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IRIS RODRIGUEZ, and all others similarly situated

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,

Defendants.

Case No.: 23CV423999

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
PLAINTIFF'S 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

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 Iris Rodriguez (individually, "Rodriguez" or "Plaintiff") in her lawsuit against Defendant Facility Masters, Inc. ("Defendant" or "Facility Masters").

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

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

4. A true and correct copy of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq.*) Settlement Agreement (the "Settlement" or "Agreement") is attached hereto as **Exhibit 1**. A true and correct copy of the parties agreed upon notice to the below-defined PAGA

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

Factual and Procedural Background

5. Facility Masters, headquartered in San Jose, California provides provide maintenance and cleaning services for commercial businesses. Plaintiff first started working for Facility Masters in or around 2019. Plaintiff’s employment ended on or around November 3, 2022. At all times during her employment with Defendant, Plaintiff was considered an hourly, non-exempt employee.

6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). On December 1, 2022, Plaintiff, on behalf of herself and Defendants’ other California non-exempt hourly employees (hereafter collectively the “PAGA Members”) gave written notice by electronic service to the California Labor and Workforce Development Agency (“LWDA”) and via certified mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached hereto as **Exhibit 3**.

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

8. On August 24, 2023, the parties attended a full day mediation session with JJ Johnston, Esq. At the mediation, the parties agreed to settle Plaintiff’s PAGA Claim for violation of Labor Code § 2698, et seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding Defendant’s policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendant produced Plaintiff’s personnel file, including time and payroll data through data sampling. Moreover, prior to the mediation, Defense counsel provided Plaintiff’s counsel with information and documents relating to other Aggrieved Employees, including time and payroll data. Through extensive arm’s length negotiations at the mediation and only after discovery and investigation were performed, the

1 parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement,
2 Plaintiff submits it to this Court for approval.

3 9. On October 9, 2023, Plaintiff filed a lawsuit in Santa Clara County Superior
4 Court (the “Lawsuit”) with a single representative claim for civil penalties under the PAGA
5 (California Labor Code § 2698, et seq.) against Defendant so that Plaintiff may pursue the
6 present motion for approval of the Parties’ Agreement. A true and correct copy of the Lawsuit
7 is attached hereto as **Exhibit 4**. Plaintiff asserted on behalf of herself and the PAGA Members
8 that Defendant (1) failed to pay for all hours worked, including but not limited to, minimum and
9 overtime wages (California Labor Code sections 510, 1194, 1197, 1197.1); (2) failed to provide
10 all required timely and duty-free meal and rest periods (California Labor Code sections 226.7
11 and 512); (3) failed to pay wages owed every pay period (California Labor Code section 204);
12 (4) failed to provide accurate, itemized wage statements (California Labor Code section 226a);
13 (5) failed to pay all wages owed at the end of employment (California Labor section 203); (6)
14 failed to maintain accurate records (California Labor Code section 1174d); (7) failed to
15 reimburse business expenses (California Labor Code sections 2800 and 2802); and (8) engaged
16 in unfair competition (California B&P Code section 17200).. *Id.*

17 10. Defendant denies any liability or wrongdoing of any kind whatsoever
18 associated with the lawsuit. It is the desire of the parties to fully, finally, and forever
19 compromise, and discharge all claims known or unknown related to those alleged in Plaintiff’s
20 lawsuit.

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

1 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
2 prosper and make a large profit.

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

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

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

1 15. I considered various sources of information in the lead-up to the mediation of
2 August 24, 2023 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
3 Plaintiff considered the following:

- 4 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 5 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
6 overtime and double-time wages, off the clock work, expense reimbursement, meal
7 periods, rest breaks, meal period waivers and agreements, compensation plans, and
8 complaints about working conditions in effect during the relevant time period beginning
9 in December of 2021. Defendant produced those policies as part of their employee
10 handbook.
- 11 • Plaintiff's counsel requested that Defendant provide the total number of employees,
12 paychecks, and the pay cycles during the relevant period. Defendant provided the
13 answers to each of these questions.
- 14 • Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
15 time period. Defendant provided a sampling of time and pay records for 44 of its
16 employees. This represents 20% of the total employees (219) that Defendant employed
17 during the PAGA Period based on data available at the time.
- 18 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
19 the records and determine the meal period violation rates, if there was any pay
20 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
21 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
22 *camera* inspection upon its request.
- 23 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
24 violations, claims for "off the clock" work and business expense reimbursement,
25 especially as it relates to "manageability" arguments brought up by the defense.

26 16. Defendant estimated for purposes of mediation that as of August 24, 2023, there
27 were approximately 219 Aggrieved Employees and 7,200 pay periods for all Aggrieved
28 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's counsel estimated a maximum possible

exposure of approximately **\$4,429,500** for civil penalties as follows:

TYPE OF VIOLATION	LABOR CODE SECTION VIOLATED/ CIVIL PENALTY STATUTE	INITIAL PENALTY AMOUNT/PAY PERIOD	PAY PERIODS	CIVIL PENALTIES
Unpaid Minimum Wages	1197/1197.1	\$100	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

The potential for recovery of this maximum possible civil penalties depends on circumstances that are highly unlikely and not in line with reality. It would depend on the Court stacking the maximum recoverable civil penalties for unpaid wages violations, inaccurate wage statements violations, inaccurate pay records violations, untimely wages violations, unreimbursed expenses violations, unprovided meal breaks violations, and unprovided rest breaks violations, per pay period for all 7,200 pay periods for all 219 potential Aggrieved Employees during the PAGA Period. Plaintiff's counsel is unaware of any California State court decision awarding a plaintiff and the other Aggrieved Employees she represents multiple civil penalties for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one penalty for each pay period (regardless of the different Labor Code violations that potentially occurred for the same employee, during the same pay periods). Assuming that Plaintiff could prove that there was at least one violation of a Labor Code section per pay period, Plaintiff could expect to recover approximately \$360,000.00 (7,200 pay periods x \$50 = \$360,000.00).

1 17. The PAGA action brought forth in this case by Plaintiff had two main substantive
2 arguments: 1) unprovided meal and rest periods, 2) unpaid overtime for not being compensated
3 for off-the-clock work. Under the civil penalty formulas applicable under PAGA, Plaintiff
4 estimated a maximum exposure of approximately \$1.4 million for civil penalties for Plaintiff's
5 strongest disputed claims of failure to provide meal and rest periods and unpaid overtime wages.
6 Plaintiff's analysis, which Defendant vehemently dispute, revealed that meal periods were not
7 being tracked and were being automatically generated by the system. As such, Plaintiff used a
8 100% violation rate to calculate meal period violations. As such, the maximum exposure would
9 be \$360,000, which is calculated as \$50 penalty multiplied by 7200 pay periods. Plaintiff
10 extrapolated the same 100% rate for rest break violations, which would equate to an exposure of
11 \$720,000 (\$100 penalty per pay period multiplied by 7200 pay periods). Plaintiff discounted this
12 amount by 50% since Rodriguez and the other Aggrieved Employees did receive at least one rest
13 break during their work shifts. In terms of the overtime wages issue, Plaintiff discounted this
14 violation rate by 50%. At a 50% violation rate, the penalties would amount to \$180,000, which
15 is calculated as \$50 penalty multiplied by 3600 pay periods (50% of the 7200 pay periods). As
16 such, a GSA of \$220,000 here is a great result. The other arguments for PAGA penalties,
17 including inaccurate paystubs, not paying all wages owed every pay period and at the end of
18 employment, and not keeping accurate time records, are all derivative claims that have no value
19 on their own. *See Naranjo v. Spectrum Security Services, Inc.*, 40 Cal App5th 444.

20 18. There are risks to Plaintiff's meal and rest period claims. Defendant contends
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 Defendant's 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 Aggrieved Employees worked during their meal
4 periods will be a challenge. Additionally, Defendant provided evidence that they provide
5 employees with the opportunity to take meal and rest breaks. Facility Master's Handbook
6 contains legally compliant meal period and rest break policies.

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

13 20. There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges
14 that Defendant did not reimburse her or the other Aggrieved Employees for uniform expenses.
15 There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to
16 indemnify for business expenses to be individual in nature. As such, Plaintiff's counsel had to
17 significantly discount the value of this claim during settlement negotiations.

18 21. Additionally, PAGA states a court has discretion to award a lesser amount than
19 the maximum penalty. See Lab. Code § 2699(e)(2) ("...a court may award a lesser amount than
20 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
21 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
22 oppressive, or confiscatory."); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
23 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
24 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
25 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
26 ("Carrington") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
27 discounted award of only \$5 per violation because it was within the Court's discretion to
28 significantly reduce PAGA penalties even when there is a finding that a violation of the

1 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
2 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
3 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
4 that this reduction was warranted because imposing the maximum penalty would be “unjust,
5 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
6 obligations and because the Court found the violations were minimal. Applying the same formula
7 here and assuming there was one violation during each pay period, the award of civil penalties
8 could not exceed \$36,000.00 in PAGA penalties (7,200 violations x \$5). As such, this Settlement
9 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
10 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
11 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
12 Amount is uncertain.

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

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

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

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

Individual PAGA Payments

26. Defendants represent that there are approximately 219 PAGA Members during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees (\$77,000.00) and PAGA Counsel's Costs (\$9,329.71), and the Settlement Administration Costs (\$3,500.00), the Net Settlement Amount will be approximately \$130,170.29. Seventy five percent (75%) of the Net Settlement Amount will be paid to the Labor and Workforce Development Agency ("LWDA") (\$97,627.72), and twenty five percent (25%) (\$32,542.57) of the Net Settlement Amount will be paid to the PAGA Members on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Agreement, ¶ 3. With a total of 219 Aggrieved Employees, the average estimated individual PAGA payment for each Aggrieved Employee is approximately \$148.60 (25% of the estimated Net Settlement of \$32,542.57) / 219 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails.

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1 *Plaintiff's Individual Settlement*

2 27. Plaintiff negotiated an individual settlement agreement separate from the PAGA
3 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual
4 settlement agreement was to settle her individual wage and hour claims, sexual harassment, and
5 wrongful termination claims. Plaintiff's individual settlement agreement does not provide for
6 any additional attorney's fees or costs to my firm.

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

18 29. The PAGA statute does not forbid service awards. Courts frequently award them
19 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
20 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
21 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
22 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
23 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
24 with our office on many occasions by phone, explaining what his employment at A-1 Jay's was
25 like, explaining what his employment at A-1 Jay's had in common with other employees who
26 worked for A-1 Jay's, explaining his claims to me and my staff, and communicating with me
27 and my staff about the settlement agreement and related documents. Despite this, Plaintiff is **not**
28 asking for a service award for her involvement and the time she spent assisting my firm with the

1 PAGA action. *See generally* Declaration of Iris Rodriguez.

2 ***Attorneys' Fees and Costs***

3 30. I represent Plaintiff on a straight contingency basis. My firm's request for
4 \$77,000.00 in attorney fees and \$9,329.71 in litigation costs is fair and reasonable. "[R]egardless
5 whether the percentage method or the lodestar method is used, fee awards in class actions average
6 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
7 fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*")
8 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129
9 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my
10 experience in wage and hour class and PAGA settlements.

11 31. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
12 awarding fees, notwithstanding courts' clear preference for the percentage method, my request
13 for attorney's fees of \$77,000.00 (33% of the Gross Settlement Amount) is fair and reasonable
14 based on my firm's lodestar as cross-checked against the percentage of the recovery.

15 32. To date, the attorneys in my firm and I have investigated and prosecuted this
16 matter for over 64.10 hours. I also expect to perform additional work on this case if the Court
17 grants final approval of the Settlement, including supervision of the Settlement Administrator's
18 disbursement of the settlement funds to the PAGA Members.

19 33. In this case, my firm has a total lodestar of approximately \$32,575 without the
20 use of any multiplier, which results in a multiplier of 2.364 when compared against the
21 \$77,000.00 request for attorneys' fees.¹ A general summary showing of the pre-multiplier
22 lodestar and the total number of hours of work performed by my firm is set forth below with a
23

24 ¹The multiplier of 2.364 is supported by California case law. Under California law, lodestar multipliers can range
25 from 2 to 4 or even higher. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer,*
26 *Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849,
27 *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding
28 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).

total lodestar of approximately \$32,575.00.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
Harout Messrelian (14 th Year Attorney)	23.70	\$650.00/\$700.00	\$15,305.00
Maralle Messrelian (7 th Year Attorney)	40.40	\$450.00/\$500.00	\$17,270.00
Totals	64.10		\$32,575.00

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 Defendant's counsel who have been paid as they performed work during this case.

34. In addition, my firm incurred substantial costs, \$9,329.71 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* inspection upon its request. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

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

36. Plaintiff reiterates her request that the Court award her counsel one third of the recovery as attorney fees. The award of attorney's fees sought is justified by the contingency nature of the attorney-client relationship, my experience in litigating wage and hour cases, the number of attorney and staff hours my firm has spent on this lawsuit, the high caliber of defense

counsel, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff's Counsel has achieved for the PAGA Members.

Settlement Administration Costs

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

A. ILYM Group, Inc.= \$3,500.00

B. Phoenix Class Action Administration Solutions = \$6,000; and

C. CPT Group, Inc.= \$ 9,500.00.

A true and correct copy of the bid from ILYM Group Inc. is attached hereto as **Exhibit 7**. A true and correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as **Exhibit 8**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 9**. Thus, settlement administration costs provision should be given approval.

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

Notice of Settlement to the LWDA

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

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

Executed on February 20, 2024, at Glendale, California.



HAROUT MESSRELIAN,
Declarant