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10 and on behalf of the general public

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 ANTHONY GONZALEZ on behalf of
15 himself, all others similarly situated, and
16 on behalf of the general public,

17 Plaintiff,

18 v.

19 ALMANSOR COURT, INC.; AND
20 DOES 1-100,

21 Defendants.

Case No. 23STCV12272

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

Date: November 20, 2024

Time: 10:00 a.m.

Dept.: 53

Reservation ID: 581165355861

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1 **I. INTRODUCTION**

2 Plaintiff Anthony Gonzalez (“Plaintiff”) respectfully requests that the Court approve of the
3 Joint Stipulation and Settlement Agreement (“Settlement Agreement”) entered into between
4 Plaintiff and Defendant, Almansor Court, Inc., (“Defendant”) (collectively Plaintiff and Defendant
5 are referred to as the “Parties”) which resolves the claims raised against Defendant in exchange
6 for a non-reversionary \$250,000 Gross Settlement Amount (“GSA”).

7 This proposed settlement will settle the claims alleged in Plaintiff’s complaint pursuant to
8 the Private Attorneys General Act of 2004 (“PAGA”) on behalf of the California Labor and
9 Workforce Development Agency (“LWDA”) and all hourly non-exempt employees in California
10 who are or were employed by Defendant at any time during the PAGA Period. The PAGA Period
11 is March 24, 2022 to June 22, 2024. The relief provided for under the Settlement Agreement is
12 solely for the payment of civil penalties under the PAGA.

13 Pursuant to California Labor Code § 2699(1)(2), a superior court shall review and approve any
14 settlement of any civil action filed pursuant to the PAGA. *See* Cal. Lab. Code § 2699(1)(2).¹ In
15 deciding whether to grant approval of the proposed settlement, the primary issue to be decided is
16 whether the settlement is fair, adequate, and reasonable. As set forth herein, the proposed settlement
17 embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product
18 of (1) arms-length negotiations, employing a neutral mediator, (2) negotiations by attorneys
19 experienced in these issues, (3) sufficient investigation which was necessary to evaluate the relative
20 strength and value of Plaintiff’s claims, and (4) a reasoned compromise based on the strength and
21 value of the case, as well as, the risks, expense, complexity, and likely duration of further litigation.

22 **II. BACKGROUND**

23 **a. Procedural History**

24 Plaintiff sent his Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on
25 March 24, 2023. In the notice, Plaintiff, a former hourly, non-exempt employee who worked in
26 California for Defendant, apprised the LWDA of his claims against Defendant. His notice alleged

27 ¹ Plaintiff has uploaded a copy of the Settlement Agreement to the LWDA’s website at the same time
28 this motion is filed with the Court. *See* Declaration of David Mara, Esq., **Exhibits 8 and 9**.

1 that Defendant violated the California Labor Code by failing to pay all straight time wages, failing
2 to pay minimum wages, failing to pay all overtime wages, failing to provide lawful meal and rest
3 periods, failing to provide accurate itemized wage statements, failing to pay all wages owed at
4 termination, failing to pay wages twice per month, failing to reimburse business expenses, and
5 failing to adopt a compliant sick pay/paid time off policy.² Mara Dec. ¶ 12.

6 Plaintiff then filed this action against Defendant in the Los Angeles County Superior Court
7 on May 30, 2023, alleging causes of action on behalf of Plaintiff and those similarly situated
8 aggrieved employees under the PAGA for the wage and hour violations detailed in the notice sent
9 to the LWDA. Mara Dec. ¶ 13.

10 **b. Discovery and Investigation**

11 Through discovery, Plaintiff sought numerous documents and substantial amounts of data
12 that were needed to evaluate the case. These documents included requests for time and wage
13 records for the Aggrieved Employees, employee handbooks in place during the class period, any
14 policies regarding meal breaks, rest breaks, the payment of wages, and employee training in place
15 during the PAGA Period. Plaintiff also requested data surrounding the number of current and
16 former employees, as well as the number of shifts, workweeks, and pay periods worked by
17 employees during the relevant time period. Mara Dec. ¶ 14.

18 This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
19 production of over one thousand documents, including the handbooks and policies at issue, as well
20 as data representing a sampling of wage and time records for the Aggrieved Employees. Using the
21 time and wage records produced by Defendant, and the data surrounding the number of current
22 and former employees, Plaintiff was able to determine numerous data points used in establishing
23 a potential exposure model in preparation for mediation. Mara Dec. ¶ 15.

24 **c. Mediation**

25 The Parties attended mediation with respected wage and hour mediator Kelly Knight on
26 April 9, 2024. Shortly after the mediation, the mediator issued a mediator's proposal that was

27
28 ² The Notice to the LWDA dated March 24, 2023 is attached to the Declaration of David Mara,
Esq. ("Mara Dec.") as **Exhibit 7**.

ultimately accepted by the Parties. Since then, the Parties have met and conferred extensively regarding the terms of the settlement and finalized their agreement in the Settlement the Parties now ask the Court to approve. A copy of the Settlement Agreement is attached to the Declaration of David Mara, Esq. as **Exhibit 1**. Mara Dec. ¶ 16.

III. THE PARTIES' CONFLICTING POSITIONS

a. Meal Periods

Plaintiff further contends that Defendant fails to provide Class Members with meal periods in which Class Members are relieved of all duty. The right to a duty-free meal period is codified in the California Labor at § 512, which, in relevant part, reads:

“[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

If an employer fails to provide time records showing a meal break was taken, a presumption can arise that the employee was not offered such a break. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74–76. In that case, an employer's claim that a break was in fact offered but the employee declined it is an affirmative defense that the employer must prove. *Id.*

Plaintiff argues that although Defendant's meal period policy tells Aggrieved Employees they are entitled to take a thirty (30) minute meal period when they work five or more hours per shift, the policy does not comply with the timing requirements explained in *Brinker*, as it completely fails to explain that the employee is entitled to this meal period before the fifth hour of work. This is reflected in the time records provided by Defendant, which evidence a meal period that was either provided after the fifth hour of work, or simply not at all, in approximately 50% of the pay periods at issue. Mara Dec. ¶ 17.

Defendant asserts that employees are provided with meal periods in accordance with

1 California law. Defendant claims that the meal period policy in their handbook is facially lawful,
2 and that employees are provided with lawful duty-free meal periods in accordance with the
3 applicable timing requirements. Defendant is confident that it will be able to rebut the presumption
4 through its application of its facially lawful meal period policy, its training procedures, and
5 testimony from employees as evidence that employees had in fact been provided
6 compliant meal periods, but simply chose to take them late or not take them at all due to any variety
7 of other reasons. Once Defendant rebuts the presumption, Defendant argues that Plaintiff would
8 have to ask each employee whether they were provided a lawful meal period on for every instance
9 of a “violation” in the records, rendering the matter entirely unmanageable. Mara Dec. ¶ 18.

10 **b. Rest Periods**

11 Plaintiff further contends that Defendant fails to provide employees with lawful rest
12 periods. Pursuant to the IWC Wage Orders, rest periods “shall be based on the total hours worked
13 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” *See*
14 Wage Order 5-2001 Section 12(A). Under this express language, the 10-minute rest break must be
15 a net 10-minutes in a suitable rest area. None of the time allotted for rest breaks can be consumed
16 by the time it takes to get to a suitable rest area. *See Augustus v. ABM Security Services, Inc.* (2016)
17 2 Cal.5th 257, 267-268 (relying on 1/3/86 and 2/22/02 DLSE Letters wherein the DLSE ruled that
18 the net ten-minute language for rest breaks means 10-minutes of time in a rest area and cannot
19 include time it takes to get to and from the rest area).

20 Plaintiff contends that Defendant’s rest period policy does not provide for a net ten
21 minutes; only ten minutes for employees to take rest breaks. This does not account for the time it
22 takes employees to travel to and from a suitable rest area, and thus violates California’s mandate
23 that employees be provided a net 10 minutes of rest time, exclusive of the time it takes to travel to
24 a suitable rest area, like the breakroom, and back to their workstations. Mara Dec. ¶ 19.

25 Defendant disputes this claim, arguing that employees are relieved of their duties at the
26 time their breaks commence, and are not, nor can they be, required to take their breaks in any
27 particular location. Just as with meal periods, Defendant points out that its rest period policy in its
28 employee handbook is facially lawful, that any failure to include the term “net” in a written policy

1 is not in and of itself a violation, and that no one is disciplined for taking longer than 10 minutes
2 for a rest period should an employee require any purported travel time. Defendant also argues that
3 Plaintiff would have to ask each employee whether they thought its rest period policy required that
4 employees be back at their workstations within 10 minutes after the start of their rest period, and
5 because each employee would have to testify as to their understanding of the policy, this claim
6 could not conceivably be tried in any sort of a manageable fashion. Mara Dec. ¶ 20.

7 **c. Unpaid Wages**

8 Plaintiff contends that the time and wage records produced by Defendant demonstrate that
9 Defendant operates under an unlawful rounding policy, resulting in employees being
10 systematically underpaid the wages owed to them. In California, rounding policies are only
11 permissible if it is “fair and neutral on its face and ‘it is used in such a manner that it will not result,
12 over a period of time, in failure to compensate the employees properly for all the time they have
13 actually worked.’” *See’s Candy, Inc. v. Superior Court* (2012) 210 Cal. App. 4th. 889, 907.

14 Here, Defendant has an unlawful rounding policy that is not fair and neutral in practice.
15 Defendant’s rounding policy results in employees systematically being underpaid. An analysis of
16 the sampling of time records reveals that the majority of employees were underpaid by the
17 rounding policy by several minutes across a significant number of pay periods. Mara Dec. ¶ 21.

18 Defendant argues that Plaintiff’s analysis only focuses on the shifts in which employees
19 are underpaid and ignores the instances in which an employee’s compensation is neutral or is being
20 overcompensated as a result of the rounding policy. Defendant contends that when the records are
21 considered as a whole, the rounding policy is indisputably fair, neutral, and properly compensates
22 employees over time for all hours worked in compliance with California law. Mara Dec. ¶ 22.

23 **d. Reimbursements**

24 Plaintiff further contends that Defendant fails to reimburse employees for business
25 expenses. Under Labor Code § 2802, Plaintiff argues that Defendant is required to reimburse
26 Plaintiff and employees for a portion of their personal cell phone bills. Labor Code § 2802(a) reads:

27 An employer shall indemnify his or her employee for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of his or her

1 duties, or of his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

3 Plaintiff contends that the primary method of communication Defendant uses to contact Plaintiff
4 and employees throughout the day is their personal cell phones, and that Defendant is liable for a
5 reasonable percentage of their cell phone bills under § 2802. Mara Dec. ¶ 23.

6 Defendant contends that they never have required Plaintiff or other employees to use their
7 personal cell phone for business purposes. Defendant further contends if employees decide to use
8 their personal cell phones for business communications, that it was solely that employee's choice,
9 and not the result of any purported mandate by Defendant. Mara Dec. ¶ 24.

10 **e. Wage Statements, Waiting Time Penalties, and Failure to Pay All Wages**
11 **Twice Per Month**

12 Plaintiff also pursued claims for failure to provide accurate itemized wage statements,
13 waiting time penalty claims, and failure to pay all wages owed twice per month. These claims are
14 derivative of Plaintiff's underlying meal and rest period claims, as well as his unpaid wages claim.
Should Plaintiff's underlying wages claim fail, these claims would also fail. Mara Dec. ¶ 25.

15 In addition, Defendant contends that even if Plaintiff was successful in his underlying
16 claims, he would have to prove Defendant "willfully" failed to pay employees the appropriate
17 wages due upon separation of employment. "A willful failure to pay wages within the meaning of
18 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee
19 when those wages are due. However, a good faith dispute that any wages are due will preclude
20 imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good
21 faith dispute' that any wages are due occurs when an employer presents a defense, based in law or
22 fact, which would preclude any recovery on the part of the employee. The fact that a defense is
23 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.*
24 Defendant contends that any failure to pay wages due at the separate of employment was not
25 willful. Defendant argues that it would not be liable for waiting time penalties because a "good
26 faith dispute" exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
27 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.
28

1 Defendant also argues that Plaintiff’s underlying claims cannot form the basis of the wage
2 statement claim or the failure to pay wages twice per month. Defendant relies on the case
3 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees
4 do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly
5 reflected the hours worked and the pay received even if the pay is later determined to be inaccurate.
6 Additionally, Defendant points out that Labor Code section 204 “does not provide for the payment
7 of any wages nor create any substantive right to wages,” as “[t]he only right furthered by the
8 section is the timely payment of wages.” *See’s Candy Shops, Inc. v. Superior Court* (2012) 210
9 Cal.App.4th 889, 905.

10 **f. Manageability**

11 Defendant also argues that should litigation continue, they will bring a motion challenging
12 the manageability of trial as Defendant does not believe that this case can be tried manageably and
13 will require the testimony of every individual aggrieved employee. Furthermore, while Defendant
14 does not concede that any of their wage and hour policies are unlawful, Defendant claims that any
15 challenges Plaintiff has posed to these policies are easily refuted by how they are implemented in
16 practice; as a result, no aggrieved employee has suffered any damages. Mara Dec. ¶ 26.

17 **IV. THE PROPOSED SETTLEMENT**

18 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
19 action be settled and compromised for the non-reversionary total sum of \$250,000 (“Gross
20 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
21 \$83,333.33 (one-third of the GSA) to compensate PAGA Counsel for work already performed and
22 work remaining to be performed in securing Court approval and overseeing administration of the
23 settlement; (b) litigation costs in the amount of \$9,270.29; (c) Enhancement Payment to Plaintiff
24 of \$10,000 in consideration for Plaintiff releasing his individual non-PAGA claims; and (d)
25 administration fees and expenses to Simpluris, Inc. (“Simpluris”) in the amount of \$2,900.³

26 After all Court-approved deductions from the GSA, it is estimated that the Net Settlement
27

28 ³ See Declaration of Eric Springer on Behalf of Simpluris, Inc. (“Springer Dec.”), **Exhibit C**.

Amount (“NSA”) will be \$144,496.38. California Labor Code § 2699(i) states that “civil penalties recovered by aggrieved employees shall be distributed in accordance with Labor Code § 2699 *et seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25% to the aggrieved employees.” Therefore, of the NSA, \$108,372.28 (75% of the NSA) will go to the LWDA and \$36,124.10 (25% of the NSA) will be distributed to Aggrieved Employees.⁴

a. Calculation of the Settlement Payments to the Aggrieved Employees

Subject to the terms and conditions of the Settlement Agreement, the Settlement Administrator will calculate and issue Individual PAGA Payments to Aggrieved Employees on a pro-rata basis based upon the number of pay periods worked by the individual Aggrieved Employee during the PAGA Period:

Each AGGRIEVED EMPLOYEE’s INDIVIDUAL PAGA PAYMENT will be calculated by the Administrator based on the information to be provided by ALMANSOR. If an AGGRIEVED EMPLOYEE worked only a portion of a pay period during the PAGA PERIOD, they will get credit for the whole pay period. If an AGGRIEVED EMPLOYEE did not work at all during an entire PAGA pay period, that/those pay period(s) will be excluded from their pro-rata share.

Exhibit 1 at Page 8, Section 3.3.2. One hundred percent (100%) of each Individual Share is considered to be a civil penalty. Payroll tax withholdings and deductions will not be withheld from these Individual PAGA Payments. Each Individual PAGA Payment will be reported on IRS 1099 Forms. *See Exhibit 1* at Page 8, Section 3.3.2.1.

b. Funding and Disbursement

Within fifteen (15) business days after the Effective Date,⁵ Defendant will provide

⁴ Aggrieved Employees are estimated to receive an average payment of approximately \$435.23 [\$36,124.10 divided by approximately 83 Aggrieved Employees during the PAGA Period (per the preliminary data provided by Defendant)].

⁵ The Effective Date of this Agreement is the date the Court has (1) approved the settlement terms and (2) issues a Judgment in the action. The Parties agree that there is no right to opt-out or object to this PAGA Settlement. It is therefore the Parties’ intention that this Settlement shall be final at the time of Court Approval and Entry of Judgment. *See Exhibit 1* at Page 2, Section 1.1.1.

1 Simpluris an electronic database, which will list for each Aggrieved Employee: name, last-known
2 mailing address, social security number, and number of pay periods worked within the PAGA
3 Period (“AGGRIEVED EMPLOYEE DATA”). *See Exhibit 1* at Page 9, Section 4.2. Simpluris
4 will conduct a skip trace for the address of all Aggrieved Employees who are former employees
5 of Defendant and an NCOA search on all addresses. *See Exhibit 1* at Page 12, Section 7.3.

6 The GSA will be wired by Defendant to Simpluris within twenty (20) business days of the
7 Effective Date. *See Exhibit 1* at Page 9, Section 4.3. Simpluris will disburse the GSA within
8 fourteen (14) business days after funding. The Settlement Administrator shall disburse: the Net
9 Settlement Amount to be paid to Aggrieved Employees; the Attorney Fee Award and Cost Award
10 to Plaintiff’s Counsel; the Enhancement Payment to Plaintiff, as approved by the Court; the
11 Administration Costs, as approved by the Court; and the LWDA Payment. *See Exhibit 1* at Page
12 9, Section 4.4. A Notice of PAGA Settlement, substantially similar to the form attached to the
13 Settlement Agreement as **Exhibit A**, subject to Court approval, shall accompany each check
14 mailed to the Aggrieved Employees.

15 **c. Undelivered Checks**

16 Any checks returned as non-deliverable on or before the check cashing deadline will be
17 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no
18 forwarding address is provided, the Settlement Administrator will promptly attempt to determine
19 the correct address using a skip-trace, or other search using the name, address or Social Security
20 number of the Aggrieved Employee involved, and will take reasonable steps to obtain an updated
21 address. *See Exhibit 1* at Page 12, Section 7.3.

22 **d. Uncashed Checks**

23 Checks will remain negotiable for 180 days. Individual PAGA Payment checks remaining
24 un-cashed, shall be transmitted by Simpluris to the State of California unclaimed property fund in
25 the name of the Aggrieved Employee. *See Exhibit 1* at Page 12, Section 7.3.

26 **e. Release of Claims**

27 When Defendant fully funds the entire GSA, Plaintiff, the LWDA, and the Aggrieved
28

1 Employees will be forever barred from pursuing against Released Parties⁶ any and all PAGA
2 Released Claims during the PAGA Period. “PAGA Released Claims” means all claims asserted in
3 this action, all claims asserted in Plaintiff’s notice to the LWDA, all claims that could have been
4 asserted in this action (whether under federal law or state law) or any other claims under PAGA,
5 based on the facts alleged, including but not limited to any and all claims for PAGA penalties
6 based on the Labor Code sections asserted therein, including, civil penalties for violations under
7 the California Labor Code §§ 201, 202, 203, 204, 218, 218.5, 222, 223, 224, 226, 226(a), 226.3,
8 226.7, 233, 234, 246, 246.5, 247.5, 510, 512, 558, 1194, 1194.2, 1194.3, 1194.5, 1195, 1195.5,
9 1197, 1197.1, 1199, 2802, 2698, 2699, 2699.3, 2699.5 and/or the applicable IWC Wage Orders.
10 See **Exhibit 1** at Page 3, Section 1.24.

11 **V. THE COURT SHOULD APPROVE OF THE SETTLEMENT**

12 The PAGA allows for the private enforcement of certain California Labor Code sections
13 relating to wage and hour violations. The settlement of a PAGA action requires court approval
14 pursuant to the operative PAGA statute, which states that a superior court shall review and approve
15 the settlement of any civil action filed pursuant to the PAGA. See Cal. Lab. Code § 2699(1)(2).
16 However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not
17 obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain
18 approval of the PAGA settlement through a motion for preliminary or final approval. The only
19 requirement placed on settling parties under California Labor Code § 2699(1)(2) is that the
20 proposed settlement must be submitted to the LWDA at the same time it is filed with the Court.
21 Cal. Lab. Code § 2699(1)(2). As noted above, Plaintiff already provided the Parties’ Settlement
22 Agreement to the LWDA. Other than this requirement, the PAGA does not set forth any standards
23 by which the Court must conduct its review of the Settlement Agreement. See *Id.*

24 In evaluating the adequacy of the settlement amount, a court is not concerned with the
25

26 ⁶ “Released Parties” means Defendant and its officers, directors, shareholders, owners, current and
27 former employees, agents, representatives, members, attorneys, insurers, re-insurers, assigns,
28 affiliates and any and all other entities with whom they have been, are now, or may hereafter be
affiliated and/or deemed joint employers or jointly liable with Defendant. See **Exhibit 1** at Page
3, Section 1.29.

1 amount the aggrieved employees are to receive, but rather, a court must focus on the total
2 settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit
3 consists of civil penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.* (E.D.
4 Cal. July 1, 2010) 2010 WL 2650571 *4. “Unlike class actions, these civil penalties are not meant
5 to compensate unnamed employees because the action is fundamentally a law enforcement action.”
6 *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4.
7 Moreover, a court must not lose sight of the fact that “[u]nlike a class action seeking damages or
8 injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to
9 recover civil penalties for the government that otherwise may not have been assessed and collected
10 by overburdened state enforcement agencies.” *Id.*

11 As with any settlement, a court must be mindful in conducting its inquiry that “[s]ettlement
12 is a compromise, which balances the possible recovery against the risks inherent in litigating
13 further.” *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.
14 Dist. LEXIS 103222, *24. Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes
15 and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
16 688 F.2d 615, 624], as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
17 and expensive litigation that induce consensual settlements.” *Id.* at 625.

18 In analyzing PAGA settlements, it is important that “the relief provided for under the
19 PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit
20 the public[.]” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. Aug. 18, 2016) 201 F.Supp.3d 1110, 1133.
21 The court in *O’Connor* suggests that courts can look at the factors outlined in *Hanlon v. Chrysler*
22 *Corp.* (9th Cir. 1998) 150 F.3d 1011, in evaluating a PAGA settlement. *See O’Connor*, 201
23 F.Supp.3d at 1134.

24 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,
25 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in
26 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In
27 California state courts, settlements are more typically evaluated under the standards set forth in the
28 cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker*

1 *Retail, Inc. (“Kullar”)* (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding
2 whether to approve a proposed class action settlement under California Code of Civil Procedure §
3 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk*, 48
4 Cal.App.4th at 1801.

5 A proposed settlement is presumed fair under the following circumstances: (1) the Parties
6 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient
7 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
8 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown
9 herein, all of these elements bearing on the fairness of the proposed settlement—with the exception
10 of the percentage of objectors, which is not applicable in a PAGA action⁷—are present.

11 *Kullar* instructs that an understanding of the amount in controversy is an important factor
12 into whether the settlement “of the class members’ claims is reasonable in light of the strengths
13 and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker*
14 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of*
15 *Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the
16 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”
17 *Id.* In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
18 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
19 the attorneys.” *Kullarr*, 168 Cal.App.4th at 133.

20 **a. The Settlement is Fair, Reasonable, and Adequate**

21 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

22 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
23 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
24 nature. At the mediation, counsel for the Parties conducted extensive arm’s length settlement
25 negotiations until the settlement was reached.

26 ⁷ The PAGA provides no notice or claim procedures. Therefore, objections, other than the potential
27 objection of the LWDA, are not contemplated in PAGA actions. *See Baumann v. Chase Inv. Servs.*
28 *Corp.* (2014) 747 F.3d 1117, 1122 (“Unlike *Rule 23(c)(2)*, PAGA has no notice requirements for
unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”).

1 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research and
4 discovery to support the settlement. The significant amount of discovery, the production and
5 analysis of hundreds of policy documents and employee records, and protracted settlement
6 negotiations through the mediation and in the extensive discussions that followed were the
7 substantial bases upon which the Parties’ “clear view of the strengths and weaknesses of their
8 cases” was made possible. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

9 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

10 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and
11 hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
12 unpaid wages, unprovided meal and rest periods, and overtime claims. Indeed, Mara Law Firm,
13 PC, was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject
14 case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
15 1004. Mara Dec. ¶ 4. Plaintiff’s Counsel has prosecuted numerous wage and hour cases on behalf
16 of employees for California Labor Code violations and thus are experienced and qualified to
17 evaluate the claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate
18 the viability of the defenses. Mara Dec. ¶¶ 2-11. This experience instructed Plaintiff’s Counsel on
19 the risks and uncertainties of further litigation and guided their determination to endorse the
20 proposed settlement. Defendant’s Counsel practices labor and employment law and have
21 represented numerous employers in similar types of claims. Accordingly, both Parties’ Counsel
22 are experienced in wage and hour employment law and class and representative actions.

23 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

24 An understanding of the amount in controversy is an important factor into whether the
25 settlement of the Aggrieved Employees’ “claims is reasonable in light of the strengths and
26 weaknesses of the claims and the risks of the particular litigation.” *Kullar*, 168 Cal.App.4th 116,
27 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
28 409. The most important factor in this regard is “the strength of the case for plaintiffs on the merits,

1 balanced against the amount offered in settlement.” *Id.*

2 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
3 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
4 that of the attorneys.” *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
5 statement of the maximum amount the Aggrieved Employees could recover if it prevailed on all
6 its claims, provided there is a record which allows “an understanding of the amount that is in
7 controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409.
8 Put differently, “as the court does when it approves a settlement as in good faith under *Code of*
9 *Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is
10 within the ‘ballpark’ of reasonableness.” *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*
11 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

12 As the following section shows, the Parties’ investigation and discovery revealed a healthy
13 discount was needed in order to reach a settlement.

14 **v. The Settlement is Fair and Reasonable Based on the Strengths of**
15 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

16 At the time of mediation, Plaintiff determined that there were approximately 83 Aggrieved
17 Employees who worked approximately 3,325 pay periods based upon the data provided by
18 Defendant.

19 Plaintiff claims that there are seven (7) core violations under § 2699(f)(2) – failure to
20 provide lawful meal breaks or pay a premium, failure to provide lawful rest breaks or pay a
21 premium, failure to pay all wages, failure to reimburse business expenses, failure to provide
22 accurate itemized wage statements, failure to pay wages at the time of termination, and failure to
23 pay wages twice per month – of the Labor Code sections which give rise to PAGA penalties. *Mara*
24 Dec. ¶ 27.

25 The PAGA allows the private enforcement of certain California Labor Code sections
26 relating to wage and hour violations. PAGA Section 2699(f)(2) reads, in part, as follows:

27 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
28 pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

California courts have interpreted this language to require notice to the employer that an initial violation occurred before penalties for subsequent violations could be assessed. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special meaning within the California Labor Code that triggers heightened statutory penalties only after an employer has learned that its conduct violates the Labor Code—that is, pursuant to *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and interpret its use in California Labor Code to require that “the employer has been notified that it is violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th at 1157, 1207–09. Each of Plaintiff’s claims, with the exception of Plaintiff’s claims for failure to provide meal periods and failure to pay wages at the time of termination, occurred at least once in every pay period. Plaintiff’s claim for failure to provide meal periods occurred in 1,663 pay periods (50% violation rate) and Plaintiff’s claim for the failure to pay wages at the time of termination only occurred in a maximum of 5 pay periods (5 former employees during the PAGA Period). Thus, Defendants’ **maximum** exposure under §2699(f)(2) is \$1,829,300:

\$100 x 5 PAGA violations x 3,325 pay periods = \$1,662,500

\$100 x 1 PAGA violation x 1,663 pay periods = \$166,300

\$100 x 1 PAGA violation x 5 pay periods = \$500

Maximum Exposure: \$1,829,300

Mara Dec. ¶ 28.

In exploring the settlement of any PAGA action, the critical fact that the Court is permitted discretion to award a “lesser amount than the maximum penalty amount” must be heavily taken into consideration. *Lab. Code. 2699 § (e)(2)*. Unlike the underlying violations upon which the Plaintiffs seek to impose PAGA civil penalties, there is no set amount the Court must levy on an employer Defendant it finds to have violated the underlying claims. Under “the facts and circumstances of the particular case,” the Court is permitted wide discretion to slash civil penalty amounts. This discretion and how a particular court will exercise it is always an unknown variable in predicting the dollar outcome of any PAGA action when evaluating settlement. Under its wide discretion to award lesser amounts, a Court could side with Plaintiffs on their claims and find that

1 the underlying Labor Code rights were violated but decide to substantially moderate the imposition
2 of PAGA penalties for those violations.

3 Courts have used this discretion to massively discount PAGA penalties imposed where it
4 found the defendant employer took its Labor Code obligations seriously, even if the employer fell
5 short of complying with them. In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”)
6 (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty
7 allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
8 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th
9 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has
10 taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business*
11 *Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the
12 trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code
13 section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30
14 Cal.App.5th 504, the plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75
15 penalty per violation. The court reduced the award, stating that awarding the maximum penalty
16 would be unjust, arbitrary, and oppressive based on Starbucks’s good faith attempts to comply with
17 the law. The lower court’s reduced award of \$150,000 was affirmed on appeal, which reflects .2%
18 of the total recoverable penalties sought.⁸

19 Thus, the projected value of PAGA claims is a variable value of two predictive indexes: 1)
20 the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
21 extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be
22 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
23 For instance, and relevant to the underlying claims in this action, class claims alleging California’s
24 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value

26 ⁸ These instances of judicial discretion imposing massive reductions in recoverable penalties is to
27 be contrasted with *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) 365 F.Supp. 3d 980, 992, where
28 the trial court reduced the recoverable PAGA penalties by only 25%. *Bernstein*, however, only
amplifies the predictive blind spot of how a court can exercise its wide-discretion to reduce full
PAGA exposure.

1 for purposes of determining whether settlement values are fair and reasonable rests only on the
2 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
3 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
4 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
5 “remedial purpose” achieved in the settlement amount, which takes into account the defendant
6 employer’s “good faith” belief that it complied with the laws claimed to be violated. *Bernstein*,
7 365 F. Supp. 3d at 991.

8 Based on this blind spot of how the Court would exercise its discretion in addition to the
9 likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff
10 necessarily and substantially had to discount the settlement value off of the full PAGA penalty
11 amounts. As discussed earlier, Defendant argues its meal and rest policies and practices track the
12 Labor Code and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*.
13 Likewise, Defendant argues that they pay employees for all time worked and reimbursed all
14 business expenses. Thus, even if Defendant was proven wrong and ultimately found to have
15 violated the underlying Labor Code claims, the court could find a good faith reliance on *Brinker*,
16 *Augustus*, and other governing authorities justifiably instructed Defendant’s actions and thereby
17 impose a massive reduction of PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

18 Good faith settlement negotiations, after considerable discovery, investigation, and
19 litigation, necessarily had to focus on amounts far less than that potential exposure. The proposed
20 PAGA settlement here of \$250,000, which takes into account the realistic exposure, the very real
21 impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff
22 succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced,
23 and reasonable settlement value of the PAGA claims. The settlement amount fits within the
24 “remedial purpose” of PAGA of enforcing compliance with important employee protections in the
25 Labor Code and Wage Order.

26 **b. The Court Should Approve the Requested Attorneys’ Fees and Costs**

27 The PAGA provides that any employee who prevails is entitled to an award of reasonable
28 attorneys’ fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval

1 of the settlement but does not specifically provide that the amount or reasonableness of attorneys’
2 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable
3 interpretation of the PAGA is that the amount of attorneys’ fees need only be addressed by a court
4 when the LWDA objects because there is no need to provide absent employees’ due process rights
5 in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*
6 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,
7 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to
8 review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action,
9 where the purpose of court approval is to protect absent class members, in a PAGA settlement the
10 real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of
11 the fees and object before the court hears the approval motion. If a court considers the
12 reasonableness of the attorneys’ fees requested, it should be guided by the common fund doctrine
13 typically applied in class action cases.

14 **i. The Requested Attorneys’ Fee and Cost Award is Within the Range of**
15 **Fees Approved in Comparable Common Fund Cases**

16 California state and federal courts have recognized that an appropriate method for
17 determining an award of attorneys’ fees is based on a percentage of the total value of benefits to
18 class members by a settlement, also known as the “common fund” method. *Serrano v. Priest*
19 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent*
20 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. “Despite its primacy, the lodestar
21 method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.*
22 (2000) 82 Cal.App.4th 19, 27 [*“Lealao”*]; *Dunk*, 48 Cal. App. 4th at 1808 (the percentage method
23 calculates attorney fees as a reasonable percentage of the common fund and may be used where
24 the amount of the settlement is a certain or easily calculable sum of money). The purpose of the
25 common fund/percentage approach is to “spread litigation costs proportionally among all the
26 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557
27 F.2d at 769. *In Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne
28 who expends attorneys’ fees in winning a suit which creates a fund from which others derive

benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”

Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” The reasons for applying the common fund doctrine include: “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*

Assessing an appropriate fee based on a percentage of the fund involves taking into account “all of the circumstances of the case.” There is sparse case law addressing the evaluation of reasonable attorneys’ fees in employee representative or class actions as appellate cases addressing fees arise almost exclusively where awards were challenged by defendants or objectors – the only parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of class action fee awards have found that the median common fund fee award is approximately one-third of the total settlement fund. See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$83,333.33 (which is one-third of the GSA). The requested fee falls in the mid-range of percentage class fee awards, which commonly range from 20% to 50% of a common fund, and constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a

1 contingent basis and compensates PAGA Counsel for their efforts, as well as the result achieved
2 for the benefit of the State of California and the Aggrieved Employees. Mara Dec. ¶ 29.

3 Numerous state and federal courts in California routinely approve fee requests equal to or
4 greater than one-third of the common fund. In short, PAGA Counsel's fee request of \$83,333.33
5 is in line with awards in California and nationwide and demonstrates that PAGA Counsel's fee
6 request is consistent with market rates and is reasonable.

7 **ii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

8 PAGA Counsel's fee request is reasonable when calculated using the lodestar method.
9 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
10 spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977)
11 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a
12 range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree
13 of success achieved. *Id.*, at 49; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *PLCM*
14 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
15 Cal.App.4th 819, 834, ("[t] there is no ... rule limiting the factors that may justify an exercise of
16 judicial discretion to [adjust the] lodestar").

17 As of the date of filing this motion, Plaintiff's counsel has worked a total of 156 hours on
18 this case and calculated the base lodestar at \$110,000 at rates reflecting those currently earned in
19 the marketplace. Mara Dec. ¶¶ 30-33, **Exhibit 3**. All of the work and tasks performed by Plaintiff's
20 counsel were reasonable and necessary to the prosecution of this case. Mara Dec. ¶¶ 30-33, **Exhibit**
21 **3**. As PAGA Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar
22 fee is not sought herein. Mara Dec. ¶ 34. In fact, the requested fee results in a so-called "negative
23 multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
24 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
25 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

26 **iii. PAGA Counsel's Hourly Rates are Reasonable**

27 PAGA Counsel's hourly rates are between \$600 and \$800 and are in line with rates
28 typically approved in wage and hour class action and PAGA litigation and which rates have been

1 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
2 Orange and San Diego County Superior Courts. *Mara* Dec. ¶ 35; **Exhibit 4**, Westlaw Court
3 Express’s Legal Billing Report, Volume 14, Number 3, California Region for December 2012;
4 **Exhibit 5**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC
5 GIC834348; **Exhibit 6**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners
6 and Associates).

7 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
8 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
9 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
10 reasonable hourly rate, courts may consider factors such as the attorney’s skill and experience, the
11 nature of the work performed, the relevant area of expertise and the attorney’s customary billing
12 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

13 PAGA Counsel’s skill and experience support their hourly rates. Their practice is limited
14 exclusively to litigation, focusing on the representation of employees in wage and hour class action
15 and PAGA matters. As prominent attorneys in the field of wage and hour employment litigation,
16 Plaintiff’s counsel continually monitors the prevailing market rates charged by both defense and
17 plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks to be
18 consistent with the prevailing market rates in the private sector for attorneys and staff of
19 comparable skill, qualifications and experience. Other wage and hour attorneys working as class
20 counsel before California courts charge comparable if not higher rates.

21 **iv. PAGA Counsel’s Total Hours are Reasonable**

22 In determining a lodestar fee, reasonable hours include, in addition to time spent during
23 litigation, the time spent before the action was filed, including time spent interviewing clients,
24 investigating the facts and the law, and preparing the initial pleadings.⁹ Further, the fee award
25 should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Priest*
26 (1982) 32 Cal.3d 621, 639 (“*Serrano IV*”). PAGA Counsel has expended a total of 156 hours on
27 this case. The work performed by PAGA Counsel in order to achieve a settlement that will provide
28

⁹ See *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

1 valuable consideration to the State of California and the Aggrieved Employees is summarized by
2 PAGA Counsel in the declarations submitted herewith. Mara Dec. ¶¶ 30, 32.

3 Counsel's many tasks, in summary form, included the following: pre-filing investigation
4 and legal research; communicating with Plaintiff; drafting PAGA letter notifying the LWDA of
5 Plaintiff's claims; investigation into Defendant's pay-structures and policies; draft and file
6 pleadings; numerous conferences with Defendant's Counsel regarding a variety of issues
7 throughout the litigation; researching and investigating legal issues throughout case; interoffice
8 discussions throughout case; draft case management statements and various stipulations; draft and
9 propound discovery; review and revise proposed protective order; review handbooks, policies, and
10 employee records produced by Defendant; analyze records produced by Defendant; draft
11 mediation brief and mediation damage and exposure models; prepare for and attend mediation;
12 review, revise, and negotiate memorandum of understanding; review and revise the settlement
13 agreement; discussions with settlement administrator regarding their duties; draft settlement
14 approval motion and supporting papers; review settlement administrator's declaration; and
15 appearing at the settlement approval hearing. Mara Dec. ¶¶ 30, 32. All of the tasks and work
16 performed were reasonable and necessary to the prosecution of this case.

17 **v. Costs of Litigation**

18 PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$9,270.29.
19 These costs were all reasonable and necessary to the prosecution of this case and the results
20 achieved, and are fair, reasonable, and unopposed by Defendant. Mara Dec. ¶ 36, **Exhibit 3**.

21 **c. The Court Should Approve the Requested Enhancement Payment**

22 PAGA Counsel seeks approval of the Enhancement Payment for the named Plaintiff in the
23 sum of \$10,000. In a typical class or representative action, Courts routinely approve service
24 payments, or incentive awards, to compensate named plaintiffs for the services they provide and
25 the risks they incur during class litigation. See *In re Cellphone Fee Termination Cases* (2010) 186
26 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-
27 26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that
28 service payments are warranted). Plaintiff has not only deferred any individual recovery up until

1 this point, but as a result of this settlement, will be releasing his own claims arising out of his
2 employment with Defendant, including any of his own individual wage and hour claims that served
3 as the underlying basis for this PAGA action. If the Court approves this settlement, the aggrieved
4 employees, unlike Plaintiff, are still free to pursue their own individual wage and hour claims.

5 Not only is Plaintiff giving up the right to recover for his own individual wage and hour
6 claims, in addition to all other known and unknown claims against Defendant,¹⁰ Plaintiff has also
7 put a great deal of effort into pursuing this matter for the State of California and for his fellow
8 aggrieved employees, furthering the purposes of PAGA and conserving the limited resources of
9 the Labor Commissioner. The requested service payment is reasonable in light of the benefits
10 Plaintiff has conferred upon the State of California and the Aggrieved Employees, the significant
11 time spent assisting counsel with the investigation and prosecution of these claims, giving a general
12 release of all claims, and consenting to the proposed settlement. *See generally* Declaration of
13 Anthony Gonzalez. Based on the foregoing, the \$10,000 Enhancement Payment to the named
14 Plaintiff is fair, appropriate and justified as part of the overall settlement.

15 **d. The Administration Costs are Reasonable**

16 The Parties agreed to hire Simpluris as the Administrator.¹¹ Simpluris will be responsible
17 for formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be
18 sent along with the checks to be mailed to the Aggrieved Employees. It will also be responsible
19 for updating addresses and re-mailing checks returned as undeliverable, responding to Aggrieved
20 Employee inquiries, and answering questions from the Parties. Simpluris also provided a
21 declaration for filing with the settlement motion. Simpluris seeks a fee of up to \$5,000,¹² currently
22 estimated to be \$2,900, for the services it will provide in conjunction with this settlement. *See*

23 ¹⁰ Upon the funding of the settlement, Plaintiff is agreeing to an additional General Release of all
24 claims against Defendant. *See Exhibit 1* at Pages 10-11, Sections 5.1.1 and 5.1.1.1.

25 ¹¹ *See* Springer Dec., which outlines Simpluris' qualifications and experience.

26 ¹² Once Defendant have provided Simpluris with the data for the Aggrieved Employees upon
27 approval of the settlement, Simpluris will be able to calculate the exact administration costs. Based
28 on the preliminary data provided by Defendant, Simpluris has estimated the administration costs
will be \$2,900. The Parties do not expect this estimate to change drastically but have accounted
for any such contingency through the Settlement Agreement, which permits up to \$5,000 in
administration costs. *See Exhibit 1* at Page 7, Section 3.2.3.

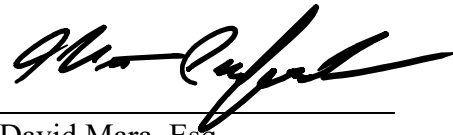
1 Springer Dec., **Exhibit C**. Plaintiff now requests that the Court approve a fee of up to \$5,000 to
2 Simpluris for services to be rendered. Following the grant of approval, Simpluris will calculate
3 and mail the checks to the Aggrieved Employees, disburse other payments as ordered by the Court,
4 and perform such other duties as set forth in the Settlement Agreement. Simpluris' fee of up to
5 \$5,000 for services rendered and to be rendered is fair and reasonable and should be granted.

6 **VI. CONCLUSION**

7 For the reasons stated herein, Plaintiff respectfully requests that the Court grant this motion
8 in its entirety.

9
10 Dated: July 16, 2024

MARA LAW FIRM, PC

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14 David Mara, Esq.
15 Matthew Crawford, Esq.
16 Attorneys for Plaintiff
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