

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (SB# 272020)

hm@messrelianlaw.com

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

maralle@messrelianlaw.com

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff, IRMA TAPIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF SANTA CRUZ
(UNLIMITED JURISDICTION)**

IRMA TAPIA,

Plaintiff,

vs.

POSADA ASSOCIATES; LA POSADA;
KALCO PROPERTIES INC.; and DOES 1
to 25, inclusive,

Defendant.

Case no.: 23CV00355

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

Action filed: February 10, 2023
Hearing Date: July 22, 2024
Hearing Time: 8:30 a.m.
Hearing Dept: 5, Hon. Syda K. Cogliati

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Harout Messrelian;
3. Declaration of Maralle Messrelian;
4. Declaration of Irma Tapia;
5. Declaration of Michael Moore; and
6. [Proposed] Order and Judgment Approving PAGA Settlement.

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

3 PLEASE TAKE NOTICE that on July 22, 2024 at 8:30 a.m., or as soon thereafter as the
4 matter may be heard, in Department 5 of the Santa Cruz County Superior Court, located at 701
5 Ocean St, Santa Cruz, CA 95060, Plaintiff Irma Tapia (“Plaintiff” or “Tapia”) will and hereby
6 does move this Court for an order approving the Private Attorneys General Act (Labor Code §
7 2698 *et seq.*) Settlement Agreement (the “Agreement” or “PAGA Settlement”) and entering the
8 [Proposed] Order and Judgment Approving PAGA Settlement.

9 The PAGA Settlement is on behalf of Tapia and all persons within the State of California
10 who are or were employed by Defendants Posada Associates, La Posada, and Kalco Properties,
11 Inc. (collectively “Defendants” or “POSADA”) from December 7, 2021 to January 18, 2024 (the
12 “Aggrieved Employees”). Plaintiff alleges that Defendants are liable to her and other Aggrieved
13 Employees for (1) failure to compensate for all hours worked, including minimum and overtime
14 wages; (2) failure to provide accurate, itemized wage statements; (3) failure to pay all wages owed
15 during and at the end of employment; (4) failure to maintain accurate records; (5) failure to give
16 rest breaks and meal breaks; and (6) failure to reimburse for business expenses.

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

22 Respectfully submitted,

23 MESSRELIAN LAW INC.

24 Dated: June 27, 2024

25 By: Maralle Messrelian
26 Harout Messrelian
27 Maralle Messrelian (Of Counsel)
28 Attorneys for Plaintiff, Irma Tapia

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (SB# 272020)

hm@messrelianlaw.com

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

maralle@messrelianlaw.com

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff, IRMA TAPIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

(UNLIMITED JURISDICTION)

IRMA TAPIA,

Plaintiff,

vs.

POSADA ASSOCIATES; LA POSADA;
KALCO PROPERTIES INC.; and DOES 1
to 25, inclusive,

Defendants.

Case no.: 23CV00355

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

Action filed: February 10, 2023
Hearing Date: July 22, 2024
Hearing Time: 8:30 a.m.
Hearing Dept: 5, Hon. Syda K. Cogliati

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND.....	1
A. Plaintiff’s Written Notice to the State of California	1
B. Plaintiff’s Lawsuit.....	2
C. Mediation With Hon. Wynne Carvill (Ret.)	2
III. OVERVIEW OF SETTLEMENT	3
A. “Aggrieved Employee” Definition	3
B. Monetary Terms Of The Settlement	3
C. Funding and Distribution of the Settlement.....	4
D. Individual PAGA Payments and Uncashed Checks	4
E. Release of Claims For Aggrieved Employees Limited To Those That Could Reasonably Arise From the Facts Alleged In The Action.....	5
IV. ARGUMENT.....	5
A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT	5
B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA	6
C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE IT IS FAIR, REASONABLE AND ADEQUATE.....	7
1. The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm’s Length Negotiations Between The Parties.	8
2. The Parties Conducted Sufficient Investigation And Discovery To Allow Counsel And The Court To Act Intelligently.....	8
3. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation.....	9
4. Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees	13
5. Counsel For Parties Are Experienced in Similar Litigation	13

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

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

7. The Proposed Settlement Administration Costs Are Fair and Reasonable and Should Be Approved. 15

V. CONCLUSION..... 15

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Austin v. Foodliner, Inc.</i> (N.D.Cal. May 10, 2019) 2019 U.S. Dist. LEXIS 79638	14
<i>Carrington v. Starbucks</i> (2018) 30 Cal.App.5th 504	11
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	14
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7
<i>Farm Raised Salmon Cases</i> (2008) 42 Cal.4th 1077	14
<i>Gutilla v. Aerotek, Inc.</i> (E.D.Cal. Mar. 21, 2017) 2017 U.S. Dist. LEXIS 41655	6,7
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	6
<i>In re Executive Life Ins. Co.</i> (1995) 32 Cal.App.4th 344	6
<i>In re Synacor ERISA Litigation,</i> (9th Cir. 2008) 516 F.3d 1095	6
<i>Juarez v. Villafan</i> (E.D.Cal. Aug. 24, 2017) 2017 U.S. Dist. LEXIS 137205	6,7
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	14
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	13
<i>Lopez v. Mgmt. & Training Corp.</i> (S.D.Cal. Apr. 20, 2020) 2020 U.S. Dist. LEXIS 70029	14
<i>Moorer v. Noble L.A. Events, Inc.</i> (2019) 32 Cal.App.5th 736	6

1	<i>Neary v. Regents of University of California</i>	
2	(1992) 3 Cal.4th 273	6
3	<i>Officers for Justice v. Civil Service Com.</i>	
4	(9th Cir. 1982) 688 F.2d 615	6
5	<i>Principe v. Ukropina (In re Pacific Enter. Sec. Litig.)</i>	
6	(9th Cir. 1995) 47 F.3d 373	15
7	<i>Ramirez v. Benito Valley Farms, LLC</i>	
8	(N.D.Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137272	6, 7
9	<i>Rincon v. West Coast Tomato Growers, LLC</i>	
10	(S.D.Cal. Feb. 12, 2018) 2018 U.S. Dist. LEXIS 22886	6, 7
11	<i>Salazar v. Sysco Cent. Cal., Inc.</i>	
12	(E.D.Cal. Feb. 2, 2017) 2017 U.S. Dist. LEXIS 14971	5
13	<i>Serrano v. Priest</i>	
14	(1977) 20 Cal.3d 25	13
15	<i>Smith v. H.F.D. No. 55, Inc.</i>	
16	(E.D.Cal. Apr. 19, 2018) 2018 U.S. Dist. LEXIS 67192	6, 7
17	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
18	(2012) 203 Cal.App.4th 1112	11
19	<i>Wershba v. Apple Computer, Inc.</i>	
20	(2001) 91 Cal.App.4th 224	13
21	<i>Western Heritage Ins. Co. v. Frances Todd, Inc.</i>	
22	(2019) 33 Cal.App.5th 976	14
23	<i>Williams v. MGM-Pathe Communs. Co.</i>	
24	(9th Cir. 1997) 129 F.3d 1026	14
25	Statutes	
26	Lab. Code, section 201.....	5
27	Lab. Code, section 202.....	5
28	Lab. Code, section 203	5
	Lab. Code, section 204.....	5

1	Lab. Code, section 210	5
2	Lab. Code, section 226	5
3	Lab. Code, section 226.3	5
4	Lab. Code, section 226.7	5
5		
6	Lab. Code, section 510.....	5
7	Lab. Code, section 512.....	5
8	Lab. Code, section 558	5
9	Lab. Code, section 1174	5
10	Lab. Code, section 1194	5
11	Lab. Code, section 1197.....	5
12		
13	Lab. Code, section 1198.....	5
14	Lab. Code, section 2698 et seq.	1, 2
15	Lab. Code, section 2699	<i>passim</i>
16	Lab. Code, section 2699.3	1
17		
18	Lab. Code, section 2802.....	5
19	Rules	
20	California Rules of Court, rule 8.1115	14
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Irma Tapia (“Plaintiff” or “Tapia”) submits this memorandum of points and
4 authorities in support of her motion for approval of the PAGA (Private Attorneys General Act,
5 Labor Code § 2698 *et seq.*) Settlement Agreement (the “Agreement” or “PAGA Settlement”)¹ for
6 the civil penalties claim she brought against Defendants Posada Associates, La Posada, and Kalco
7 Properties, Inc. (“Defendants” or “POSADA”) under the Labor Code Private Attorneys General
8 Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiff brings this motion because Labor
9 Code section 2699(l) of the PAGA requires Court-approval of any civil penalties sought as part
10 of a proposed settlement agreement. Through this motion, Plaintiff respectfully requests for this
11 Court to approve the PAGA Settlement.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 Defendants operate a senior living/retirement community in Santa Cruz, California.
14 Plaintiff first started working for Defendants in or around November 2018 in the housekeeping
15 department. Plaintiff’s employment ended on or around December 27, 2022. At all times during
16 her employment with Defendants, Plaintiff was considered an hourly, non-exempt employee.
17 HM, ¶ 5.

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

19 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the
20 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On
21 October 25, 2022 and February 10, 2023, Plaintiff, on behalf of herself and Defendants’ other
22 California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”)
23 gave written notice by electronic service to the California Labor and Workforce Development
24 Agency (“LWDA”) and via certified mail to Defendants of the specific provisions of the
25 California Labor Code alleged to have been violated, including the facts and theories to support
26 the alleged violations. HM, ¶ 6, Ex. 3.

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

1 **B. Plaintiff's Lawsuit**

2 On February 10, 2023, Plaintiff filed a lawsuit in Santa Cruz County Superior Court (the
3 "Lawsuit") with a single representative claim for civil penalties under the PAGA (California
4 Labor Code § 2698, et seq.) against Defendants so that Plaintiff may pursue the present motion
5 for approval of the Parties' Agreement. Plaintiff asserted the following causes of action against
6 Defendants for: (1) Failure to Compensate for All Hours Worked; (2) Failure to Pay Minimum
7 Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Accurate, Itemized Wage
8 Statements; (5) Failure to Pay Wages Owed Every Pay Period; (6) Failure to Pay Wages When
9 Employment Ends; (7) Failure to Give Rest Breaks; (8) Failure to Give Meal Periods and; (9)
10 Failure to Reimburse Business Expenses; (10) PAGA claims; (11) Sexual Harassment in
11 Violation of the FEHA; (12) Retaliation in Violation of the FEHA; (13) Failure to Prevent
12 Harassment and Retaliation in Violation of FEHA; (14) Retaliation in Violation of Labor Code
13 Section 1102.5; (15) Negligent Retention and Supervision; (16) Wrongful Discharge in Violation
14 of Public Policy, and; (17) Violation of California Business and Professions Code Section
15 17200.*Id.*. HM, ¶ 7, Ex. 4.

16 On April 17, 2023, Defendants filed their Answers to Plaintiff's Complaint. HM, ¶ 8, Exs.
17 5-6.

18 **C. Mediation With Hon. Wynne Carvill (Ret.).**

19 The parties met and conferred and agreed that it may be in their mutual interests to discuss
20 Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation.
21 On January 18, 2024, the parties attended a full day mediation session with Hon. Wynne Carvill
22 (Ret.). At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor
23 Code § 2698, et seq. Before agreeing to the terms of the Settlement, the Parties engaged in
24 informal discovery regarding Defendants' policies, practices, operations, time and payroll
25 information and other topics. In advance of mediation, Defendants produced Plaintiff's personnel
26 file, including time and payroll data through data sampling. Moreover, prior to the mediation,
27 Defense counsel provided Plaintiff's counsel with information and documents relating to other
28 Aggrieved Employees, including time and payroll data. Through extensive arm's length

1 negotiations at the mediation and only after discovery and investigation were performed, the
2 parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement,
3 Plaintiff submits it to this Court for approval. HM, ¶ 9.

4 Defendants deny any liability or wrongdoing of any kind whatsoever associated with the
5 lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and discharge all
6 claims known or unknown related to those alleged in Plaintiff's lawsuit. HM, ¶ 10.

7 **III. OVERVIEW OF SETTLEMENT**

8 **A. "Aggrieved Employees" Definition**

9 The Aggrieved Employees are means all current and former hourly, non-exempt
10 employees who worked for Defendants in California during the PAGA Period. Agreement, ¶ 1.4.
11 The PAGA Period means the period of time from December 7, 2021 to January 18, 2024.
12 Agreement, ¶ 1.20.

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

14 Defendants have agreed to pay a total of \$62,000.00 ("Gross Settlement Amount" or
15 "GSA") to settle the PAGA lawsuit. In consideration for the release of all claims of Plaintiff and
16 the Aggrieved Employees against Defendants (described more fully below), Defendants agreed
17 to pay \$62,000.00 toward the GSA from which all settlement payments for the Net Settlement
18 Amount, Court approved attorneys' fees and costs, and Settlement Administration Costs shall be
19 paid. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
20 calculated based on the total number of pay periods each Aggrieved Employee worked as a non-
21 exempt hourly employee in California during the PAGA Period. Agreement, ¶¶ 1.11. The GSA
22 will be divided as follows:

- 23 1. PAGA Counsel Fees amounting to \$20,666.66 (33% of the GSA), and
24 PAGA Counsel's Litigation Expenses in the amount of \$5,381.47 (the
25 Agreement provides up to \$7,000);
- 26 2. "Settlement Administration Costs" of \$3,860.82 to Phoenix Class Action
27 Administration Solutions ("Phoenix" or "Settlement Administrator") to
28 administer the Settlement;
3. Approximately \$32,091.05 ("Net Settlement Amount"), divided as

follows:

- a. \$ 24,068.29 to the LWDA (75%); and
- b. \$ 8,022.76 to the Aggrieved Employees (25%)

Agreement, ¶ 3.

C. Funding and Distribution of the Settlement

Within thirty (30) days after the Effective Date², Defendants shall deposit the Gross Settlement Amount with the Settlement Administrator. Agreement, ¶ 4.2.

Within thirty (30) days of the Effective Date, Defendants shall provide the Settlement Administrator with the Aggrieved Employee data, which states each Aggrieved Employee's full name, last known mailing address, social security number, and number of PAGA pay periods. Agreement, ¶ 1.5, 4.2.

Within 30 days after Defendants funds the Gross Settlement Amount, the Settlement Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. ¶ 4.4.

The Settlement Administrator will issue each Aggrieved Employee a check for his or her share of the NSA along with the Notice of PAGA Settlement (**Exhibit 2** to HM Declaration) by First-Class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. The Settlement Administrator will skip trace return mail and re-mail within seven (7) calendar days. Agreement, ¶¶ 4.4.1-4.4.2.

D. Individual PAGA Payments and Uncashed Checks

The settlement checks issued to Aggrieved Employees will remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty (180) days after issuance will be distributed to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee. All settlement payments to Aggrieved Employees will be treated as

² "Effective Date" means the later date by when both of the following have occurred: (a) service on Defendants of the Court Order and Judgment Approving the PAGA Settlement and (b) the Judgment is final, i.e., the day the Court enters Judgment.

1 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator
2 if required by law. Agreement, ¶¶ 3.2.3.2, 4.4.1, 4.4.3.

3 **E. Release of Claims For Aggrieved Employees Limited To Those That Could**
4 **Reasonably Arise From the Facts Alleged In The Action.**

5 Upon the Effective Date of this Settlement, Plaintiff, Aggrieved Employees, and the State
6 of California are deemed to release, on behalf of themselves and their respective former and
7 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
8 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have
9 been alleged, based on the PAGA Period facts stated in the pleadings, the PAGA Notice, or
10 otherwise at issue in the case.

11 The Released PAGA Claims include:

12 all claims for PAGA penalties that were alleged, or reasonably could have been
13 alleged, based on the PAGA Period facts stated in the Operative Complaint and
14 the PAGA Notice, including but not limited to: California Labor Code Sections
201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
1174.5, 1194, 1197, 1198, and 2802.

15 Agreement, ¶ 5.

16 **IV. ARGUMENT**

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

18 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
19 Court necessarily has broad discretion in making the decision to approve or reject a settlement
20 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
21 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
22 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2),
23 Although the PAGA does not set forth the particular standards against which a PAGA settlement
24 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
25 for evaluating class action settlements. *HM*, ¶ 12; *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*,
26 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's
27 guidance, that approval of PAGA settlements may be had where the statutory requirements of
28 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and
adequate). The established standards for evaluating whether class action settlements are fair,

1 reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA
2 settlements and have been adopted by several courts. *Id.*, See *Juarez v. Villafan*, 2017 U.S. Dist.
3 LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm'n of City*
4 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms,*
5 *LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*,
6 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7,
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.
8 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal.
9 2018).

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

20 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
21 **PAGA**

22 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
23 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
24 follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. See
25 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
26 The parties’ Settlement so provides. HM, ¶ 13, Ex. 1. Second, the LWDA must be given notice
27 of the settlement so that it may be heard before the Court decides whether to grant approval. Cal.
28 Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently with the filing of

1 this motion. HM, ¶¶ 13, 38, Ex. 11. As a result, Plaintiff has met all procedural statutory
2 requirements for settling a PAGA action.

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

5 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the
6 Court may consider several factors, including:

7 the strength of the Plaintiff’s case, the risk, expense, complexity and
8 likely duration of further litigation, the risk of maintaining class
9 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.

10 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS
11 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS
12 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886,
13 *6. However, this Court should begin its analysis with a presumption that the proposed
14 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through
15 arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
16 court to act intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.
17 App. 4th at 1802.

18 The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The
19 parties reached the Settlement through arm’s-length bargaining with the aid of a respected
20 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
21 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
22 Employees, the total number of pay periods during the PAGA Period, all policies in effect during
23 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced
24 with PAGA cases. HM, ¶ 14. Moreover, neither Plaintiff nor Plaintiff’s Counsel have any
25 conflicts of interest with the absent Aggrieved Employees and there are no issues of
26 ascertainability. HM, ¶ 14. For the reasons discussed below, this Court should approve the PAGA
27 Settlement.

28 ///

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

3 The PAGA Settlement was reached only after litigation and arms' length negotiations
4 between experienced attorneys, which included a full day mediation with Hon. Wynne Carvill
5 (Ret.). At all times, the negotiations were adversarial and contentious, although still professional
6 in nature. HM, ¶ 9.

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

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

19 Plaintiff considered various sources of information in the lead-up to and during the
20 mediation of January 18, 2024 that enabled her to achieve the PAGA Settlement at issue. HM, ¶
21 15. Among other things, Plaintiff considered the following:

- 22 • Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 23 • Plaintiff's counsel requested that Defendants provide any and all policies regarding
24 overtime and double-time wages, off the clock work, expense reimbursement, meal
25 periods, rest breaks, meal period waivers and agreements, compensation plans, and
26 complaints about working conditions in effect during the relevant time period beginning
27 in December of 2021. Defendants produced those policies as part of their employee
28 handbook.
- Plaintiff's counsel requested that Defendants provide the total number of employees,
 paychecks, and the pay cycles during the relevant period. Defendants provided the
 answers to each of these questions.

- Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant time period. Defendants provided a sampling of time and pay records for 10 of its employees. This represents 20% of the total employees (48) that Defendants employed during the PAGA Period based on data available at the time.
- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.
- Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for "off the clock" work and business expense reimbursement, especially as it relates to "manageability" arguments brought up by the defense.

HM, ¶ 15.

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

Defendants estimated for purposes of mediation that as of August 24, 2023, there were approximately 48 Aggrieved Employees and 2,141 pay periods for all Aggrieved Employees during the PAGA Period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. HM, ¶ 16. 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 estimated a maximum exposure of approximately \$66,150 for civil penalties for Plaintiff's strongest disputed claims of failure to provide meal and rest periods and \$214,100 for unreimbursed business expenses. Plaintiff's analysis, which Defendants vehemently dispute, revealed a 23.8% violation rate for either late, short, or interrupted meal periods for shifts over 5 hours. Since the total number of pay periods in the PAGA period was 2,141 and since approximately 60% of the shifts in the sample were over 5 hours, the total number of pay periods to consider for potential meal break violations was 1285 (60% x 2,141 pay periods). As such, with the 23.8% violation rate, the maximum exposure would be \$15,250.00, which is calculated as \$50 penalty multiplied by 305 pay periods (23.8% of the 1285 pay periods). As far as rest breaks, approximately 80.3% of the

1 shifts in the sample were over 3.5 hours, the total number of pay periods to consider for potential
2 rest break violations was 1719 (80.3% x 2,141 pay periods). Plaintiff extrapolated the same
3 23.8% rate for rest break violations, which would equate to a maximum exposure of \$50,900
4 (\$100 penalty per pay period multiplied by 509 pay periods, which is 23.8% x 2141 pay periods).
5 For unreimbursed expenses, Plaintiff estimated a maximum exposure of \$214,100, calculated as
6 \$100 penalty multiplied by 2,141 pay periods. As such, the aggregate maximum exposure for
7 meal break, rest break, and unreimbursed expenses claims would be \$280,250. Assuming that
8 Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court
9 will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. For the rest
10 period violations, it also presumes that the meal and rest period violation rates were identical.
11 HM, ¶ 17.

12 Plaintiff alleges that the strongest claims are that Plaintiff and other Aggrieved
13 Employees were not provided timely, uninterrupted meal and rest breaks. Defendants vehemently
14 deny that there were any meal and rest break violations especially in light of the fact that
15 Defendants presented evidence that they maintained Labor-Code-compliant meal and rest
16 policies and paid meal period premiums. HM, ¶ 18.

17 There are significant risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges
18 that Defendants did not reimburse her or the other Aggrieved Employees for personal mobile
19 phone and uniform expenses. There is a risk that the Court may consider Plaintiff's claims as to
20 Defendants' alleged failure to indemnify for business expenses to be individual in nature. As
21 such, Plaintiff's counsel had to significantly discount the value of this claim during settlement
22 negotiations. HM, ¶ 19.

23 Moreover, Plaintiff's counsel is unaware of any California State court decision awarding
24 a plaintiff and the other Aggrieved Employees she represents multiple civil penalties for the same
25 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that
26 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.
27 Plaintiff's counsel had to substantially discount the value of these claims in the settlement
28 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one

1 penalty for each pay period (regardless of the different Labor Code violations that potentially
2 occurred for the same employee, during the same pay periods). HM, ¶ 20.

3 Additionally, PAGA states a court has discretion to award a lesser amount than the
4 maximum penalty. See Lab. Code § 2699(e)(2) (“...a court may award a lesser amount than the
5 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
6 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
7 oppressive, or confiscatory.”); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
8 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
9 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
10 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
11 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
12 discounted award of only \$5 per violation because it was within the Court’s discretion to
13 significantly reduce PAGA penalties even when there is a finding that a violation of the
14 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
15 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
16 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
17 that this reduction was warranted because imposing the maximum penalty would be “unjust,
18 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
19 obligations and because the Court found the violations were minimal. Applying the same formula
20 here and assuming there was one violation during each pay period, the award of civil penalties
21 could not exceed \$10,705.00 in PAGA penalties (2,141 violations x \$5). As such, this Settlement
22 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
23 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
24 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
25 Amount is uncertain. HM, ¶ 21.

26 The Parties further recognize that the issues presented in the representative PAGA claim
27 are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that
28 further litigation will cause inconvenience, distraction, disruption, delay, and expense

1 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
2 from continued litigation, especially in the post pandemic era where further and extensive
3 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
4 Plaintiff's attorneys, other Aggrieved Employees, and the State of California. HM, ¶ 22.

5 The settlement of the representative PAGA claim involves monetary relief to all
6 Aggrieved Employees, Plaintiff, her attorneys, and the State of California. The Settlement is
7 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
8 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
9 punishment statute. It provides for civil penalties only. Within the PAGA framework she is bound
10 by, Plaintiff, considering the evidence she faced, achieved a great result for the employees
11 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
12 civil penalties can pursue any damages they believe they are owed by the Defendants. The
13 Settlement does not require them to opt out to do so. HM, ¶ 23.

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

24 As such, the settlement of PAGA penalties in the gross sum of \$62,000.00, of which 75%
25 of the net amount after attorney's fees, litigation costs, and settlement administration costs
26 (\$24,068.29) will be paid to the LWDA and 25% (\$8,022.76) will be distributed to the Aggrieved
27 Employees, is reasonable and appropriate under the circumstances. HM, ¶ 25.

28 ///

1 **4. Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or**
2 **Her Injury Compared to Other Aggrieved Employees**

3 Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
4 depending on the number of pay periods Defendants employed them for during the PAGA Period.
5 Agreement, ¶ 1.11. With a total of 48 Aggrieved Employees, the average estimated individual
6 PAGA payment for each Aggrieved Employee is approximately \$167.14 (25% of the estimated
7 Net Settlement of \$8,022.76) / 48 Aggrieved Employees). This is a great result given the
8 uncertainties this lawsuit entails. HM, ¶ 26.

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

10 Plaintiff's counsel has considerable experience in wage and hour litigation and is
11 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with
12 litigation, and viability of possible affirmative defenses. Similarly, Defendants' counsel, Joseph
13 Lordan, Vincent Fisher, and Trenten Bilodeaux of O'Hagan Meyer LLP (on behalf of Posada)
14 and Mike Laurenson and Hannah Diamond of Gordon Rees Scully Mansukhani, LLP (on behalf
15 of Kalco), have vast experience in handling employment matters and wage and hour litigation.
16 See HM, ¶¶ 2, 34, Declaration of Maralle Messrelian ("MM"), ¶ 7.

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

19 Of the \$62,000.00 allocated towards the GSA, Plaintiff's counsel requests \$20,666.66
20 (33% of the GSA) in attorney's fees and \$5,381.47 in litigation expenses, which is fair and
21 reasonable. HM, ¶ 30.

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

1 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

2 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
3 check” on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
4 1 Cal. 5th 480, 505 (“*Laffitte*”). However, the California Supreme Court in *Laffitte* has now made
5 clear that this cross-check is not required and approved one-third of the class action settlement
6 fund as reasonable attorney fees as “[t]he percentage of the fund method survives in California
7 class action cases...” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
8 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
9 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not “engage
10 in a full-blown lodestar analysis when the primary basis remains the percentage method...” The
11 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
12 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
13 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
14 reasonableness of a requested percentage fee.’”³ *Id.* (citing *Laffitte*)).

15 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
16 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
17 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
18 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
19 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
20 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
21 settlements. HM, ¶ 30.

22 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
23 fees, notwithstanding courts’ clear preference for the percentage method, my request for
24 attorney’s fees of \$20,666.66 (33% of the Gross Settlement Amount) is fair and reasonable based
25 on my firm’s lodestar as cross-checked against the percentage of the recovery. HM, ¶¶ 31-32,

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

1 Declaration of Maralle Messrelian, ¶¶ 9-10. Plaintiff's counsel's previous experience in litigating
2 wage and hour class actions and the caliber of opposing counsel also support the reasonableness
3 of the fee request. HM, ¶ 35. The award of attorneys' fees sought is also justified by the
4 contingency nature of the attorney-client relationship, the risks of non-payment and non-
5 reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff's
6 Counsel has achieved for the Aggrieved Employees. HM, ¶ 35.

7 In addition, Plaintiff's Counsel incurred substantial costs, \$5,381.47 to date, including the
8 costs of a mediator, to aid in the representation of the Aggrieved Employees. HM, ¶ 33, Ex.7. As
9 the evidence submitted herewith shows, all of these costs are documented and reasonably
10 incurred. *Id.* Accordingly, they warrant the Court's approval.

11 **7. The Proposed Settlement Administration Costs Are Fair and Reasonable and**
12 **Should Be Approved.**

13 With regard to the settlement administration costs provision, it is reasonable. Before
14 agreeing to Phoenix Class Action Administration Solutions, the Parties sought and reviewed bids
15 from other reputable third-party administrators which provided higher bids. HM, ¶ 36, Exs. 8-10.
16 *See generally* Declaration of Michael Moore. Thus, the settlement administration costs provision
17 should be given approval.

18 **V. CONCLUSION**

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

21 Respectfully submitted,

22 MESSRELIAN LAW INC.

23
24 Dated: June 27, 2024

25 By: Maralle Messrelian
26 Harout Messrelian
27 Maralle Messrelian (Of Counsel)
28 Attorneys for Plaintiff,
Irma Tapia