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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

IRIS RODRIGUEZ,

Plaintiff,

vs.

FACILITY MASTERS, INC.; and
DOES 1 to 25, inclusive,

Defendant.

Case no.: 23CV423999

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

Action filed: October 9, 2023
Hearing Date: March 13, 2024
Hearing Time: 1:30 p.m.
Hearing Dept: 19, Hon. Theodore C.
Zayner

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Harout Messrelian;
3. Declaration of Maralle Messrelian;
4. Declaration of Iris Rodriguez;
5. Declaration of Lisa Mullins; 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 March 13, 2024 at 1:30 p.m., or as soon thereafter as the
4 matter may be heard, in Department 19 of the Santa Clara County Superior Court, located at 191
5 N. First St., San Jose, CA 95113, Plaintiff Iris Rodriguez (“Plaintiff” or “Rodriguez”) will and
6 hereby does move this Court for an order approving the Private Attorneys General Act (Labor
7 Code § 2698 *et seq.*) Settlement Agreement (the “Agreement” or “PAGA Settlement”) and
8 entering the [Proposed] Order and Judgment Approving PAGA Settlement.

9 The PAGA Settlement is on behalf of Rodriguez and all persons within the State of
10 California who are or were employed by Defendant Facility Masters, Inc. (“Defendant” or
11 “FACILITY MASTERS”) from December 1, 2021 to August 24, 2023 (the “Aggrieved
12 Employees”). Plaintiff alleges that Defendant is liable to her and other Aggrieved Employees for
13 (1) failure to compensate for all hours worked, including minimum and overtime wages; (2) failure
14 to provide accurate, itemized wage statements; (3) failure to pay all wages owed during and at the
15 end of employment; (4) failure to maintain accurate records; (5) failure to give rest breaks and
16 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, Iris Rodriguez,
19 and Lisa Mullins, 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: February 20, 2024

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

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PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

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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. Mediation With JJ Johnston, Esq.....	2
C. Plaintiff’s Lawsuit.....	2
III. OVERVIEW OF SETTLEMENT	2
A. “Aggrieved Employee” Definition	2
B. Monetary Terms Of The Settlement	3
C. Funding and Distribution of the Settlement.....	3
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.....	4
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.....	6
1. The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm’s Length Negotiations Between The Parties.	7
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	14

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2
3
4
5
6
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8
9
10
11
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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..... 14

7. The Proposed Settlement Administration Costs Are Fair and Reasonable and Should Be Approved. 16

V. CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Austin v. Foodliner, Inc.</i> (N.D.Cal. May 10, 2019) 2019 U.S. Dist. LEXIS 79638	15
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	11
<i>Carrington v. Starbucks</i> (2018) 30 Cal.App.5th 504	12
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	15
<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	15
<i>Gutilla v. Aerotek, Inc.</i> (E.D.Cal. Mar. 21, 2017) 2017 U.S. Dist. LEXIS 41655	5, 6
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	5,6
<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	5,7
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	14,15
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	14
<i>Lopez v. Mgmt. & Training Corp.</i> (S.D.Cal. Apr. 20, 2020) 2020 U.S. Dist. LEXIS 70029	15

1	<i>Moorer v. Noble L.A. Events, Inc.</i>	
2	(2019) 32 Cal.App.5th 736	6
3	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
4	(2019) 40 Cal App5th 444.....	10
5	<i>Neary v. Regents of University of California</i>	
6	(1992) 3 Cal.4th 273	6
7	<i>Officers for Justice v. Civil Service Com.</i>	
8	(9th Cir. 1982) 688 F.2d 615	5
9	<i>Principe v. Ukropina (In re Pacific Enter. Sec. Litig.)</i>	
10	(9th Cir. 1995) 47 F.3d 373	15
11	<i>Ramirez v. Benito Valley Farms, LLC</i>	
12	(N.D.Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137272	5, 7
13	<i>Rincon v. West Coast Tomato Growers, LLC</i>	
14	(S.D.Cal. Feb. 12, 2018) 2018 U.S. Dist. LEXIS 22886	5, 7
15	<i>Salazar v. Sysco Cent. Cal., Inc.</i>	
16	(E.D.Cal. Feb. 2, 2017) 2017 U.S. Dist. LEXIS 14971	5
17	<i>Serrano v. Priest</i>	
18	(1977) 20 Cal.3d 25	14
19	<i>Smith v. H.F.D. No. 55, Inc.</i>	
20	(E.D.Cal. Apr. 19, 2018) 2018 U.S. Dist. LEXIS 67192	5, 7
21	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
22	(2012) 203 Cal.App.4th 1112	12
23	<i>Washington v. Joe's Crab Shack</i>	
24	(N.D.Cal. 2010) 271 F.R.D. 629	11
25	<i>Wershba v. Apple Computer, Inc.</i>	
26	(2001) 91 Cal.App.4th 224	14
27	<i>Western Heritage Ins. Co. v. Frances Todd, Inc.</i>	
28	(2019) 33 Cal.App.5th 976	15
	<i>Williams v. MGM-Pathe Communs. Co.</i>	
	(9th Cir. 1997) 129 F.3d 1026	15
	///	

Statutes

Lab. Code, section 201.....	5,9
Lab. Code, section 202.....	5,9
Lab. Code, section 203	5,9
Lab. Code, section 204.....	5,9
Lab. Code, section 210	9
Lab. Code, section 226	5, 9
Lab. Code, section 226.3	5,9
Lab. Code, section 226.7	2, 5
Lab. Code, section 510.....	2, 5, 9
Lab. Code, section 512.....	2, 5, 9
Lab. Code, section 558	5,9
Lab. Code, section 1174	2, 5, 9
Lab. Code, section 1194	2,5
Lab. Code, section 1197.....	2, 5, 9
Lab. Code, section 1197.1.....	2,9
Lab. Code, section 1198.....	5, 9
Lab. Code, section 2698 et seq.	1, 2
Lab. Code, section 2699	<i>passim</i>
Lab. Code, section 2699.3	1
Lab. Code, section 2802.....	2, 5, 9

Rules

California Rules of Court, rule 8.1115	16
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 Facility Masters, headquartered in San Jose, California provides provide maintenance and
14 cleaning services for commercial businesses. Plaintiff first started working for Facility Masters
15 in or around 2019. Plaintiff’s employment ended on or around November 3, 2022. At all times
16 during her employment with Defendant, Plaintiff was considered an hourly, non-exempt
17 employee. 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 December 1, 2022, Plaintiff, on behalf of herself and Defendant’s other California non-exempt
22 hourly employees (hereafter collectively the “Aggrieved Employees”) gave written notice by
23 electronic service to the California Labor and Workforce Development Agency (“LWDA”) and
24 via certified mail to Defendant of the specific provisions of the California Labor Code alleged to
25 have been violated, including the facts and theories to support the alleged violations. HM, ¶ 6,
26 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. Mediation With JJ Johnston, Esq.**

2 Prior to Plaintiff commencing a civil action against Defendant, the parties met and
3 conferred and agreed that it may be in their mutual interests to discuss Plaintiff's allegations
4 informally, rather than through litigation, and scheduled private mediation. HM, ¶ 7.

5 On August 24, 2023, the parties attended a full day mediation session with JJ Johnston,
6 Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor
7 Code § 2698, *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged in
8 informal discovery regarding Defendant's policies, practices, operations, time and payroll
9 information and other topics. In advance of mediation, Defendant produced Plaintiff's personnel
10 file, including time and payroll data through data sampling. Moreover, prior to the mediation,
11 Defense counsel provided Plaintiff's counsel with information and documents relating to other
12 Aggrieved Employees, including time and payroll data. Through extensive arm's length
13 negotiations at the mediation and only after discovery and investigation were performed, the
14 parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement,
15 Plaintiff submits it to this Court for approval. HM, ¶ 8.

16 **C. Plaintiff's Lawsuit**

17 Upon reaching a settlement, Plaintiff filed her lawsuit in this Court on October 9, 2023,
18 with a single representative claim for civil penalties under the PAGA (California Labor Code §
19 2698, *et seq.*) against Defendant so that Plaintiff may pursue the present motion for approval of
20 the Parties' Agreement. HM, ¶ 9, Ex. 4.

21 Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
22 lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and discharge all
23 claims known or unknown related to those alleged in Plaintiff's lawsuit. HM, ¶ 10.

24 **III. OVERVIEW OF SETTLEMENT**

25 **A. "Aggrieved Employees" Definition**

26 The Aggrieved Employees are all persons within the State of California who are or were
27 employed by Defendant Facility Masters, Inc. during the PAGA Period. Agreement, ¶ 1.4. The
28 PAGA Period means the period of time from December 1, 2021 to August 24, 2023. Agreement,

¶ 1.19.

B. Monetary Terms Of The Settlement

Defendant has agreed to pay a total of \$220,000.00 (“Gross Settlement Amount” or “GSA”) to settle the PAGA lawsuit. In consideration for the release of all claims of Plaintiff and the Aggrieved Employees against Defendant (described more fully below), Defendant agreed to pay \$220,000.00 toward the GSA from which all settlement payments for the Net Settlement Amount, Court approved attorneys’ fees and costs, and Settlement Administration Costs shall be paid. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis calculated based on the total number of pay periods each Aggrieved Employee worked as a non-exempt hourly employee in California during the PAGA Period. Agreement, ¶¶ 3. The GSA will be divided as follows:

1. PAGA Counsel’s Fees amounting to \$77,000 (35% of the GSA), and PAGA Counsel’s Litigation Expenses in the amount of \$9,329.71 (the Agreement provides up to \$10,000);
2. “Settlement Administration Costs” of \$4,250.00 to ILYM Group, Inc. (“ILYM” or “Settlement Administrator”) to administer the Settlement;
3. Approximately \$130,170.29 (“Net Settlement Amount”), divided as follows:
 - a. \$ 97,627.72 to the LWDA (75%); and
 - b. \$ 32,542.57 to the Aggrieved Employees (25%)

Agreement, ¶ 3.

C. Funding and Distribution of the Settlement

Within thirty (30) calendar days after the Effective Date², Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator. Agreement, ¶ 4.3.

Within fifteen (15) calendar days of the Effective Date, Defendant shall provide the Settlement Administrator with the Aggrieved Employee data, which states each Aggrieved

² “Effective Date” means (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

1 Employee's full name, last known mailing address, social security number, and number of PAGA
2 pay periods. Agreement, ¶ 4.2.

3 Within 10 days after Defendant funds the Gross Settlement Amount, the Settlement
4 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment,
5 the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA
6 Counsel Litigation Expenses Payment. Agreement, ¶ 4.4.

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

13 **D. Individual PAGA Payments and Uncashed Checks**

14 The settlement checks issued to Aggrieved Employees will remain valid for one hundred
15 eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty
16 (180) days after issuance will be distributed to the California State Controller's Office Unclaimed
17 Property Fund with an identification of the amount of unclaimed funds attributable to each
18 Aggrieved Employee. All settlement payments to Aggrieved Employees will be treated as
19 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator
20 if required by law. Agreement, ¶¶ 4.4.1, 4.4.3.

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

23 Upon the Effective Date of this Settlement, Plaintiff, the State of California (including,
24 but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully,
25 finally, and forever released, settled, compromised, relinquished, and discharged the Released
26 PAGA Claims with respect to Defendant and each of its former and present directors, officers,
27 shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
28 subsidiaries, affiliates, and employees (the "Released Parties").

///

1 The Released PAGA Claims include:

2 all claims for PAGA penalties that were alleged, or reasonably could have been
3 alleged, based on the PAGA Period facts stated in the Operative Complaint and
4 the PAGA Notice, including but not limited to: California Labor Code Sections
201, 202, 203, 204 and/or 204b, 210, 221, 226, 226.3, 226.7, 510, 512, 558, 558.1,
1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

5 Agreement, ¶ 5.

6 **IV. ARGUMENT**

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

8 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
9 Court necessarily has broad discretion in making the decision to approve or reject a settlement
10 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
11 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
12 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2),
13 Although the PAGA does not set forth the particular standards against which a PAGA settlement
14 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
15 for evaluating class action settlements. HM, ¶ 12; *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*,
16 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's
17 guidance, that approval of PAGA settlements may be had where the statutory requirements of
18 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and
19 adequate). The established standards for evaluating whether class action settlements are fair,
20 reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA
21 settlements and have been adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist.
22 LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (*citing Officers for Justice v. Civil Serv. Comm'n of City*
23 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms,*
24 *LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*,
25 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7,
26 n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal.
27 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal.
28 2018).

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

11 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
12 **PAGA**

13 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
14 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
15 follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See*
16 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
17 The parties’ Settlement so provides. HM, ¶ 13, Ex. 1. Second, the LWDA must be given notice
18 of the settlement so that it may be heard before the Court decides whether to grant approval. Cal.
19 Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA concurrently with the filing of
20 this motion. HM, ¶¶ 13, 39, Ex. 10. As a result, Plaintiff has met all procedural statutory
21 requirements for settling a PAGA action.

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

24 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the
25 Court may consider several factors, including:
26 the strength of the Plaintiff’s case, the risk, expense, complexity and
27 likely duration of further litigation, the risk of maintaining class
28 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.

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

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

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

21 The PAGA Settlement was reached only after litigation and arms’ length negotiations
22 between experienced attorneys, which included a full day mediation with JJ Johnston, Esq. At all
23 times, the negotiations were adversarial and contentious, although still professional in nature.
24 HM, ¶ 8.

25 Counsel for the Parties have further investigated the applicable law as applied to the facts
26 discovered regarding Plaintiff’s claims, the defenses thereto, and the Labor Code violations
27 claimed by Plaintiff. Plaintiff’s counsel is experienced in prosecuting PAGA lawsuits. Counsel
28 for the Defendant are experienced in defending PAGA cases. Based on the parties’ own
independent investigations and evaluations, the parties and their respective counsel are of the

1 opinion that the Settlement for the consideration and on the terms set forth in the Agreement are
2 fair, reasonable and adequate and are in the best interests of Plaintiff, the Aggrieved Employees,
3 the State, and Defendant in light of all known facts and circumstances and the risks inherent in
4 litigation, especially in this post pandemic era, where businesses are struggling to remain afloat,
5 much less prosper and make a large profit. HM, ¶ 11.

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

8 Plaintiff considered various sources of information in the lead-up to and during the
9 mediation of August 24, 2023 that enabled her to achieve the PAGA Settlement at issue. HM, ¶
10 15. Among other things, Plaintiff considered the following:

- 11 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 12 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
13 overtime and double-time wages, off the clock work, expense reimbursement, meal
14 periods, rest breaks, meal period waivers and agreements, compensation plans, and
15 complaints about working conditions in effect during the relevant time period beginning
16 in December of 2021. Defendant produced those policies as part of their employee
17 handbook.
- 18 • Plaintiff's counsel requested that Defendant provide the total number of employees,
19 paychecks, and the pay cycles during the relevant period. Defendant provided the
20 answers to each of these questions.
- 21 • Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
22 time period. Defendant provided a sampling of time and pay records for 44 of its
23 employees. This represents 20% of the total employees (219) that Defendant employed
24 during the PAGA Period based on data available at the time.
- 25 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
26 the records and determine the meal period violation rates, if there was any pay
27 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
28 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.

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

3 Defendant estimated for purposes of mediation that as of August 24, 2023, there were
4 approximately 219 Aggrieved Employees and 7,200 pay periods for all Aggrieved Employees
5 during the PAGA Period. Based on this information, Plaintiff's counsel prepared an estimate of
6 the maximum possible civil penalties under the PAGA. HM, ¶ 16. The maximum possible civil
7 penalties under the PAGA is the total number of pay periods with one or more violations
8 multiplied by the maximum possible civil penalty amount per pay period. Under the civil penalty
9 formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of
10 approximately **\$4,429,500** for civil penalties as follows:

11 12 13 14 15 16 17 18 19 20 TYPE OF VIOLATION	LABOR CODE SECTION VIOLATED/ CIVIL PENALTY STATUTE	INITIAL PENALTY AMOUNT/PAY PERIOD	PAY PERIODS	CIVIL PENALTIES
Unpaid Minimum Wages	1197/1197.1	\$100	7200	\$720,000.00
Unpaid Overtime	510/558	\$50	7200	\$360,000.00
Inaccurate Wage Statements	226/226.3	\$100	7200	\$720,000.00
Inaccurate Pay Records	1174/1174.5	\$500	219	\$109,500.00
Untimely Wages	201-204/210, 2699(f)(2)	\$100	7200	\$720,000.00
Unreimbursed Expenses	2802/2699(f)(2)	\$100	7200	\$720,000.00
Unprovided Meal Breaks	512/558	\$50	7200	\$360,000.00
Unprovided Rest Breaks	1198/2699(f)(2)	\$100	7200	\$720,000.00
MAXIMUM CIVIL PENALTIES				\$4,429,500.00

21 The potential for recovery of this maximum possible civil penalties depends on circumstances
22 that are highly unlikely and not in line with reality. It would depend on the Court stacking the
23 maximum recoverable civil penalties for unpaid wages violations, inaccurate wage statements
24 violations, inaccurate pay records violations, untimely wages violations, unreimbursed expenses
25 violations, unprovided meal breaks violations, and unprovided rest breaks violations, per pay
26 period for all 7,200 pay periods for all 219 potential Aggrieved Employees during the PAGA
27 Period. Plaintiff's counsel is unaware of any California State court decision awarding a plaintiff
28 and the other Aggrieved Employees she represents multiple civil penalties for the same pay

1 period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the
2 Court would refuse to “stack” civil penalties arising under the various Labor Code statutes.
3 Plaintiff’s counsel had to substantially discount the value of these claims in the settlement
4 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one
5 penalty for each pay period (regardless of the different Labor Code violations that potentially
6 occurred for the same employee, during the same pay periods). Assuming that Plaintiff could
7 prove that there was at least one violation of a Labor Code section per pay period, Plaintiff could
8 expect to recover approximately \$360,000.00 (7,200 pay periods x \$50 = \$360,000.00). HM, ¶
9 16.

10 The PAGA action brought forth in this case by Plaintiff had two main substantive
11 arguments: 1) unprovided meal and rest periods, 2) unpaid overtime for not being compensated
12 for off-the-clock work. HM, ¶ 17. Under the civil penalty formulas applicable under PAGA,
13 Plaintiff estimated a maximum exposure of approximately \$1.4 million for civil penalties for
14 Plaintiff’s strongest disputed claims of failure to provide meal and rest periods and unpaid
15 overtime wages. Plaintiff’s analysis, which Defendant vehemently dispute, revealed that meal
16 periods were not being tracked and were being automatically generated by the system. As such,
17 Plaintiff used a 100% violation rate to calculate meal period violations. As such, the maximum
18 exposure would be \$360,000, which is calculated as \$50 penalty multiplied by 7200 pay periods.
19 Plaintiff extrapolated the same 100% rate for rest break violations, which would equate to an
20 exposure of \$720,000 (\$100 penalty per pay period multiplied by 7200 pay periods). Plaintiff
21 discounted this amount by 50% since Rodriguez and the other Aggrieved Employees did receive
22 at least one rest break during their work shifts. In terms of the overtime wages issue, Plaintiff
23 discounted this violation rate by 50%. At a 50% violation rate, the penalties would amount to
24 \$180,000, which is calculated as \$50 penalty multiplied by 3600 pay periods (50% of the 7200
25 pay periods). As such, a GSA of \$220,000 here is a great result. The other arguments for PAGA
26 penalties, including inaccurate paystubs, not paying all wages owed every pay period and at the
27 end of employment, and not keeping accurate time records, are all derivative claims that have no
28 value on their own. *See Naranjo v. Spectrum Security Services, Inc.*, 40 Cal App5th 444.

1 HM, ¶ 17.

2 There are risks to Plaintiff’s meal and rest period claims. HM, ¶ 18. Defendant contends
3 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
4 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
5 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
6 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
7 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
8 or prohibited the employee from taking a proper break, or otherwise failed to release the
9 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
10 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
11 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendant’s time
12 records the exact reasons why a meal period appears to be short or late would be difficult and
13 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal
14 periods will be a challenge. Additionally, Defendant provided evidence that they provide
15 employees with the opportunity to take meal and rest breaks. Facility Master’s Handbook
16 contains legally compliant meal period and rest break policies. HM, ¶ 18.

17 Defendant contends it provided its non-exempt employees with the opportunity to take
18 rest periods in accordance with California law, and, accordingly, Plaintiff’s rest break claim has
19 no support. Additionally, there are other risks to Plaintiff’s rest period claim. Employers are not
20 required to record rest periods and such periods are paid. Unlike meal periods, where there are
21 often records showing whether an employee clocked out or not, there is no such evidence to
22 prove a missed rest period or that the employer refused to authorize and permit one. HM, ¶ 19.

23 There are risks to Plaintiff’s claim for unreimbursed expenses. Plaintiff alleges that
24 Defendant did not reimburse her or the other Aggrieved Employees for uniform expenses. There
25 is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged failure to
26 indemnify for business expenses to be individual in nature. As such, Plaintiff’s counsel had to
27 significantly discount the value of this claim during settlement negotiations. HM, ¶ 20.

28 Additionally, PAGA states a court has discretion to award a lesser amount than the

1 maximum penalty. See Lab. Code § 2699(e)(2) (“...a court may award a lesser amount than the
2 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
3 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
4 oppressive, or confiscatory.”); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
5 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
6 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
7 of willful and intentional conduct. HM, ¶ 21. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
8 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
9 discounted award of only \$5 per violation because it was within the Court’s discretion to
10 significantly reduce PAGA penalties even when there is a finding that a violation of the
11 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
12 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
13 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
14 that this reduction was warranted because imposing the maximum penalty would be “unjust,
15 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
16 obligations and because the Court found the violations were minimal. Applying the same formula
17 here and assuming there was one violation during each pay period, the award of civil penalties
18 could not exceed \$36,000.00 in PAGA penalties (7,200 violations x \$5). As such, this Settlement
19 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
20 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
21 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
22 Amount is uncertain. HM, ¶ 21.

23 The Parties further recognize that the issues presented in the representative PAGA claim
24 are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that
25 further litigation will cause inconvenience, distraction, disruption, delay, and expense
26 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
27 from continued litigation, especially in the post pandemic era where further and extensive
28 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,

1 Plaintiff's attorneys, other Aggrieved Employees, and the State of California. HM, ¶ 22.

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

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

21 As such, the settlement of PAGA penalties in the gross sum of \$220,000.00, of which
22 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs
23 (\$97,627.72) will be paid to the LWDA and 25% (\$32,542.57) will be distributed to the
24 Aggrieved Employees, is reasonable and appropriate under the circumstances. HM, ¶ 25.

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

27 Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
28 depending on the number of pay periods Defendant employed them for during the PAGA Period.

1 Agreement, ¶ 1.11. With a total of 219 Aggrieved Employees, the average estimated individual
2 PAGA payment for each Aggrieved Employee is approximately \$148.60 (25% of the estimated
3 Net Settlement of \$32,542.57) / 219 Aggrieved Employees). This is a great result given the
4 uncertainties this lawsuit entails. HM, ¶ 26.

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

6 Plaintiff's counsel has considerable experience in wage and hour litigation and is
7 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with
8 litigation, and viability of possible affirmative defenses. Similarly, Defendant's counsel, Daniel
9 Muller, has vast experience in handling employment matters and wage and hour litigation. See
10 HM, ¶¶ 2, 35.

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

13 Of the \$220,000.00 allocated towards the GSA, Plaintiff's counsel requests \$77,000.00
14 (35% of the GSA) in attorney's fees and \$9,329.71 in litigation expenses, which is fair and
15 reasonable. HM, ¶ 30.

16 It is an accepted practice in wage and hour class action settlements to award attorneys'
17 fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the
18 parties. California courts have long recognized that an appropriate method for awarding
19 attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
20 (1977) 20 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific
21 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
22 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
23 fund"]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial*
24 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

25 California courts have the discretion to employ (or decline to employ) a "lodestar cross-
26 check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
27 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made
28 clear that this cross-check is not required and approved one-third of the class action settlement
fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California

1 class action cases....” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
2 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
3 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not “engage
4 in a full-blown lodestar analysis when the primary basis remains the percentage method...” The
5 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
6 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
7 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
8 reasonableness of a requested percentage fee.’”³ *Id.* (citing *Laffitte*)).

9 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
10 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
11 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
12 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
13 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
14 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
15 settlements. HM, ¶ 30.

16 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
17 fees, notwithstanding courts’ clear preference for the percentage method, Plaintiff’s Counsel’s
18 fee request of \$77,000 (35% of GSA) is fair and reasonable based on their lodestar as cross-
19 checked against the percentage of the recovery. HM, ¶¶ 31-33, Ex. 5. Plaintiff’s counsel’s
20 previous experience in litigating wage and hour class actions and the caliber of opposing counsel
21 also support the reasonableness of the fee request. HM, ¶ 35. The award of attorneys’ fees sought
22 is also justified by the contingency nature of the attorney-client relationship, the risks of non-
23 payment and non-reimbursement, the delay in payment and cost reimbursement, and the great
24 results Plaintiff’s Counsel has achieved for the Aggrieved Employees. HM, ¶ 36.

25 In addition, Plaintiff’s Counsel incurred substantial costs, \$9,329.71 to date, including the

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 costs of a mediator, to aid in the representation of the Aggrieved Employees. HM, ¶ 34, Ex.6. As
2 the evidence submitted herewith shows, all of these costs are documented and reasonably
3 incurred. *Id.* Accordingly, they warrant the Court's approval.

4 **7. The Proposed Settlement Administration Costs Are Fair and Reasonable and**
5 **Should Be Approved.**

6 With regard to the settlement administration costs provision, it is reasonable. Before
7 agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-
8 party administrators which provided higher bids. HM, ¶ 37, Exs. 7-9. *See generally* Declaration
9 of Lisa Mullins. Thus, the settlement administration costs provision should be given approval.

10 **V. CONCLUSION**

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

13 Respectfully submitted,

14 MESSRELIAN LAW INC.

15
16 Dated: February 20, 2024

By: Maralle Messrelian
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