

MESSRELIAN LAW INC.
Harout Messrelian, Esq. (SB# 272020)
hm@messrelianlaw.com
Maralle Messrelian, Esq., Of Counsel (SB#316974)
maralle@messrelianlaw.com
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorneys for Plaintiff Eduardo Martinez Guizar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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

EDUARDO MARTINEZ GUIZAR,

Plaintiff,

vs.

AIR CULINAIRE WORLDWIDE, LLC;
and DOES 1 to 25, inclusive,

Defendants.

Case No.: 23CV415879

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

Action filed: May 4, 2023
Hearing Date: April 24, 2025
Hearing Time: 1:30 p.m.
Hearing Dept: 7, Hon. Charles F. Adams

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 Eduardo Martinez Guizar (individually, "Guizar" or "Plaintiff") in his lawsuit against Defendant Air Culinaire Worldwide ("Defendant" or "Air Culinaire Worldwide").

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 Joint Stipulation of PAGA Settlement and Release of Claims (the "Settlement or "Agreement") is attached hereto as **Exhibit 1**. A true and correct

1 copy of the parties agreed upon notice to the below-defined PAGA Group Members (the “PAGA
2 Group Notice”) is attached hereto as **Exhibit 2**.

3 ***Factual and Procedural Background***

4 5. Plaintiff started working for Defendant in or around early 2022 as a cook at its
5 location in San Jose (1250 Aviation Ave., San Jose, California). Plaintiff was classified as an
6 hourly, non-exempt employee and his latest rate of pay was \$24.61/hour. Plaintiff’s employment
7 ended on or around October 31, 2022.

8 6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
9 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
10 (“PAGA”). On January 10, 2023, Plaintiff, on behalf of himself and Defendant’s other
11 California non-exempt hourly employees (hereafter collectively the “PAGA Group Members”)
12 gave written notice by electronic service to the California Labor and Workforce Development
13 Agency (“LWDA”) and via certified mail to Defendant of the specific provisions of the
14 California Labor Code alleged to have been violated, including the facts and theories to support
15 the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA is attached
16 hereto as **Exhibit 3**.

17 7. On May 4, 2023, Plaintiff filed a lawsuit in Santa Clara County Superior Court
18 (the “Lawsuit”) against Defendant. Plaintiff asserted the following causes of action against
19 Defendant: (1) failure to compensate for all hours worked, (2) failure to pay minimum wages,
20 (3) failure to pay overtime, (4) failure to provide accurate itemized wage statements, (5) failure
21 to pay wages when employment ends, (6) failure to pay wages owed every pay period, (7) failure
22 to give rest breaks, (8) failure to give meal breaks, (9) failure to reimburse business expenses;
23 (10) penalties pursuant to the Private Attorneys General Act (“PAGA”); (11) failure to provide
24 personnel records; (12) failure to provide pay records; (13) discrimination on the basis of
25 physical disability, (14) failure to accommodate physical disability, (15) failure to engage in the
26 interactive process, (16) retaliation in violation of the FEHA, (17) failure to prevent
27 discrimination and retaliation, (18) wrongful termination in violation of public policy, and (19)
28 violation of Business & Professions Code section 17200. A true and correct copy of Plaintiff’s

1 Lawsuit is attached hereto as **Exhibit 4**. By Order dated May 31, 2023, the Court stayed
2 discovery and Defendant's responsive pleading deadline.

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

6 9. On August 26, 2024, the parties attended a full day mediation session with Hon.
7 Brian Walsh (Ret.). At the mediation, the parties attended a full day mediation session with
8 experienced and well-respected employment and PAGA mediator Mariam Zadeh. At the
9 mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor Code §
10 2698, et seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal
11 discovery regarding Defendant's policies, practices, operations, time and payroll information
12 and other topics. In advance of mediation, Defendant produced Plaintiff's personnel file,
13 including time and payroll data through data sampling. Moreover, prior to the mediation,
14 Defense counsel provided Plaintiff's counsel with information and documents relating to other
15 PAGA Group Members, including time and payroll data. At all times, the negotiations were
16 adversarial and contentious, although still professional in nature. Through extensive arm's
17 length negotiations at the mediation and only after discovery and investigation were performed,
18 the parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement,
19 Plaintiff submits it to this Court for approval.

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

23 11. Counsel for the Parties have further investigated the applicable law as applied to
24 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
25 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
26 Defendant are experienced in defending PAGA cases. Based on the parties' own independent
27 investigations and evaluations, the parties and their respective counsel are of the opinion that the
28 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable

1 and adequate and are in the best interests of Plaintiff, the PAGA Group Members, the State, and
2 Defendant in light of all known facts and circumstances and the risks inherent in litigation,
3 especially in this post pandemic era, where businesses are struggling to remain afloat, much less
4 prosper and make a large profit.

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

13 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
14 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
15 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
16 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.
17 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must
18 be given notice of the settlement so that it may be heard before the Court decides whether to
19 grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA
20 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with
21 the LWDA and a confirmation email is attached as **Exhibit 9**. As a result, Plaintiff has met all
22 procedural statutory requirements for settling a PAGA action.

23 14. The PAGA Settlement warrants a presumption of fairness for several reasons: (1)
24 The parties reached the Settlement through arm's-length bargaining with the aid of a respected
25 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
26 the Court to act intelligently. Plaintiff requested and Defendant provided the number PAGA
27 Group Members, the number of total pay periods during the PAGA Period, all policies in effect
28 during the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are

1 experienced with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest
2 with the absent PAGA Group Members and there are no issues of ascertainability.

3 15. I considered various sources of information in the lead-up to the mediation of
4 August 26, 2024 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
5 Plaintiff considered the following:

- 6 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 7 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
8 overtime and double-time wages, off the clock work, expense reimbursement, meal
9 periods, rest breaks, meal period waivers and agreements, compensation plans, and
10 complaints about working conditions in effect during the relevant time period beginning
11 in January of 2022. Defendant produced those policies as part of their employee
12 handbook.
- 13 • Plaintiff's counsel requested that Defendant provide the total number of employees,
14 paychecks, and the pay cycles during the relevant period. Defendant provided the
15 answers to each of these questions.
- 16 • Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
17 time period. Defendant provided a sampling of time and pay records for 47 of its
18 employees. This represents 20% of the total employee IDs that Defendant provided to
19 Plaintiff based on data available at the time.
- 20 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
21 the records and determine the meal period violation rates, if there was any pay
22 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
23 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
24 *camera* inspection upon its request.
- 25 • Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
26 violations, claims for "off the clock" work and business expense reimbursement,
27 especially as it relates to "manageability" arguments brought up by the defense.

28 16. Defendant estimated for purposes of mediation that as of August 26, 2024, there
were approximately 165 PAGA Group Members and 4,815 pay periods for all PAGA Group
Members during the relevant period. Based on this information, Plaintiff's counsel prepared an
estimate of the maximum possible civil penalties under the PAGA. The maximum possible civil
penalties under the PAGA is the total number of pay periods with one or more violations

1 multiplied by the maximum possible civil penalty amount per pay period.

2 17. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel
3 estimated a maximum possible exposure of approximately \$255,750 for civil penalties for
4 Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's
5 analysis, which Defendant vehemently disputes, revealed a 39.1% violation rate for either late,
6 short, or no meal periods for shifts over 5 hours. Since the total number of pay periods in the
7 PAGA period was 4,815 and since approximately 90.6% of the shifts in the sample analysis were
8 over 5 hours, the total number of pay periods to consider for potential meal break violations was
9 4,362 (90.6% x 4,815 pay periods). As such, with the 39.1% violation rate, the maximum
10 exposure would be \$85,250, which is calculated as \$50 penalty multiplied by 1,705 pay periods
11 (39.1% of the 4,362 pay periods). Plaintiff extrapolated the same 39.1% rate for rest break
12 violations, which would equate to a maximum exposure of \$170,500 (\$100 penalty per pay period
13 multiplied by 1705 pay periods, which is 39.1% x 4,362 pay periods). As such, the aggregate
14 maximum exposure for meal break and rest break claims would be \$255,750. Assuming that
15 Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court
16 will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. For the rest
17 period violations, it also presumes that the meal and rest period violation rates were identical.

18 18. There are risks to Plaintiff's meal and rest period claims. Defendant contends
19 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
20 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
21 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
22 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
23 performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
24 or prohibited the employee from taking a proper break, or otherwise failed to release the
25 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the
26 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*
27 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendants' time
28 records the exact reasons why a meal period appears to be short or late would be difficult and

1 pinpointing those days in which Plaintiff and the PAGA Group Members worked during their
2 meal periods will be a challenge. Additionally, Defendant provided evidence that they provide
3 employees with the opportunity to take meal and rest breaks and paid meal premium payments
4 throughout the PAGA Period. Moreover, Air Culinaire Worldwide's Handbook contains legally
5 compliant meal period and rest break policies.

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

12 20. As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest
13 period violations, there would be issues with proof. The sampling did not reveal any rounding as
14 hours were paid to the second decimal point. There would be no regular rate issue, since there
15 were no bonus payments seen in the sample. As it relates to any overtime issues, the data showed
16 the average workday was 7.65 hours, which means that overtime pay was not an issue.
17 Regardless, when employees worked over 8.0 hours, they were paid 1.5 times their regular rate.
18 In addition, double time was also properly paid. Moreover, Defendant provided overall strong
19 written policies as it related to wage and hour practices and showed that Plaintiff acknowledged
20 the policies. There are also risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges
21 that Defendant did not reimburse him or the other PAGA Group Members for use of personal
22 phones for business-related purposes (taking photos of the dishes, for example) and
23 uniforms/equipment, including knives, pans, utensils, and other kitchen supplies that Plaintiff
24 brought into the workplace for use. Defendant provided evidence at mediation that it provided
25 its employees with all necessary tools and supplies to perform their work. Moreover, there is a
26 risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify
27 for business expenses to be individual in nature. As such, Plaintiff's Counsel had to significantly
28 discount the value of this claim during settlement negotiations. Plaintiff's other claims for

1 violations of Labor Code sections 203, 204, and 226 (for not being paid all wages owed every
2 pay period or at the end of employment as well as not receiving accurate, itemized wage
3 statements) would not be triggered since they are derivative claims, and no rounding/overtime
4 issues were identified. Based on the above calculations, Plaintiff's aggregate exposure for the
5 strongest disputed claims would be **\$255,750**. Assuming that Plaintiff's calculations and analysis
6 are accurate, the maximum exposure presumes that the Court will not reduce the penalty award
7 as unjust, arbitrary, oppressive, or confiscatory. Based on the above analysis, a gross settlement
8 in the amount of \$170,000, which represents 66% of the maximum penalty calculation, is a very
9 strong result, especially in light of the risk factors as discussed above.

10 21. Moreover, I am unaware of any California State court decision awarding a
11 plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same
12 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that
13 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.
14 Plaintiff's counsel had to substantially discount the value of these claims in the settlement
15 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one
16 penalty for each pay period (regardless of the different Labor Code violations that potentially
17 occurred for the same employee, during the same pay periods).

18 22. 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 \$24,075 in PAGA penalties (4,815 violations x \$5). As such, this Settlement is
9 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
10 Defendants have 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 23. 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 Group Members and Plaintiff
17 from continued litigation, especially in the post pandemic era where further and extensive
18 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
19 Plaintiff’s attorneys, other PAGA Group Members, and the State of California.

20 24. The settlement of the representative PAGA claim involves monetary relief to all
21 PAGA Group Members, Plaintiff, his 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 he is bound
25 by, Plaintiff, considering the evidence he 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 Defendants. The
28 Settlement does not require them to opt out to do so.

25. 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 PAGA Group Members 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 Defendants, 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.

26. As such, the settlement of PAGA penalties in the gross sum of \$170,000.00, of which 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs (\$71,599.80) will be paid to the LWDA and 25% (\$23,866.60) will be distributed to the PAGA Group Members, is reasonable and appropriate under the circumstances.

Individual PAGA Payments

27. Defendants represent that at the time of mediation there were approximately 165 PAGA Group Members during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees (\$59,500) and PAGA Counsel's Litigation Costs (\$11,783.60), and the Settlement Administrator's Costs (\$3,250), the NSA will be approximately \$95,466.40. Seventy five percent (75%) of the NSA will be paid to the Labor and Workforce Development Agency ("LWDA Payment") (\$71,599.80), and twenty five percent (25%) (\$23,866.60) of the NSA will be paid to the PAGA Group Members on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Agreement, ¶ 44(b)-(c). With a total of 165 PAGA Group Members, the average estimated individual PAGA payment for each PAGA Group Member is approximately \$144.65 (25% of the estimated PAGA GP of \$23,866.60) / 165 PAGA Group Members). This is a great result given the uncertainties this lawsuit entails.

Plaintiff's Individual Settlement

28. Plaintiff negotiated an individual settlement agreement separate from the PAGA

1 Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual
2 settlement agreement was to settle his individual wage and hour claims, disability
3 discrimination, retaliation, and wrongful termination claims. Plaintiff's individual settlement
4 agreement does not provide for any additional attorney's fees or costs to my firm.

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

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

Attorneys' Fees and Costs

31. I represent Plaintiff on a straight contingency basis. My firm's request for \$59,500 in attorney fees and \$11,783.60 in litigation costs is fair and reasonable. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my experience in wage and hour class and PAGA settlements.

32. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, my request for attorneys' fees of \$59,500 (35% of the Gross Settlement Amount) is fair and reasonable based on my firm's lodestar as cross-checked against the percentage of the recovery.

33. To date, I have investigated and prosecuted this matter for approximately 28.5 hours, including initial investigation, drafting the initial PAGA notice; reviewing Defendant's informal document production, including wage and hour policies; sending and receiving emails on the case with defense counsel, including substantive discussions and settlement communications; reviewing the expert's findings/conclusions; preparing for and attending a full day mediation, reviewing the settlement agreement, and reviewing this PAGA Approval Motion. 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 Group Members.

34. In this case, my firm has a total lodestar of approximately \$54,525 without the use of any multiplier, which results in a multiplier of 1.091 when compared against the \$59,500 request for attorneys' fees.¹ A general summary showing of the pre-multiplier lodestar and the

¹The multiplier of 1.091 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*

total number of hours of work performed by my firm is set forth below with a total lodestar of approximately \$54,525. See also Declaration of Maralle Messrelian, ¶ 8-10.

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Pre-Multiplier Lodestar</u>
Harout Messrelian	28.5	\$750.00	\$21,375
Maralle Messrelian	51.0	\$650.00	\$33,150
Totals	79.5		\$54,525

I will make detailed copies of such time records available to the Court for inspection upon its request. 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, \$11,783.60 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 5** to this declaration. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

36. 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, Clint Robinson and Michael Kessler of O'hagan Meyer, also supports the fairness and reasonableness of the requested fee award.

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).

37. Plaintiff reiterates his request that the Court award his 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 Group Members.

Settlement Administration Costs

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

- A. Simpluris, Inc. = \$3,250.00
- B. ILYM Group, Inc.= \$4,250.00
- C. Phoenix Class Action Administration Solutions = \$4,340.12; and

A true and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 6**. A true and correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as **Exhibit 7**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 8**. Thus, settlement administration costs provision should be given approval.

39. Furthermore, the Declaration of Denise Islas with attached exhibits, filed under separate cover, sets forth Simpluris, Inc.'s qualifications and costs to administer the settlement. *See generally* Declaration of Denise Islas. Thus, the settlement administration costs provision should be given approval.

Notice of Settlement to the LWDA

40. 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 9** to this declaration.

I declare under the penalty of perjury of the laws of the State of California that the

1 foregoing is true and correct to the best of my knowledge.

2 Executed on April 2, 2025, at Glendale, California.

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