Hearing Time: 8:30 a.m.
Hearing Dept.: 24, The Honorable
Sonny S. Sandhu

Action filed: September 19, 2022
Trial Date: Not Set



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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

I. INTRODUCTION

Plaintiff Juan Miguel Perales (“Plaintiff” or “Perales”) submits this memorandum of points and authorities in support of his motion for approval of the PAGA Settlement Agreement (the “Agreement” or “PAGA Settlement” or “Settlement”)² for the civil penalties claim he brought against Defendants Ships Pizza, Inc., Central Valley Pizza LLC, and Team Central Valley, Inc., (collectively “Defendants”) under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiff brings this motion because Labor Code section 2699(l) of the PAGA requires Court-approval of any civil penalties sought as part of a proposed settlement agreement. Based on Plaintiff’s and his attorneys’ investigation and evaluation, Plaintiff is of the opinion that the PAGA Settlement Agreement represents a reasonable and adequate settlement of strongly disputed claims and is in the best interest of the State of California, the Aggrieved Employees, and Plaintiff. Through this motion, therefore, Plaintiff respectfully requests for this Court to approve the PAGA Settlement Agreement for resolution of the PAGA claim. The Plaintiff seeks division of the \$280,000.00 Gross Settlement Amount as follows:

Item	Amount
PAGA Counsel Fees Payment	\$93,333.33
PAGA Counsel Litigation Expenses Payment	\$17,500.00
Administrator’s Expenses Payment	\$20,000.00
PAGA civil penalties (Net Settlement Amount)	\$149,166.67
75% to LWDA	\$111,875.00
25% to Aggrieved Employees	\$37,291.67
Gross Settlement Amount	\$280,000.00

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants are owners and operators of Domino’s Pizza franchisees. Defendants employed Plaintiff as an hourly, non-exempt assistant manager from about June of 2020 until June 24, 2022. DS, ¶3.

A. Plaintiff’s Written Notice to the State of California

Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under PAGA. By letter dated September 19, 2022, Plaintiff, on behalf of himself and other aggrieved hourly employees gave written notice by certified mail to the Labor and Workforce Development

² The PAGA Settlement Agreement is attached as **Exhibit** (“Ex.”) **1** to the Declaration of David Spivak (“DS”), which is submitted herewith under a separate cover.



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Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. DS, ¶ 4, Ex. 3.

B. Plaintiff’s PAGA Claim

Plaintiff and the Aggrieved Employees are potentially subject to arbitration agreements with Defendants. On September 19, 2022, Plaintiff commenced this Action. On December 9, 2022, Plaintiff filed a First Amended Complaint adding Central Valley Pizza LLC, and Team Central Valley, Inc., and Greg DeGrandis as named defendants. Plaintiff also added a claim under the 2004 Labor Code Private Attorneys General Act, Labor Code §§ 2699, *et seq.* (“PAGA”) against Defendant SHIPS PIZZA, INC only. On February 2, 2023, filed a Second Amended Complaint against all Defendants. DS, ¶ 5, Ex. 4. On July 14, 2023, the Court granted Defendants’ Motion to compel Plaintiff to arbitration and dismissed Plaintiff’s class claims. DS, ¶ 5, Ex. 5. Defendants deny all of Plaintiff’s allegations and strongly contend that their wage and hour policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 5.

C. Mediation

On July 25, 2023, the Parties participated in mediation with mediator Tripper Ortman in an attempt to resolve the PAGA claim. The Parties engaged in arm’s-length negotiations and even though the case did not settle at the mediation, the Parties continued their settlement negotiations with the help of the mediator and ultimately reached a resolution of the PAGA claims asserted in the Action. The PAGA Settlement Agreement was reached after exchanges of data, information and documents, and is a result of extensive arms-length negotiations. The Parties conducted informal discovery for purposes of potential resolution through which they ascertained the size of the aggrieved employee group and the number of pay periods worked by them during the PAGA Period to ascertain the total value of Plaintiff’s PAGA claim. Now that the Parties have finalized the PAGA Settlement Agreement, Plaintiff submits it to this Court for approval. DS, ¶ 6.

III. OVERVIEW OF SETTLEMENT

A. “Aggrieved Employees” Definition

The Aggrieved Employees are all persons employed by Defendants in California and classified as hourly, non-exempt who worked for Defendants during the period from September 19, 2021 through October 9, 2024 (the “PAGA Period”). Agreement, ¶¶ 1.4 and 1.18.

B. Monetary Terms Of The Settlement

Defendants promise to pay \$280,000.00 and no more as the Gross Settlement Amount.



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1 Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated
2 in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement
3 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of
4 payment. None of the Gross Settlement Amount will revert to Defendants. The Administrator will
5 make and deduct the following payments from the Gross Settlement Amount, in the amounts
6 specified by the Court in the Court's Approval order (Settlement, § 3):

7 **To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 33.33%, which is
8 currently estimated to be \$93,333.33 and a PAGA Counsel Litigation Expenses Payment of not
9 more than \$17,500.00. Defendants will not oppose requests for these payments provided that they
10 do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment and/or a
11 PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
12 will allocate the remainder to the PAGA Penalties.

13 **To the Administrator:** An Administrator Expenses Payment not to exceed \$20,000.00
14 except for a showing of good cause and as approved by the Court. To the extent the
15 Administration Expenses are less or the Court approves payment less than \$20,000.00, the
16 Administrator will retain the remainder in the PAGA Penalties.

17 **To the LWDA and Aggrieved Employees:** The Administrator will calculate the PAGA
18 Penalties by deducting the following amounts from the Gross Settlement Amount: Counsel Fees
19 Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses
20 Payment. PAGA Penalties in the amount of \$149,166.67 to be paid from the Gross Settlement
21 Amount, with 75% (\$111,875.00) allocated to the LWDA PAGA Payment and 25% (\$37,291.67)
22 allocated to the Individual PAGA Payments. The Administrator will calculate each Individual
23 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA
24 Penalties (\$39,791.67) by the total number of PAGA Pay Periods worked by all Aggrieved
25 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
26 PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes
27 owed on their Individual PAGA Payment.

28 **C. Timing of Payments**

Not later than 15 days after the Court grants approval of the Settlement, Defendants will
simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a
Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator



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1 must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data
2 only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
3 Employee Data to Administrator employees who need access to the Aggrieved Employee Data to
4 effect and perform under this Agreement. Defendants have a continuing duty to immediately
5 notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee
6 identifying information and to provide corrected or updated Aggrieved Employee Data as soon
7 as reasonably feasible. Without any extension of the deadline by which Defendants must send the
8 Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously
9 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
10 omitted Aggrieved Employee Data. Defendants shall fully fund the Gross Settlement Amount by
11 transmitting the funds to the Administrator no later than 14 days after the Effective Date. Within
12 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks
13 for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
14 Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation
15 Expenses Payment shall not precede disbursement of Individual PAGA Payments. The
16 Administrator will issue checks for the Individual PAGA Payments and send them to the
17 Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall
18 prominently state the date (not less than 180 days after the date of mailing) when the check will
19 be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing
20 any checks, the Administrator must update the recipients' mailing addresses using the National
21 Change of Address Database. Settlement, § 4.

22 **D. Calculation of Settlement Shares**

23 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
24 amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$39,791.67) by the total
25 number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and
26 (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Settlement, §
27 3.2.3.1.

28 **E. Apportionment of Settlement Shares**

100% of the individual settlement shares will be allocated as penalties. Aggrieved
Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
Payment. Settlement, § 3.2.3.1.



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1 **F. The Releases**

2 Effective on the date when Defendants fully fund the entire Gross Settlement Amount,
3 Plaintiff, Aggrieved Employees, and PAGA Counsel will release claims against all Released
4 Parties as follows (Settlement, § 5):

5 **Plaintiff's Release.** Plaintiff and his respective former and present spouses,
6 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors,
7 and assigns generally, release and discharge Released Parties from all claims, transactions, or
8 occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims
9 that were, or reasonably could have been, alleged, based on the facts contained in the Operative
10 Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to
11 any claims or actions to enforce this Agreement, or to any claims for vested benefits,
12 unemployment benefits, disability benefits, social security benefits, workers' compensation
13 benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff
14 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts
15 or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's
16 Release shall be and remain effective in all respects, notwithstanding such different or additional
17 facts or Plaintiff's discovery of them. Plaintiff's Waiver of Rights Under California Civil Code
18 Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
19 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

20 A general release does not extend to claims that the creditor or releasing party does not
21 know or suspect to exist in his or her favor at the time of executing the release, and that if
22 known by him or her would have materially affected his or her settlement with the debtor
23 or Released Party.

24 The Parties agree that Plaintiff's Release excludes any claims covered by the separate confidential
25 individual Settlement Agreement and Release of All Claims ("Individual Settlement Agreement")
26 that Plaintiff and Defendants have entered into. Further, the Parties also agree that nothing in the
27 Individual Settlement Agreement prevents Plaintiff from or waives Plaintiff's right to recover the
28 Individual PAGA Payment that he is entitled to under this Agreement.

Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on
 behalf of themselves and their respective former and present representatives, agents, attorneys,
 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA



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1 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
2 facts stated in the Operative Complaint and the PAGA Notice.

3 **G. Notice Process and Procedures**

4 Not later than 15 days after the Court grants approval of the Settlement, Defendants will
5 simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a
6 Microsoft Excel spreadsheet. Settlement, § 4.2. Defendants shall fully fund the Gross Settlement
7 Amount by transmitting the funds to the Administrator no later than 14 days after the Effective
8 Date. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will
9 mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
10 Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel
11 Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. The
12 Administrator will issue checks for the Individual PAGA Payments and send them to the
13 Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall
14 prominently state the date (not less than 180 days after the date of mailing) when the check will
15 be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing
16 any checks, the Administrator must update the recipients' mailing addresses using the National
17 Change of Address Database. The Administrator must conduct a Aggrieved Employee Address
18 Search for all other Aggrieved Employees whose checks are returned undelivered without USPS
19 forwarding address. Within seven (7) days of receiving a returned check the Administrator must
20 re-mail checks to the USPS forwarding address provided or to an address ascertained through the
21 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver
22 checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The
23 Administrator shall promptly send a replacement check to any Aggrieved Employee whose
24 original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
25 Settlement, §§ 4.3-4.4.

26 **IV. ARGUMENT**

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

28 In 2003, the California Legislature, concerned that state labor laws were not being
adequately enforced, enacted PAGA to deputize "aggrieved employees" to pursue civil penalties.
Kim v. Reins International California, Inc. (2020) 9 Cal.5th 73, 81. An aggrieved employee is a
person who was employed by the defendant employer and who suffered one or more of the alleged
Labor Code violations. Lab. Code § 2699(c).



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

19 PAGA penalties are in the nature of a law enforcement penalty and are designed to
20 penalize an employer for its failure to comply with California's wage and hour laws and
21 regulations and are not designed to compensate employees. *Ochoa-Hernandez v. CJADERS*
22 *Foods, Inc.*, 2010 WL 1340777 *1, *5 (E.D. Cal. Apr. 2, 2010). ("Unnamed employees need not
23 be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative
24 PAGA claim. There is no indication that the unnamed plaintiffs can contest a settlement, if any,
25 reached between the parties.").

26 PAGA settlements are subject to trial court review and approval. Lab. Code § 2699(l)(2).
27 "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable,
28 and adequate in view of PAGA's purposes to remediate present labor law violations, deter future
ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* (2021) 72



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1 Cal.App.5th 56, 77. Many of the same factors used to evaluate the fairness of a class action
2 settlement can be "useful" in evaluating the fairness of a PAGA settlement. *Id.* These include:

- 3 1. Strength of plaintiff's case. This is the most important factor.
- 4 2. Expense associated with taking the case to trial, *i.e.*, the avoided cost of further
5 litigation.
- 6 3. Amount or value offered in settlement.
- 7 4. Extent of discovery completed and state of proceedings.
- 8 5. Experience and views of counsel.
- 9 6. Presence of a governmental participant.
7. Reaction of employees to proposed settlement.

10 *Moniz* suggests items 1-6 from this list may provide guidance in the PAGA setting; obviously
11 item 7 does not apply, because the non-party aggrieved workers in a PAGA case are entitled to
12 no notice and have no opt out rights. *Arias v. Superior Court* (2009) 46 Cal.4th 969.

13 In making the determination whether a settlement taken as a whole is fair, reasonable, and
14 adequate, the Court should be careful to still give "proper deference to the private consensual
15 decision of the parties," since "the court's intrusion upon what is otherwise a private consensual
16 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
17 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
18 collusion between, the negotiating parties" *Hanlon*, 150 F.3d at 1027. The law favors
19 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
20 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
21 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
22 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

23 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
24 **PAGA.**

25 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
26 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
27 follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See*
28 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
The Parties' Settlement so provides. 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(1)(2). Under the Settlement, notice is being given to the LWDA concurrently with the filing



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of this motion. DS, ¶ 7, Ex. 6. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

C. THIS COURT SHOULD APPROVE the PAGA SETTLEMENT BECAUSE IT IS A FAIR, REASONABLE AND ADEQUATE IN VIEW OF PAGA'S PUBLIC POLICY GOALS.

To make its determination that the Settlement is fair, reasonable, and adequate, the Court may consider several factors, including:

the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel.

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

The 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 PAGA Period, time and payroll records, Point of Sales ("POS") records, and all policies in effect during the relevant time period; and (3) Counsel for the Parties are experienced with PAGA cases. DS, ¶ 8. For the reasons discussed below, this Court should approve the Settlement.

1. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A court has discretion under PAGA to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). Defendants have posed valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant uncertainty. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and



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1 required a significant discount for settlement purposes. For mediation purposes, I estimated a
2 maximum exposure of approximately \$9,147,150.00 in civil penalties. This estimate did not take
3 into account any of the risks discussed above and assumed a violation for every single pay period.
4 Plaintiff's counsel also assessed multiple penalties for the same pay period for the same alleged
5 violations of different Labor Code provisions and derivative violations. Although two federal
6 district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to
7 determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is
8 not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same
9 violation for the same pay period under different Labor Code provisions. This may be because
10 the PAGA does not provide for what many employers characterize as claim splitting and not
merely stacking. DS, ¶ 14.

11 In preparation for mediation and during the settlement negotiations that followed,
12 Defendants disclosed that there were approximately 1,143 potentially aggrieved employees and
13 23,780 pay periods. The maximum possible civil penalties under the PAGA is the total number
14 of pay periods with one or more violations multiplied by the maximum possible civil penalty
15 amount per pay period. Unfortunately for the employees concerned, the potential for recovery of
16 the maximum possible civil penalties depends on circumstances that are extremely unlikely
17 independently and in combination. It would depend on the Court stacking the maximum
18 recoverable civil penalties for all pay periods for all potentially aggrieved employees during the
19 PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a
20 plaintiff and the other aggrieved employees he represents multiple civil penalties for the same pay
21 period under different Labor Code provisions. Plaintiff's counsel had to substantially discount the
22 value of these claims in the settlement negotiations for this and a variety of other reasons (outlined
below). DS, ¶ 15.

23 **a. Risks Associated with Plaintiff's Claim That Defendants Failed**
24 **To Pay All Earned Wages at the Correct Rates of Pay**

25 There is a risk that Plaintiff's claim that Defendants did not pay all wages at the correct
26 rates of pay would be extremely limited at best, largely because Defendants' written policies
27 throughout the relevant time period prohibited off-the-clock work. Off-the-clock claims are
28 difficult where a Defendants require in their written policies that all work must take place while
clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must
have notice of off-the-clock work for it to be compensable). *Id.* In their written employment



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1 policies, Defendants mandate that employees must record all time worked accurately on their time
2 records and strictly prohibit employees from performing any work off-the-clock. As part of the
3 mediation discovery, Defendants also produced their store POS records which show customer
4 transactions entered by the Aggrieved Employees. Although the POS records show certain
5 activities taking place off the clock, individualized evidence may be necessary to determine
6 whether they occurred due to conduct of the Defendants or each of the employees concerned and
7 whether Defendants had knowledge of the off-the-clock work. Although, Defendants dispute that
8 off-the-clock work occurred, they also contend that any time spent off the clock was *de minimis*.
9 The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835
10 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense
11 even if compensable (Stating that “We do not decide whether there are circumstances where
12 compensable time is so minute or irregular that it is unreasonable to expect the time to be
13 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
14 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
15 civil penalties seems unlikely with respect to this claim. DS, ¶ 16.

16 The difficulty inherent in proving that off-the-clock work occurred poses a significant
17 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
18 Here, Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim,
19 especially given the lack of records indicating when such off-the-clock work may have taken
20 place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to
21 determine if an individual in fact worked “minutes” off-the-clock on a “regular” basis.
22 Accordingly, there is a significant risk that the Court would consider this evidentiary showing
23 insufficient as a methodology for all aggrieved employees and find such claims unmanageable at
24 trial. DS, ¶ 17.

25 **b. Risks Associated with Plaintiff’s Claim That Defendants Failed**
26 **To Provide All Meal Periods**

27 There are risks to Plaintiff’s claims that Defendants failed to provide all meal periods. DS,
28 Defendants contend that, to establish a violation of the meal period law, a plaintiff must do more
than show that a meal break was not taken. DS, ¶ 17; *Brinker*, 53 Cal. 4th at 1004. So long as an
employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it
has no further duty to “police meal breaks and ensure no work thereafter is performed.” *Id.* at
1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the



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1 employee from taking a proper break, or otherwise failed to release the employee of all control.
2 *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular
3 employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal.
4 2010) 271 F.R.D. 629, 641. *Id.*

5 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
6 from taking their meal periods. Defendants’ policies mandate that employees take at least a 30-
7 minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks
8 each day on their time records. The time records that comprise the random sample Defendants
9 produced to Plaintiff for purposes of mediation show that meal periods were often taken. Of the
10 time records that show a late, short or no lunch, individualized evidence may be necessary to
11 determine whether they occurred due to conduct of the Defendants or each of the employees
12 concerned. Accordingly, there is a significant risk that the recoverable amount of civil penalties
13 for unprovided meal periods would be substantially reduced at trial. DS, ¶ 18.

14 **c. Risks Associated with Plaintiff’s Claim That Defendants Failed**
15 **To Authorize or Permit Rest Breaks**

16 There are risks to Plaintiff’s claims that Defendants failed to authorize or permit rest
17 breaks. DS, ¶ 19. Employers are not required to record rest periods and such periods are paid.
18 Defendants contend they provided non-exempt employees the opportunity to take rest periods in
19 accordance with California law. Further, Defendants’ written policies on meal and rest periods
20 are consistent with the Wage Order. Thus, unlike meal periods, where there are often records
21 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
22 period or that the employer refused to authorize and permit one. Managing such claims at trial
23 has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys
24 to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw
25 makes such claims risky from a trial management and due process perspective. *See Duran v. U.S.*
26 *Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist
27 to support class certification, it may be possible to manage individual issues through the use of
28 surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382;
Comcast Corporation v. Behrend (2013) 133 S.Ct. 1426.

d. The Absence of Large Civil Penalty Awards under PAGA

The sole source of money recoverable for the Aggrieved Employees and the State is civil penalties available under PAGA. It allows employees to seek civil penalties for certain violations



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1 of the Labor Code so long as the penalties are not unjust, arbitrary, oppressive, or confiscatory.
2 As discussed above, Plaintiff's maximum estimated liability exposure is based on the theories
3 that: (1) Every paycheck that Defendants issued to employees during the PAGA Period represents
4 a pay period in which every Aggrieved Employee suffered a minimum wage violation; (2) Every
5 paycheck that Defendants issued to employees during the PAGA Period represents a pay period
6 in which every Aggrieved Employee suffered an overtime wage or meal period violation; and (3)
7 Every paycheck that Defendants issued to employees during the PAGA Period represents a pay
8 period in which every Aggrieved Employee suffered a rest period violation. There are no
9 California state court decisions under the PAGA to date with substantial awards of civil penalties.
10 Plaintiff's counsel is aware of only two significant awards under the PAGA in a contested
11 proceeding, both issued by federal district courts, one of which was overturned on May 28, 2021.³
12 DS, ¶ 20.

13 ³ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
14 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58.
15 In this regard, the district court stated,

16 The plain language of PAGA provides that “a court may award a lesser amount than the
17 maximum civil penalty amount specified by this part if, *based on the facts and*
18 *circumstances of the particular case*, to do otherwise would result in an award that is
19 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
20 added). The relationship between the amount of total damages and the amount of
21 maximum PAGA penalties is certainly a “circumstance” of the case under the term's
22 ordinary meaning. The weight given to that circumstance is greater in this case because
23 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
24 individual claims except for one. As a general matter, it would be excessively punitive for
25 the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the
26 damages caused by that injury or set of injuries.

27 *Id.*, fnnt. 9. The district court further stated, “Virgin “has not presented any evidence that the full
28 penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
29 *Id.*

30 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
31 awarded approximately \$102 million in damages, primarily based on the Defendants' failures to
32 comply with the requirements of California Labor Code section 226. On May 28, 2021, the United
33 States Court of appeals for the Ninth Circuit overturned the decision finding that there is no
34 technical wage statement violation for a failure to list the rates and hours of pay associated with
35 adjustments to overtime pay. *Magadia v. Wal-Mart Assocs.*, No. 19-16184, 2021 U.S. App.
36 LEXIS 16070 (9th Cir. May 28, 2021).



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1 Additionally, PAGA states a court has discretion to award a lesser amount than the
2 maximum penalty. Labor Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*
3 (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the
4 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
5 evidence of willful and intentional conduct. *Carrington v. Starbucks (2018) 30 Cal.App.5th 504*
6 (*"Carrington"*) illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
7 discounted award of only \$5 per violation because it was within the Court's discretion to
8 significantly reduce PAGA penalties even when there is a finding that a violation of the California
9 Labor Code occurred. Under *Carrington*, assuming two (2) violations for each pay period for all
10 Aggrieved Employees, will result in a recovery of \$237,800 (23,780 x 2 x \$5 = \$237,800). DS, ¶
21.

11 Moreover, judges have awarded extremely small sums to PAGA claimants in the past. In
12 *Ghrdilyan v. RJ Financial, Inc., Los Angeles Superior Court*, case number BC430633, the
13 employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in
14 civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian
15 awarded approximately \$325,000 in civil penalties under the PAGA. DS, ¶ 23, Exs. 7-9. In a
16 similar PAGA case before the Los Angeles Superior Court, *Shields v. Security Paving Company,*
17 *Inc.*, LA Superior Court case no. BC492828, on October 24, 2017, the court awarded the
18 prevailing PAGA plaintiff civil penalties totaling only \$50.00. A similar result could occur here.
DS, ¶ 22, Ex. 10.

19 Defendants could also convince the Court to dismiss the claims due to unmanageability
20 because determining whether each Aggrieved Employee worked off the clock or why each
21 employee missed a meal or rest period would require separate mini-trials. *Id. See, Mendiola v.*
22 *CPS Sec. Solutions, Inc.* (2015) 60 Cal.4th 833. In *Ortiz v. CVS Caremark Corp.*, the court
23 dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at *3-4 (N.D. Cal.
24 2014). The *Ortiz* court cited the "multitude of individualized assessments" that case would have
25 required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed
26 PAGA claims where, there are a large number of allegedly aggrieved individuals whose claims
27 require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3
28 (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



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1 trial of plaintiff's claim from representative claims: "in light of the number of potential aggrieved
2 employees, judicial economy favors deferring the representative portion of the PAGA claim");
3 *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). Further, on
4 September 9, 2021, the California Court of Appeal issued a decision in *Wesson v. Staples The*
5 *Office Superstore, LLC*, 68 Cal. App. 5th 746 (2021), reh'g denied (Sept. 27, 2021) holding that
6 trial courts have authority to ensure that claims under PAGA are manageable, and that courts may
7 limit or strike unmanageable PAGA claims. DS, ¶ 23.

8 While the evidence gathered through Plaintiff's discovery supports the merits of the
9 claims asserted in this lawsuit, the settlement is fair, reasonable, and adequate in light of the risks
10 associated with the merits of Plaintiff's claims, the uncertainties of complex litigation, the cost of
11 pretrial and trial proceedings, the Court's discretion to lower the amount of penalties ultimately
12 awarded, and the secured benefit to the Aggrieved Employees and the LWDA promoting
13 compliance with the Labor Code. DS, ¶ 26.

14 **2. Plaintiff's Counsel's Estimate of the Expense of Taking This Case To**
15 **Trial Also Favors This Settlement**

16 Plaintiff's counsel estimates that the cost of taking this case to trial will exceed \$500,000
17 in attorney fees and costs alone. DS, ¶24.

18 **3. Amount or Value Offered in Settlement.**

19 As stated above, Defendants offer \$280,000.00. The Parties have also agreed to a separate
20 payment to Plaintiff of \$15,000 for a general release of her individual (non-PAGA) claims
21 pursuant to a separate confidential settlement agreement. DS, ¶ 25. Plaintiff will present the
22 confidential agreement to the Court if requested. *Id.*

23 **4. The Extent of Investigation and Discovery Completed Provided Ample**
24 **Information to Enter into an Informed and Reasonable Settlement**

25 Plaintiff considered various sources of information in the lead-up to, during and after the
26 mediation that enabled him to achieve the Settlement at issue. Among other things, Plaintiff
27 considered the following:

- 28 • Defendants produced and Plaintiff reviewed his personnel file.
- Defendants produced and Plaintiff reviewed and analyzed time and payroll records for over 574 Aggrieved Employees.
- Defendants produced and Plaintiff reviewed and analyzed Point of Sales ("POS") records for Plaintiff and the Aggrieved Employees.
- Plaintiff requested that Defendants produce any and all relevant policies



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1 regarding Plaintiff's claims and Defendants produced those policies in effect during the relevant
2 time period.

3 • Plaintiff analyzed the state of caselaw on PAGA claims, claims and related
4 claims.

5 • Plaintiff surveyed the outcomes of PAGA cases that went to trial or
6 otherwise concluded before trial.

7 DS, ¶ 13.

8 **5. The Experience and Views of Counsel Favor This Settlement**

9 As Plaintiff's counsel explains in his declaration, this settlement makes good sense based
10 on his experience litigating wage and hour actions, including claims seeking civil penalties under
11 PAGA. DS, generally.

12 **6. The Presence of a Governmental Participant Favors This Settlement.**

13 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
14 PAGA. By letters dated September 19, 2022, Plaintiff, on behalf of himself and other "aggrieved
15 employees" gave written notice by certified mail to the Labor and Workforce Development
16 Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code
17 alleged to have been violated, including the facts and theories to support the alleged violations.
18 DS ¶ 4, Ex. 3. Plaintiff also notified this LWDA of this settlement. DS ¶ 7, Ex. 6.

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

21 The PAGA Settlement Agreement was reached only after litigation and arms' length
22 negotiations between experienced attorneys, which included a full day mediation with Tripper
23 Ortman, a respected mediator. At all times, the negotiations were adversarial and contentious,
24 although still professional in nature. DS, ¶ 6.

25 **8. The Gross Settlement Amount Fairly, Reasonably, and Adequately
26 Awards Shares To Aggrieved Employees Because Each Aggrieved
27 Employee Will Be Paid Based on the Potential Extent of His or Her
28 Injury Compared to Other Aggrieved Employees**

Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
depending on the number of pay periods Defendants employed them for during the PAGA Period.
With a total of approximately 1,143 Aggrieved Employees, the average estimated individual
Settlement Payment for each Aggrieved Employee is approximately \$32.63 (\$37291.67 / 1,143
Aggrieved Employees). Although an average payment of \$32.63 per Aggrieved Employee is not
an enormous sum of money, it is an excellent result given the uncertainties this lawsuit entails. It



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1 is also reasonable given the structure and purpose of the PAGA. The PAGA is not a restitution
2 statute with a traditional damages provision designed to restore victims to the position they would
3 have been in had the Labor Code violations not taken place. Rather, it is at best a punishment
4 statute designed to reduce future Labor Code violations. It provides for civil penalties only. DS,
¶27.

5 **9. Plaintiff's Counsel is Experienced in Similar Litigation.**

6 Plaintiff's counsel have considerable experience in class actions and wage and hour
7 litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving
8 forward with litigation, and viability of possible affirmative defenses. See DS, ¶¶ 9-12;
9 Declaration of Walter L. Haines ("Haines Decl.") ¶ 2.

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

11 "The law empowers the court to set the amount of fees independently without
12 disapproving the entire settlement." *Garabedian v. Los Angeles Cellular Telephone Co.* (2004)
13 118 Cal.App.4th 123, 129. The benchmark for determining attorney fees is reasonableness.
14 *Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 744. The determination
15 of what constitutes a reasonable fee generally begins with the lodestar, i.e., the number of hours
16 reasonably expended multiplied by the reasonable hourly rate. *Graciano v. Robinson Ford Sales,*
17 *Inc.* (2006) 144 Cal.App.4th 140, 154. The lodestar figure may then be adjusted, based on factors
18 specific to the case, to fix the fee at the fair market value for the legal services provided. *PLCM*
Group v. Drexler (2000) 22 Cal.4th 1084, 1095.

19 Of the \$280,000.00 Gross Settlement Amount, Plaintiff's counsel requests \$93,333.33
20 (1/3 of the Gross Settlement Amount) in attorney's fees and up to \$17,500.00 in litigation
21 expenses. DS, ¶ 29. The written retainer agreement Plaintiff's counsel entered into with Plaintiff
22 provided that his counsel may elect to recover either (a) statutorily awarded attorney fees or (b)
up to 40% of any recovery. *Id.*

23 It is an accepted practice in wage and hour class action settlements to award attorneys'
24 fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the
25 parties. California courts have long recognized that an appropriate method for awarding attorneys'
26 fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20
27 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an
28 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation



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1 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund”]; *Wershba*
2 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*
3 (2000) 82 Cal.App.4th 19, 26-30.)

4 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
5 check” on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
6 1 Cal. 5th 480, 505 (“*Laffitte*”). However, the California Supreme Court in *Laffitte* has now made
7 clear that this cross-check is not required and approved one-third of the class action settlement
8 fund as reasonable attorney fees as “[t]he percentage of the fund method survives in California
9 class action cases....” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
10 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
11 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not “engage
12 in a full-blown lodestar analysis when the primary basis remains the percentage method...” The
13 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
14 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
15 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
16 reasonableness of a requested percentage fee.’”⁴ *Id.* (citing *Laffitte*)).

17 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
18 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008) 162
19 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
20 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
21 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is also
22 consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA settlements.
23 DS, ¶ 32.

24 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
25 fees, notwithstanding courts’ clear preference for the percentage method, Plaintiff’s Counsel’s

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



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1 fee request of \$93,333.33 (one-third of the Gross Settlement Amount) is fair and reasonable based
2 on their lodestar as cross-checked against the percentage of the recovery. DS, ¶ 30, Ex. 11.
3 Plaintiff's counsel's previous experience in litigating wage and hour class actions and the caliber
4 of opposing counsel also support the reasonableness of the fee request. DS, ¶¶ 32-33.

5 In addition, Plaintiff's Counsel incurred substantial costs, \$17,675.58 to date, including
6 the costs of a mediator to aid in the representation of the Aggrieved Employees.⁵ DS, ¶ 31, Ex.
7 12; Haines Decl. ¶ 11. Plaintiff's Counsel anticipate that Plaintiff will incur an additional \$121.94
8 in costs, which consist of filing fees and attorney service fees for filing this motion and notice of
9 entry of order. Plaintiff's Counsel anticipate that litigation costs will total approximately \$
10 \$17,797.52 through final accounting of the Settlement. *Id.* As the evidence submitted herewith
11 shows, all of these costs are documented and reasonably incurred. *Id.* Accordingly, they warrant
12 the Court's approval.

13 **11. The Proposed Administrator's Expenses Payment Are Fair and**
14 **Reasonable and Should Be Approved.**

15 With regard to the Administrator's Expenses Payment provision, it is reasonable. Before
16 agreeing to Simpluris, Inc., the Parties sought and reviewed bids from other reputable third-party
17 administrators which provided higher bids. DS, ¶ 34-35 Exs. 13-16. Thus, the Administrator's
18 Expenses Payment provision should be given approval.

19 **V. CONCLUSION**

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

22 Respectfully submitted,

23 THE SPIVAK LAW FIRM

24 

25 Dated: February 7, 2025

26 By:

27 DAVID G. SPIVAK
28 CAROLINE TAHMASSIAN
Attorneys for Plaintiff, JUAN
MIGUEL PERALES, and all others
similarly situated

29 ⁵ Plaintiff's counsel do not seek reimbursement for the wages they paid to the attorneys,
30 paralegals, and legal assistants to aid in the representation of the Aggrieved Employees and the
31 State. Plaintiff's Counsel bore these expenses over the lengthy since they began work on this
32 matter without reimbursement.



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