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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

**NOTICE OF PLAINTIFF'S MOTION AND
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

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Harout Messrelian;
3. Declaration of Maralle Messrelian;
4. Declaration of Eduardo Martinez Guizar;
5. Declaration of Denise Islas; 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 April 24, 2025 at 1:30 p.m., or as soon thereafter as the
4 matter may be heard, in Department 7 of the Santa Clara County Superior Court, located at 191
5 N. First St., San Jose, CA 95113, Plaintiff Eduardo Martinez Guizar ("Plaintiff" or "Guizar") will
6 and hereby does move this Court for an order approving the Joint Stipulation of PAGA Settlement
7 and Release of Claims (the "Agreement" or "PAGA Settlement") and entering the [Proposed]
8 Order and Judgment Approving PAGA Settlement.

9 The PAGA Settlement is on behalf of Guizar and all persons within the State of California
10 who are or were employed by Defendant Air Culinaire Worldwide ("Defendant" or "Air Culinaire
11 Worldwide") during the PAGA Period of January 10, 2022 to September 26, 2024 (the "PAGA
12 Group Members"). Plaintiff alleges that Defendant is liable to him and other PAGA Group
13 Members for (1) failure to compensate for all hours worked, including minimum and overtime
14 wages; (2) failure to provide accurate, itemized wage statements; (3) failure to pay all wages owed
15 during and at the end of employment; (4) failure to maintain accurate records; (5) failure to give
16 rest breaks and meal breaks; and (6) failure to reimburse for business expenses.

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

22 Respectfully submitted,

23 MESSRELIAN LAW INC.

24 Dated: April 2, 2025

25 By: Maralle Messrelian
26 Harout Messrelian
27 Maralle Messrelian (Of Counsel)
28 Attorneys for Plaintiff, Eduardo Martinez
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SANTA CLARA**

13 **(UNLIMITED JURISDICTION)**

14 EDUARDO MARTINEZ GUIZAR,

15 *Plaintiff,*

16 vs.

17 MORENO & ASSOCIATES, INC.;

18 J ERNESTO MORENO; and

19 DOES 1 to 25, inclusive,

20 *Defendants.*

Case No.: 23CV415879

21 **MEMORANDUM OF POINTS AND**

22 **AUTHORITIES IN SUPPORT OF**

23 **PLAINTIFF'S MOTION FOR APPROVAL**

24 **OF PAGA SETTLEMENT**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eduardo Martinez Guizar (“Plaintiff” or “Guizar”) submits this memorandum of
4 points and authorities in support of his motion for approval of the Joint Stipulation of PAGA
5 Settlement and Release of Claims (the “Agreement” or “PAGA Settlement”)¹ for the civil
6 penalties claim he brought against Defendant Air Culinaire Worldwide (“Defendant” or “Air
7 Culinaire Worldwide”) under the Labor Code Private Attorneys General Act of 2004, Labor Code
8 §§ 2698, *et seq.* (“PAGA”). Plaintiff brings this motion because Labor Code section 2699(l) of
9 the PAGA requires Court-approval of any civil penalties sought as part of a proposed settlement
10 agreement. Through this motion, Plaintiff respectfully requests for this Court to approve the
11 PAGA Settlement.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

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

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

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

26 ///

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

1 **B. Plaintiff's Lawsuit**

2 On May 4, 2023, Plaintiff filed a lawsuit in Santa Clara County Superior Court (the
3 “Lawsuit”) against Defendant. Plaintiff asserted the following causes of action against Defendant:
4 (1) failure to compensate for all hours worked, (2) failure to pay minimum wages, (3) failure to
5 pay overtime, (4) failure to provide accurate itemized wage statements, (5) failure to pay wages
6 when employment ends, (6) failure to pay wages owed every pay period, (7) failure to give rest
7 breaks, (8) failure to give meal breaks, (9) failure to reimburse business expenses; (10) penalties
8 pursuant to the Private Attorneys General Act (“PAGA”); (11) failure to provide personnel
9 records; (12) failure to provide pay records; (13) discrimination on the basis of physical disability,
10 (14) failure to accommodate physical disability, (15) failure to engage in the interactive process,
11 (16) retaliation in violation of the FEHA, (17) failure to prevent discrimination and retaliation,
12 (18) wrongful termination in violation of public policy, and (19) violation of Business &
13 Professions Code section 17200. HM, ¶ 7, Ex. 4. By Order dated May 31, 2023, the Court stayed
14 discovery and Defendant’s responsive pleading deadline. *Id.*

15 **C. Mediation With Mariam Zadeh**

16 The parties met and conferred and agreed that it may be in their mutual interests to discuss
17 Plaintiff’s allegations informally, rather than through litigation, and scheduled private mediation.
18 HM, ¶ 8. On August 26, 2024, the parties attended a full day mediation session with experienced
19 and well-respected employment and PAGA mediator Mariam Zadeh. At the mediation, the parties
20 agreed to settle Plaintiff’s PAGA Claim for violation of Labor Code § 2698, et seq. Before
21 agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding
22 Defendant’s policies, practices, operations, time and payroll information and other topics. In
23 advance of mediation, Defendant produced Plaintiff’s personnel file, including time and payroll
24 data through data sampling. Moreover, prior to the mediation, Defense counsel provided
25 Plaintiff’s counsel with information and documents relating to other PAGA Group Members,
26 including time and payroll data. Through extensive arm’s length negotiations at the mediation
27 and only after discovery and investigation were performed, the parties agreed to settlement terms.
28 Now that the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for

1 approval. HM, ¶ 9.

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

5 **III. OVERVIEW OF SETTLEMENT**

6 **A. "PAGA Group Members" Definition**

7 The PAGA Group Members are all persons who, during the PAGA Period, have
8 previously been or currently are employed in California by Defendant, as an hourly-paid, non-
9 exempt employee. Agreement, ¶ 6. The PAGA Period means January 10, 2022 to September 26,
10 2024. Agreement, ¶ 4.

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

12 Defendant has agreed to pay a total of \$170,000.00 ("Gross Settlement Amount" or
13 "GSA") to settle the PAGA lawsuit. In consideration for the release of all claims of Plaintiff and
14 the PAGA Group Members against Defendant (described more fully below), Defendant agreed
15 to pay \$170,000.00 toward the GSA from which all settlement payments for the PAGA Group
16 Members, Court approved attorneys' fees and costs, and settlement administration costs shall be
17 paid. Each PAGA Group Member will receive a portion of the civil penalties on a pro-rata basis
18 calculated based on the total number of pay periods each PAGA Group Member worked as a non-
19 exempt hourly employee in California during the PAGA Period. Agreement, ¶¶ 8, 17. The GSA
20 will be divided as follows:

- 21 1. PAGA Counsel's Fees amounting to \$59,500 (35% of the GSA), and
22 PAGA Counsel's Litigation Costs in the amount of \$11,783.60 (the
23 Agreement provides up to \$12,000);
- 24 2. "Settlement Administrator's Costs" of \$3,250.00 to Simpluris, Inc.
25 ("Simpluris" or "Settlement Administrator") to administer the Settlement;
- 26 3. Approximately \$95,466.40 ("Net Settlement Amount"), divided as
27 follows:
 - 28 a. \$ 71,599.80 to the LWDA (75%) (the "LWDA Payment"); and
 - b. \$ 23,866.60 to the PAGA Group Members (25%) ("PAGA Group
Payment" or "PAGA=GP")

1 Agreement, ¶¶ 10-12, 15-17, 19.

2 **C. Funding and Distribution of the Settlement**

3 The Settlement Administrator shall establish a Settlement Account within ten (10) days
4 of the Effective Date² and notify the Parties when the Settlement Account has been established.
5 Agreement, ¶ 39. The Settlement Administrator shall also provide Defendant with an itemized
6 statement for the total amount to be deposited into the Settlement Account, which shall equal the
7 GSA (“Settlement Account Deposit”). *Id.* Within ten (10) days after receiving notification of the
8 Settlement Account and statement for the Settlement Account Deposit, Defendant shall deposit
9 GSA. *Id.*

10 Within twenty-one (21) calendar days after the Motion for Approval is granted,
11 Defendant will provide to the Settlement Administrator the “PAGA Group Members’ Data,”
12 which shall consist of an electronic database containing (i) each PAGA Group Member’s first
13 and last name, (ii) last known mailing address, (ii) the PAGA Group Member’s Social Security
14 number or Tax ID, (iii) the PAGA Group Member’s employee identification number, if
15 applicable, and based on Defendant’s payroll records, and (iv) the PAGA Group Member’s total
16 number of Individual Pay Periods. Agreement, ¶ 36(a).

17 Within fourteen (14) days of its receipt of the Settlement Account Deposit from
18 Defendant, the Settlement Administrator will issue each PAGA Group Member a check for his
19 or her share of the PAGA Group Payment along with the Notice of PAGA Settlement (Exhibit 2
20 to HM Declaration) by First-Class United States mail, postage prepaid, with directions to the
21 Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the
22 Settlement Administrator. Agreement, ¶ 40. If a PAGA Group Notice is returned by the U.S.
23 Postal Service because of an incorrect address, the Settlement Administrator will promptly, and
24 not later than five (5) days from receipt of the returned packet, search for a more current address
25 for the PAGA Group Member and re-mail the PAGA Group Notice to the PAGA Group Member.
26 Agreement, ¶ 36. The Settlement Administrator will also issue payments to the LWDA, PAGA

27
28 ² “Effective Date” means the date the Court enters a Judgment on its Order Approving the PAGA
Settlement and (b) the Judgment is final.

Counsel, and itself. Agreement, ¶ 47.

D. Individual PAGA Payments and Uncashed Checks

The settlement checks issued to PAGA Group Members will remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty (180) days after issuance will be distributed to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Group Member. All settlement payments to PAGA Group Members will be treated as miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator if required by law. Agreement, ¶¶ 41-42.

E. Release of Claims For PAGA Group Members Limited To Those That Could Reasonably Arise From the Facts Alleged In The Action.

Upon Defendant's payment into the Settlement Account of the Gross Settlement Amount, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Group Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the PAGA Released Claims with respect to with respect to Defendant and its past, present and/or future, direct and/or indirect, officers, owners, directors, members, managers, employees, agents, representatives, attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, franchisors, trusts, stockholders, fiduciaries, and joint venturers(the "Released Parties"). The PAGA Released Claims means:

all claims for PAGA penalties, attorneys' fees, expenses and costs that were alleged in the Complaint in the Action and/or the PAGA Letter or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the Complaint in the Action and/or the PAGA Letter, including failure to compensate for all hours worked; failure to pay minimum wages; failure to pay overtime; failure to provide accurate itemized wage statements; failure to pay wages when employment ends; failure to pay wages owed every pay period; failure to give rest breaks; failure to give meal breaks; failure to reimburse for business expenses; failure to provide personnel file; failure to provide pay records; violation of California Business and Professions Code § 17200; violations of the Labor Code §§ 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802; failure to pay for all hours worked, including minimum wage for all

1 hours worked and for “off the clock” work; failure to pay overtime compensation and
2 properly calculate the employee’s regular rate of pay in connection with the employee’s
3 overtime rate of pay; failure to provide compliant rest periods and properly calculate the
4 employee’s regular rate of pay in connection with the employee’s rest period premium
5 payment; failure to provide compliant meal periods and properly calculate the employee’s
6 regular rate of pay in connection with the employee’s meal period premium payment; failure
7 to pay all wages due within the time period specified by Labor Code § 204; failure to include
8 pertinent information on wage statements in compliance with Labor Code § 226(a) and
therefore, provide complete, accurate itemized wage statements; failure to keep accurate and
complete payroll records showing the actual hours worked per day and the wages paid in
compliance with Labor Code § 1174(d); willful failure to pay all wages earned and due upon
separation of employment; and failure to reimburse necessary, business related expenses and
costs by employees.

9 Agreement, ¶ 49.

10 **IV. ARGUMENT**

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

12 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
13 Court necessarily has broad discretion in making the decision to approve or reject a settlement
14 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
15 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
16 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2),
17 Although the PAGA does not set forth the particular standards against which a PAGA settlement
18 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
19 for evaluating class action settlements. HM, ¶ 12; *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*,
20 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA’s
21 guidance, that approval of PAGA settlements may be had where the statutory requirements of
22 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and
23 adequate). The established standards for evaluating whether class action settlements are fair,
24 reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA
25 settlements and have been adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist.
26 LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (*citing Officers for Justice v. Civil Serv. Comm’n of City*
27 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms,*
28 *LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (*citing Hanlon v. Chrysler Corp.*,

1 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7,
2 n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal.
3 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal.
4 2018).

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

15 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
16 **PAGA**

17 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
18 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
19 follows: 75 percent to the LWDA, and the remaining 25 percent to the PAGA Group Members.
20 *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
21 The parties’ Settlement so provides. HM, ¶ 13, Ex. 1. Second, the LWDA must be given notice
22 of the settlement so that it may be heard before the Court decides whether to grant approval. Cal.
23 Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently with the filing of
24 this motion. HM, ¶¶ 13, 40, Ex. 9. As a result, Plaintiff has met all procedural statutory
25 requirements for settling a PAGA action.

26 ///

27 ///

28

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

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

5 the strength of the Plaintiff’s case, the risk, expense, complexity and
6 likely duration of further litigation, the risk of maintaining class
7 action status through trial, the amount offered in settlement, the
8 extent of discovery completed and the stage of the proceedings, and
9 the experience and views of counsel.

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

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

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

 The PAGA Settlement was reached only after litigation and arms’ length negotiations

1 between experienced attorneys, which included a full day mediation with Mariam Zadeh (Ret.).
2 At all times, the negotiations were adversarial and contentious, although still professional in
3 nature. HM, ¶ 9.

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

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

16 Plaintiff considered various sources of information in the lead-up to and during the
17 mediation of August 26, 2024 that enabled him to achieve the PAGA Settlement at issue. HM, ¶

18 15. Among other things, Plaintiff considered the following:

- 19 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 20 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
21 overtime and double-time wages, off the clock work, expense reimbursement, meal
22 periods, rest breaks, meal period waivers and agreements, compensation plans, and
23 complaints about working conditions in effect during the relevant time period beginning
24 in January of 2022. Defendant produced those policies as part of their employee
25 handbook.
- 26 • Plaintiff's counsel requested that Defendant provide the total number of employees,
27 paychecks, and the pay cycles during the relevant period. Defendant provided the
28 answers to each of these questions.
- Plaintiff's counsel requested a 20% sample of time and payroll records for the relevant
time period. Defendant provided a sampling of time and pay records for 47 of its
employees. This represents 20% of the total employees IDs provided to Plaintiff based

on data available at the time.

- Plaintiff’s counsel then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.
- Plaintiff’s counsel analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for “off the clock” work and business expense reimbursement, especially as it relates to “manageability” arguments brought up by the defense.

HM, ¶ 15.

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

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. 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 \$255,750 for civil penalties for Plaintiff’s strongest disputed claims of failure to provide meal and rest periods. Plaintiff’s analysis, which Defendant vehemently disputes, revealed a 39.1% violation rate for either late, short, or no meal periods for shifts over 5 hours. Since the total number of pay periods in the PAGA period was 4,815 and since approximately 90.6% of the shifts in the sample analysis were over 5 hours, the total number of pay periods to consider for potential meal break violations was 4,362 (90.6% x 4,815 pay periods). As such, with the 39.1% violation rate, the maximum exposure would be \$85,250, which is calculated as \$50 penalty multiplied by 1,705 pay periods (39.1% of the 4,362 pay periods). Plaintiff extrapolated the same 39.1% rate for rest break violations, which would equate to a maximum exposure of \$170,500 (\$100 penalty per pay period multiplied by 1705 pay periods, which is 39.1% x 4,362 pay periods). As such, the aggregate maximum exposure for

1 meal break and rest break claims would be \$255,750. Assuming that Plaintiff's calculations and
2 analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty
3 award as unjust, arbitrary, oppressive, or confiscatory. For the rest period violations, it also
4 presumes that the meal and rest period violation rates were identical. HM, ¶ 17.

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

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

27 As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest period
28 violations, there would be issues with proof. The sampling did not reveal any rounding as hours

1 were paid to the second decimal point. There would be no regular rate issue, since there were no
2 bonus payments seen in the sample. As it relates to any overtime issues, the data showed the
3 average workday was 7.65 hours, which means that overtime pay was not an issue. Regardless,
4 when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. In addition,
5 double time was also properly paid. Moreover, Defendant provided overall strong written
6 policies as it related to wage and hour practices and showed that Plaintiff acknowledged the
7 policies. There are also risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that
8 Defendant did not reimburse him or the other PAGA Group Members for use of personal phones
9 for business-related purposes (taking photos of the dishes, for example) and uniforms/equipment,
10 including knives, pans, utensils, and other kitchen supplies that Plaintiff brought into the
11 workplace for use. Defendant provided evidence at mediation that it provided its employees with
12 all necessary tools and supplies to perform their work. Moreover, there is a risk that the Court
13 may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business
14 expenses to be individual in nature. As such, Plaintiff's Counsel had to significantly discount the
15 value of this claim during settlement negotiations. Plaintiff's other claims for violations of Labor
16 Code sections 203, 204, and 226 (for not being paid all wages owed every pay period or at the
17 end of employment as well as not receiving accurate, itemized wage statements) would not be
18 triggered since they are derivative claims, and no rounding/overtime issues were identified.
19 Based on the above calculations, Plaintiff's aggregate exposure for the strongest disputed claims
20 would be \$255,750. Assuming that Plaintiff's calculations and analysis are accurate, the
21 maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary,
22 oppressive, or confiscatory. Based on the above analysis, a gross settlement in the amount of
23 \$170,000, which represents 66% of the maximum penalty calculation, is a very strong result,
24 especially in light of the risk factors as discussed above. HM, ¶ 20.

25 Moreover, Plaintiff's counsel is unaware of any California State court decision awarding
26 a plaintiff and the other PAGA Group Members she represents multiple civil penalties for the
27 same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces
28 is that the Court would refuse to "stack" civil penalties arising under the various Labor Code

1 statutes. Plaintiff’s counsel had to substantially discount the value of these claims in the
2 settlement negotiations for this and a variety of other reasons. At best, Plaintiff could hope to
3 recover one penalty for each pay period (regardless of the different Labor Code violations that
4 potentially occurred for the same employee, during the same pay periods). HM, ¶ 21.

5 Additionally, PAGA states a court has discretion to award a lesser amount than the
6 maximum penalty. See Lab. Code § 2699(e)(2) (“...a court may award a lesser amount than the
7 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
8 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
9 oppressive, or confiscatory.”); see also *Thurman v. Bayshore Transit Management, Inc.* (2012)
10 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
11 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
12 of willful and intentional conduct. HM, ¶ 22. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
13 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
14 discounted award of only \$5 per violation because it was within the Court’s discretion to
15 significantly reduce PAGA penalties even when there is a finding that a violation of the
16 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
17 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
18 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
19 that this reduction was warranted because imposing the maximum penalty would be “unjust,
20 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
21 obligations and because the Court found the violations were minimal. Applying the same formula
22 here and assuming there was one violation during each pay period, the award of civil penalties
23 could not exceed \$24,075 in PAGA penalties (4,815 violations x \$5). As such, this Settlement is
24 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
25 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
26 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
27 Amount is uncertain. HM, ¶ 22.

28 The Parties further recognize that the issues presented in the representative PAGA claim

1 are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that
2 further litigation will cause inconvenience, distraction, disruption, delay, and expense
3 disproportionate to the maximum potential benefits to the PAGA Group Members and Plaintiff
4 from continued litigation, especially in the post pandemic era where further and extensive
5 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
6 Plaintiff's attorneys, other PAGA Group Members, and the State of California. HM, ¶ 23.

7 The settlement of the representative PAGA claim involves monetary relief to all PAGA
8 Group Members, Plaintiff, his attorneys, and the State of California. The Settlement is reasonable
9 given the uncertainties this lawsuit entails. It is also reasonable given the structure and purpose
10 of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a punishment
11 statute. It provides for civil penalties only. Within the PAGA framework he is bound by, Plaintiff,
12 considering the evidence he faced, achieved a great result for the employees concerned.
13 Furthermore, any employees who are dissatisfied with the amount they received in civil penalties
14 can pursue any damages they believe they are owed by the Defendant. The Settlement does not
15 require them to opt out to do so. HM, ¶ 24.

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

26 As such, the settlement of PAGA penalties in the gross sum of \$170,000.00, of which
27 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs
28 (\$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. HM, ¶ 26.

4. Each PAGA Group Member Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other PAGA Group Members

Each PAGA Group Member will receive a portion of the civil penalties on a pro-rata basis depending on the number of pay periods Defendant employed them for during the PAGA Period. Agreement, ¶ 44(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. HM, ¶ 27.

5. Counsel for the Parties Are Experienced in Similar Litigation

Plaintiff's counsel has considerable experience in wage and hour litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Similarly, Defendant's counsel, Clint Robinson and Michael Kessler of O'hagan Meyer, has vast experience in handling employment matters and wage and hour litigation. See HM, ¶¶ 2, 36; Declaration of Maralle Messrelian ("MM"), ¶¶ 5-7.

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

Of the \$170,000.00 allocated towards the GSA, Plaintiff's counsel requests \$59,500.00 (35% of the GSA) in attorney's fees and \$11,783.60 in litigation costs, which is fair and reasonable. HM, ¶ 31.

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

fund”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

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

“[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 Plaintiff’s Counsel’s experience in wage and hour class and PAGA settlements. HM, ¶ 31.

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, Plaintiff’s Counsel’s fee request of \$59,500 (35% of GSA) is fair and reasonable based on their lodestar as cross-

³ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to 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.)

checked against the percentage of the recovery. HM, ¶¶ 32-34, MM, ¶ 8-10. Plaintiff's counsel's previous experience in litigating wage and hour class and representative actions and the caliber of opposing counsel also support the reasonableness of the fee request. HM, ¶ 36, MM, ¶¶ 5-7. The award of attorneys' fees sought is also justified by the contingency nature of the attorney-client relationship, 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. HM, ¶ 37.

In addition, Plaintiff's Counsel incurred substantial costs, \$11,783.60 to date, including the costs of a mediator, to aid in the representation of the PAGA Group Members. HM, ¶ 35, Ex. 6. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. *Id.* Accordingly, they warrant the Court's approval.

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

With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Simpluris, Inc., the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. HM, ¶¶ 38-39, Exs. 6-8. *See generally* Declaration of Denise Islas. Thus, the settlement administration costs provision should be given approval.

V. CONCLUSION

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

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: April 2, 2025

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