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

12 **FOR THE COUNTY OF SANTA CLARA**
13 **(UNLIMITED JURISDICTION)**

14 JOSE ANGEL LOPEZ,

15 *Plaintiff,*

16 vs.

17 MORENO & ASSOCIATES, INC.;

18 J ERNESTO MORENO; and

19 DOES 1 to 25, inclusive,

20 *Defendants.*

Case No.: 23CV422622

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

Action filed: September 11, 2023

Hearing Date: July 17, 2024

Hearing Time: 1:30 p.m.

Hearing Dept: 19, Hon. Theodore C. Zayner

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Jose Angel Lopez (individually, "Lopez" or "Plaintiff") in his lawsuit against Defendants Moreno & Associates, Inc. and J Ernesto Moreno ("Defendants" or "Moreno").

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

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

4. A true and correct copy of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq.*) Settlement Agreement (the "Settlement or "Agreement") is attached hereto as

1 **Exhibit 1.** A true and correct copy of the parties agreed upon notice to the below-defined PAGA
2 Employees (the “PAGA Notice”) is attached hereto as **Exhibit 2.**

3 ***Factual and Procedural Background***

4 5. Moreno & Associates, Inc. is a family-owned full service building maintenance
5 company that has served clients throughout the San Francisco Bay Area since 1993. The
6 company provides janitorial services, cleanroom maintenance, painting, floor cleaning, and
7 window washing, among other services, to its clients. Plaintiff started working for Defendants
8 on or around April 30, 2016. Plaintiff’s employment ended in or around November 2022. During
9 his employment tenure, Plaintiff was classified as an hourly, non-exempt employee and his latest
10 rate of pay was \$23.00 per hour. Plaintiff was part of the night utility crew and his job duties
11 included cleaning wooden floors by removing old wax and putting new wax and also washing
12 carpets.

13 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
14 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
15 (“PAGA”). On December 15, 2022, Plaintiff, on behalf of himself and Defendants’ other
16 California non-exempt hourly employees (hereafter collectively the “PAGA Employees”) gave
17 written notice by electronic service to the California Labor and Workforce Development Agency
18 (“LWDA”) and via certified mail to Defendants of the specific provisions of the California
19 Labor Code alleged to have been violated, including the facts and theories to support the alleged
20 violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached hereto as **Exhibit**
21 **3.**

22 7. On September 11, 2023, Plaintiff filed a lawsuit in Santa Clara County Superior
23 Court (the “Lawsuit”) against Defendants. A true and correct copy of the Lawsuit is attached
24 hereto as Exhibit 4. Plaintiff asserted the following causes of action against Defendants: (1)
25 failure to compensate for all hours worked, (2) failure to pay minimum wages, (3) failure to pay
26 overtime, (4) failure to provide accurate itemized wage statements, (5) failure to pay wages
27 when employment ends, (6) failure to pay wages owed every pay period, (7) failure to give rest
28 breaks, (8) failure to give meal breaks, (9) penalties pursuant to the Private Attorneys General

1 Act (“PAGA”), (10) failure to reimburse business expenses, (11) discrimination on the basis of
2 physical disability, (12) failure to accommodate physical disability, (13) failure to engage in the
3 interactive process, (14) retaliation in violation of the FEHA, (15) failure to prevent
4 discrimination and retaliation, (16) wrongful termination in violation of public policy, and (17)
5 violation of Business & Professions Code section 17200. By Order dated September 26, 2023,
6 the Court stayed discovery and Defendants’ responsive pleading deadline.

7 8. The parties met and conferred and agreed that it may be in their mutual interests
8 to discuss Plaintiff’s allegations informally, rather than through litigation, and scheduled private
9 mediation.

10 9. On February 27, 2024, the parties attended a full day mediation session with
11 Hon. Brian Walsh (Ret.). At the mediation, the parties agreed to settle Plaintiff’s PAGA Claim
12 for violation of Labor Code § 2698, et seq. Before agreeing to the terms of the Settlement, the
13 Parties engaged in informal discovery regarding Defendants’ policies, practices, operations,
14 time and payroll information and other topics. In advance of mediation, Defendants produced
15 Plaintiff’s personnel file, including time and payroll data through data sampling. Moreover,
16 prior to the mediation, Defense counsel provided Plaintiff’s counsel with information and
17 documents relating to other PAGA Employees, including time and payroll data. At all times, the
18 negotiations were adversarial and contentious, although still professional in nature. Through
19 extensive arm’s length negotiations at the mediation and only after discovery and investigation
20 were performed, the parties agreed to settlement terms. Now that the parties have finalized the
21 PAGA Settlement, Plaintiff submits it to this Court for approval.

22 10. Defendants deny any liability or wrongdoing of any kind whatsoever associated
23 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and
24 discharge all claims known or unknown related to those alleged in Plaintiff’s lawsuit.

25 11. Counsel for the Parties have further investigated the applicable law as applied to
26 the facts discovered regarding Plaintiff’s claims, the defenses thereto, and the Labor Code
27 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
28 Defendants are experienced in defending PAGA cases. Based on the parties’ own independent

1 investigations and evaluations, the parties and their respective counsel are of the opinion that the
2 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable
3 and adequate and are in the best interests of Plaintiff, the PAGA Employees, the State, and
4 Defendants in light of all known facts and circumstances and the risks inherent in litigation,
5 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
6 prosper and make a large profit.

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

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

25 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
26 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
27 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
28 the Court to act intelligently. Plaintiff requested and Defendants provided the number PAGA

1 Employees, the number of total pay periods during the PAGA Period, all policies in effect during
2 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced
3 with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent
4 PAGA Employees and there are no issues of ascertainability.

5 15. I considered various sources of information in the lead-up to the mediation of
6 February 27, 2024 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
7 Plaintiff considered the following:

- 8 • Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 9 • Plaintiff's counsel requested that Defendants provide any and all policies regarding
10 overtime and double-time wages, off the clock work, expense reimbursement, meal
11 periods, rest breaks, meal period waivers and agreements, compensation plans, and
12 complaints about working conditions in effect during the relevant time period beginning
13 in December of 2021. Defendants produced those policies as part of their employee
14 handbook.
- 15 • Plaintiff's counsel requested that Defendants provide the total number of employees,
16 paychecks, and the pay cycles during the relevant period. Defendant provided the
17 answers to each of these questions.
- 18 • Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
19 time period. Defendants provided a sampling of time and pay records for 58 of its
20 employees. This represents 20% of the total employee IDs that Defendants provided to
21 Plaintiff based on data available at the time.
- 22 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
23 the records and determine the meal period violation rates, if there was any pay
24 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
25 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
26 *camera* inspection upon its request.
- 27 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
28 violations, claims for "off the clock" work and business expense reimbursement,
especially as it relates to "manageability" arguments brought up by the defense.

16. Defendants estimated for purposes of mediation that as of February 27, 2024,
there were approximately 309 PAGA Employees and 11,100 pay periods for all PAGA
Employees during the relevant period. Based on this information, Plaintiff's counsel prepared an

1 estimate of the maximum possible civil penalties under the PAGA. HM, ¶ 16. The maximum
2 possible civil penalties under the PAGA is the total number of pay periods with one or more
3 violations multiplied by the maximum possible civil penalty amount per pay period.

4 17. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel
5 estimated a maximum possible exposure of approximately \$635,700 for civil penalties for
6 Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's
7 analysis, which Defendants vehemently dispute, revealed a 52.3% violation rate for either late,
8 short, or interrupted meal periods for shifts over 5 hours. Since the total number of pay periods
9 in the PAGA period was 11,100 and since approximately 73% of the shifts in the sample analysis
10 were over 5 hours, the total number of pay periods to consider for potential meal break violations
11 was 8,103 (73% x 11,100 pay periods). As such, with the 52.3% violation rate, the maximum
12 exposure would be \$211,900, which is calculated as \$50 penalty multiplied by 4238 pay periods
13 (52.3% of the 8,103 pay periods). Plaintiff extrapolated the same 52.3% rate for rest break
14 violations, which would equate to a maximum exposure of \$423,800 (\$100 penalty per pay period
15 multiplied by 4238 pay periods, which is 52.3% x 8,103 pay periods). As such, the aggregate
16 maximum exposure for meal break and rest break claims would be \$635,700. Assuming that
17 Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court
18 will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. For the rest
19 period violations, it also presumes that the meal and rest period violation rates were identical.

20 18. There are risks to Plaintiff's meal and rest period claims. Defendants contend
21 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
22 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
23 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
24 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
25 performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
26 or prohibited the employee from taking a proper break, or otherwise failed to release the
27 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the
28 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*

1 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants' time
2 records the exact reasons why a meal period appears to be short or late would be difficult and
3 pinpointing those days in which Plaintiff and the PAGA Employees worked during their meal
4 periods will be a challenge. Additionally, Defendants provided evidence that they provide
5 employees with the opportunity to take meal and rest breaks. Moreno's Handbook contains
6 legally compliant meal period and rest break policies and the employees who worked most often
7 with the Plaintiff confirmed to a third party investigator that they were able to take complaint
8 meal periods at their discretion, and did so routinely.

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

15 20. There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges
16 that Defendants did not reimburse him or the other PAGA Employees for mobile phones,
17 mileage, and uniform expenses. Defendants provided evidence at mediation that Plaintiff drove
18 in a company vehicle with other employees to their job locations, Plaintiff and the other
19 employees were issues company phones, and Moreno provided its employees with uniforms
20 without charge. Moreover, there is a risk that the Court may consider Plaintiff's claims as to
21 Defendants' alleged failure to indemnify for business expenses to be individual in nature. As
22 such, I had to significantly discount the value of this claim during settlement negotiations.

23 21. Moreover, I am unaware of any California State court decision awarding a
24 plaintiff and the other Aggrieved Employees he 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).

3 22. Additionally, PAGA states a court has discretion to award a lesser amount than
4 the maximum penalty. See Lab. Code § 2699(e)(2) (“...a court may award a lesser amount than
5 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
6 of 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 \$55,500 in PAGA penalties (11,100 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.

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

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

5 24. The settlement of the representative PAGA claim involves monetary relief to all
6 PAGA Employees, Plaintiff, his 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 he is bound
10 by, Plaintiff, considering the evidence he 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.

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

24 26. As such, the settlement of PAGA penalties in the gross sum of \$380,000.00, of
25 which 75% of the net amount after attorney's fees, litigation costs, and settlement administration
26 costs (\$173,900.97) will be paid to the LWDA and 25% (\$57,966.99) will be distributed to the
27 PAGA Employees, is reasonable and appropriate under the circumstances.

28 ///

1 ***Individual PAGA Payments***

2 27. Defendants represent that at the time of mediation there were approximately 309
3 PAGA Employees during the PAGA Period. After deducting the requested Court-approved
4 PAGA Counsel's Attorneys' Fees (\$133,000.00) and PAGA Counsel's Costs (\$10,132.04), and
5 the Settlement Administration Costs (\$5,000.00), the PAGA Penalties Fund will be
6 approximately \$231,867.96. Seventy five percent (75%) of the PAGA Penalties Fund will be
7 paid to the Labor and Workforce Development Agency ("LWDA") (\$173,900.97), and twenty
8 five percent (25%) (\$57,966.99) of the PAGA Penalties Fund will be paid to the PAGA
9 Employees on a pro-rata basis based upon their respective number of pay periods during the
10 PAGA Period. Agreement, ¶ 17. With a total of 309 PAGA Employees, the average estimated
11 individual PAGA payment for each PAGA Employee is approximately \$187.60 (25% of the
12 estimated PAGA Penalties Fund of \$57,966.99) / 309 PAGA Employees). This is a great result
13 given the uncertainties this lawsuit entails.

14 ***Plaintiff's Individual Settlement***

15 28. Plaintiff negotiated an individual settlement agreement separate from the PAGA
16 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual
17 settlement agreement was to settle his individual wage and hour claims, disability
18 discrimination, retaliation, and wrongful termination claims. Plaintiff's individual settlement
19 agreement does not provide for any additional attorney's fees or costs to my firm.

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

1 wage and hour claims and claims for disability discrimination/retaliation and wrongful
2 termination. *See generally* Declaration of Jose Angel Lopez.

3 30. The PAGA statute does not forbid service awards. Courts frequently award them
4 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
5 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
6 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
7 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
8 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
9 with our office on many occasions by phone, explaining what his employment at Moreno's was
10 like, explaining what his employment at Moreno's had in common with other employees who
11 worked for Moreno's, explaining his claims to me and my staff, and communicating with me
12 and my staff about the settlement agreement and related documents. Despite this, Plaintiff is **not**
13 asking for a service award for his involvement and the time he spent assisting my firm with the
14 PAGA action. *See generally* Declaration of Jose Angel Lopez.

15 *Attorneys' Fees and Costs*

16 31. I represent Plaintiff on a straight contingency basis. My firm's request for
17 \$133,000 in attorney fees and \$10,132.04 in litigation costs is fair and reasonable. "[R]egardless
18 whether the percentage method or the lodestar method is used, fee awards in class actions average
19 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
20 fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*")
21 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129
22 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my
23 experience in wage and hour class and PAGA settlements.

24 32. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
25 awarding fees, notwithstanding courts' clear preference for the percentage method, my request
26 for attorneys' fees of \$133,000.00 (35% of the Gross Settlement Amount) is fair and reasonable
27 based on my firm's lodestar as cross-checked against the percentage of the recovery.

28

33. To date, the attorneys in my firm and I have investigated and prosecuted this matter for over 27.30 hours. I also expect to perform additional work on this case if the Court grants final approval of the Settlement, including supervision of the Settlement Administrator's disbursement of the settlement funds to the PAGA Employees.

34. In this case, my firm has a total lodestar of approximately \$42,335.00 without the use of any multiplier, which results in a multiplier of 3.142 when compared against the \$133,000.00 request for attorneys' fees.¹ A general summary showing of the pre-multiplier lodestar and the total number of hours of work performed by my firm is set forth below with a total lodestar of approximately \$42,335.00.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
Harout Messrelian (14 th Year Attorney)	27.30	\$650.00/\$700.00	\$18,555.00
Maralle Messrelian (7 th Year Attorney)	50.70	\$450.00/\$500.00	\$23,780.00
Totals	78.00		\$42,335.00

True and correct copies of the time records of my firm are collectively attached as **Exhibit 5** to this declaration. I will have waited for over one and a half years to be awarded attorneys' fees for work performed since November of 2022, when Plaintiff first contacted my office, compared to Defendants' counsel who have been paid as they performed work during this case.

35. In addition, my firm incurred substantial costs, \$10,132.04 to date, which consist of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct summary of my firm's costs and expenses incurred to date is attached as **Exhibit 6** to this declaration. I will make detailed copies of such records available to the Court for *in camera*

¹The multiplier of 3.142 is supported by California case law. Under California law, lodestar multipliers can range from 2 to 4 or even higher. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849, *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of America Nat'l Trust & Sav. Ass'n.*, (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded) (cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora Community Redevelopment Agency v. Demeter* (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12 times estimated lodestar multiplier)).

1 inspection upon its request. As the evidence submitted herewith shows, all of these costs are
2 documented and reasonably incurred. Accordingly, they warrant the Court's approval.

3 36. My previous experience in litigating wage and hour actions also supports the
4 reasonableness of the fee request. Based on past experience with similar matter, I was able to
5 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.
6 Because it is reasonable to compensate me commensurate with my skill, reputation, and
7 experience, attorney's fees of approximately one-third of the Gross Settlement Amount is
8 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
9 litigation, Daniel F. Pyne, Esq. of Hopkins & Carley, also supports the fairness and
10 reasonableness of the requested fee award.

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

17 ***Settlement Administration Costs***

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

21 A. Simpluris, Inc. = \$5,000.00

22 B. ILYM Group, Inc.= \$5,550.00

23 C. Phoenix Class Action Administration Solutions = \$5,813.51; and

24 D. Apex Class Action Administration = \$6,990.00

25 A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 7**. A true
26 and correct copy of the bid from Phoenix Class Action Administration Solutions is attached
27 hereto as **Exhibit 8**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto
28

1 as **Exhibit 9**. A true and correct copy of the bid from Apex is attached hereto as **Exhibit 10**.
2 Thus, settlement administration costs provision should be given approval.

3 39. Furthermore, the Declaration of Michael Bui with attached exhibits, filed under
4 separate cover, sets forth Simpluris, Inc.'s qualifications and costs to administer the settlement.
5 See generally Declaration of Michael Bui. Thus, the settlement administration costs provision
6 should be given approval.

7 ***Notice of Settlement to the LWDA***

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

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

14 Executed on June 24, 2024, at Glendale, California.

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17 HAROUT MESSRELIAN,
18 Declarant
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