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on behalf of herself and all others similarly situated
6 and on behalf of the general public
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ALAMEDA**
10

11 JENNY CISNEROS on behalf of herself,
all others similarly situated, and on behalf
12 of the general public,

13 Plaintiff,

14 v.

15 ALOM TECHNOLOGIES
CORPORATION; AND DOES 1-100,

16 Defendants.
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Case No. 23CV037671

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

Date: September 12, 2024

Time: 3:00 p.m.

Dept.: 20

Reservation ID: 635391669043

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1 **I. INTRODUCTION**

2 Plaintiff Jenny Cisnero (“Plaintiff”) respectfully requests that the Court approve of the
3 Joint Stipulation and Settlement Agreement (“Settlement Agreement”) entered into between
4 Plaintiff and Defendant, ALOM Technologies Corporation, (“Defendant”) (collectively Plaintiff
5 and Defendant are referred to as the “Parties”) which resolves the claims raised against Defendant
6 in exchange for a non-reversionary \$310,530 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 non-exempt employees (including temporary
10 non-exempt workers) in California who were employed by Defendant or worked for Defendant at
11 any time during the PAGA Period. The PAGA Period is April 26, 2022 through March 4, 2024.
12 The relief provided under the Settlement Agreement is solely for 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 her Notice of Labor Code Violations Pursuant to Labor Code § 2699.3 on
25 April 26, 2023.² In the notice, Plaintiff, a former hourly, non-exempt employee who worked in

26 ¹ Plaintiff has uploaded a copy of the Settlement Agreement to the LWDA’s website at the same time
27 this motion is filed with the Court. *See* Declaration of David Mara, Esq., **Exhibits 7 and 8**.

28 ² The Notice to the LWDA dated April 26, 2023 is attached to the Declaration of David Mara,
Esq. (“Mara Dec.”) as **Exhibit 2**.

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

7 Plaintiff then filed this action against Defendant in the Alameda County Superior Court on
8 July 5, 2023, alleging causes of action on behalf of Plaintiff and those similarly situated aggrieved
9 employees under the PAGA for the wage and hour violations detailed in the notice sent to the
10 LWDA. Mara Dec. ¶ 13.

11 **b. Discovery and Investigation**

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

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

25 **c. Mediation**

26 The Parties attended mediation with respected wage and hour mediator Mark Rudy on
27 February 27, 2024. Shortly after the mediation, the mediator issued a mediator's proposal that was
28 ultimately accepted by the Parties. Since then, the Parties have met and conferred extensively

1 regarding the terms of the settlement and finalized their agreement in the Settlement the Parties
2 now ask the Court to approve. A copy of the Settlement Agreement is attached to the Declaration
3 of David Mara, Esq. as **Exhibit 1**. Mara Dec. ¶ 16.

4 **III. THE PARTIES' CONFLICTING POSITIONS**

5 **a. Meal Periods**

6 Plaintiff contends that Defendant fails to provide Class Members with meal periods in which
7 Class Members are relieved of all duty. Under California Labor Code section 512 and the IWC
8 Wage Orders, no employer shall employ any person for a work period of more than five hours
9 without providing a meal period of not less than thirty minutes. The first meal period must be
10 permitted to commence no later than after five hours of work, or the start of the sixth hour of work.
11 *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049. The second meal period must
12 be permitted to commence no later than after ten hours of work, or the start of the eleventh hour
13 of work. *Id.* In *Brinker*, the California Supreme Court succinctly described Section 512's mandate:
14 "Employers must afford employees uninterrupted half-hour periods in which they are relieved of
15 any duty or employer control and are free to come and go as they please." *Brinker Rest. Corp. v.*
16 *Superior Court* (2012) 53 Cal.4th 1004, 1037.

17 Plaintiff argues that Defendant fails to provide employees with a full 30 minute meal period
18 "in which they are relieved of any duty or employer control." Defendant expects employees to
19 clock out and in for meal periods. However, there are no timeclocks in the breakroom. This means
20 employees are expected to clock out, then walk to the breakroom to take a meal period, and then
21 walk back to the timeclock to clock back in for work, all within 30 minutes. It takes at least a few
22 minutes to travel from the timeclock to the breakroom, and another few minutes to get from the
23 breakroom back to the timeclock. This time spent under Defendant's control cuts into the
24 employee's 30-minute meal period. Mara Dec. ¶ 17; see *Kaanaana v. Barrett Business Services,*
25 *Inc.* (2018) 29 Cal.App.5th 778, 801 ("On a 30-minute break, time is scarce" and "[w]hen time is
26 scarce, minutes count."); see also *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 69 ("A
27 premium pay scheme that discourages employers from infringing on meal periods by even a few
28 minutes cannot be reconciled with a policy that counts those minutes as negligible rounding

errors.”).

Defendant asserts that employees are provided with meal periods in accordance with California law. Defendant points out that the meal period policy in its employee handbook is facially lawful, that nothing in Defendant’s meal period policy prevents employees from taking additional time beyond the minimum allocated 30 minutes, and that no one is disciplined for not clocking in precisely at the 30-minute mark upon their return from a meal period, nor would it be feasibly possible to expect employees to do so, highlighting the absurdity of Plaintiff’s claims here. Defendant also argues that Plaintiff would have to ask each employee whether they thought the policy Plaintiff relies upon actually meant that employees were required to clock back in to work after a 30-minute meal period, despite Defendant’s meal period policy explicitly providing for a minimum of 30 minutes, not a maximum. Because each employee would have to testify as to their understanding of the policy, Defendant argues that Plaintiff would have to ask each employee whether they were provided a lawful meal period on for every instance of a “violation” in the records, rendering the matter entirely unmanageable. *Mara Dec.* ¶ 18.

b. Rest Periods

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

Plaintiff contends that Defendant’s rest period policy does not provide for a net ten minutes; only ten minutes for employees to take rest breaks. This does not account for the time it takes employees to navigate Defendant’s massive facility to get to and from a suitable rest area, and thus violates California’s mandate that employees be provided a net 10 minutes of rest time,

1 exclusive of the time it takes to travel to a suitable rest area, like the breakroom, and back to their
2 workstations. Mara Dec. ¶ 19.

3 Defendant disputes this claim, arguing that employees are relieved of their duties at the
4 time their breaks commence, and are not, nor can they be, required to take their breaks in any
5 particular location. Just as with meal periods, Defendant points out that its rest period policy in its
6 employee handbook is facially lawful, that any failure to include the term “net” in a written policy
7 is not in and of itself a violation, and that no one is disciplined for taking longer than 10 minutes
8 for a rest period should an employee require any purported travel time. Defendant also argues that
9 Plaintiff would have to ask each employee whether they thought its rest period policy required that
10 employees be back at their workstations within 10 minutes after the start of their rest period, and
11 because each employee would have to testify as to their understanding of the policy, this claim
12 could not conceivably be tried in any sort of a manageable fashion. Mara Dec. ¶ 20.

13 **c. Unpaid Wages**

14 Employees must be paid for all “hours worked,” as that phrase is defined in the Wage Order
15 and interpreted by California courts. Hours worked is defined in Wage Order 5-2001 – the Wage
16 Order that governs the employees in this case - as “the time during which an employee is subject
17 to the control of an employer, and includes all the time the employee is suffered or permitted to
18 work, whether or not required to do so.” Wage Order 5-2001, Subd. 2(K); *see also Mendiola v.*
19 *CPS Security Solutions, Inc.*, 60 Cal. 4th 833 (2015). Under this standard, “it is only necessary that
20 the worker be subject to the control of the employer in order to be entitled to compensation.”
21 *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584.

22 The *Morillion* Court reasoned that an employee is under the employer’s control and entitled
23 to compensation when the employer “‘directs, commands or restrains’ an employee.” *Morillion*,
24 *supra*, 22 Cal. 4th at 583, quoting from *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968,
25 975 (1995) Whether time is considered compensable hours worked is based entirely on employer
26 control. *Id.* at 584. That is, whether during the time in question the employee is subject to an
27 employer’s directive, command, or restraint. *Id.* at 583. Completely irrelevant to the analysis of
28 whether time is compensable work time is whether employees were permitted to engage in limited,

1 non-working activities, such as eating, reading, or sleeping, while they are under the employer's
2 directive, command, or restraint. *Id.* at 587. Again, it is the existence of the directive, command,
3 or restraint that the employee must oblige that determines whether the employee is engaged in
4 compensable hours worked. *Id.* at 583.

5 As discussed previously, Defendant does not pay employees for the time spent traveling
6 from the breakroom to the timeclock during their unpaid meal periods. All of this time is spent
7 under Defendant's compensable control, but employees are not paid for this time. Mara Dec. ¶ 21.

8 Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that
9 employees performed *any* work-related tasks for which they were not compensated, and that
10 Defendant has uniform practices and policies *forbidding* employees from working off the clock.
11 Defendant claims that Plaintiff's "investigation" is wholly inaccurate, and that the time spent
12 engaging in this "travel time" takes merely seconds, not minutes. Due to this brevity, Defendant
13 asserts that it is not reasonably required to compensate employees for this time. Mara Dec. ¶ 22.

14 **d. Reimbursements**

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

18 An employer shall indemnify his or her employee for all necessary expenditures or
19 losses incurred by the employee in direct consequence of the discharge of his or her
20 duties, or of his or her obedience to the directions of the employer, even though
21 unlawful, unless the employee, at the time of obeying the directions, believed them
22 to be unlawful.

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

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

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

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

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

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

1 **f. Manageability**

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

8 **IV. THE PROPOSED SETTLEMENT**

9 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
10 action be settled and compromised for the non-reversionary total sum of \$310,530 (“Gross
11 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
12 \$103,510 (one-third of the GSA) to compensate PAGA Counsel for work already performed and
13 work remaining to be performed in securing Court approval and overseeing administration of the
14 settlement; (b) litigation costs in the amount of \$26,886.77; and (c) administration fees and
15 expenses to Simpluris, Inc. (“Simpluris”) in the amount of \$6,000.³

16 After all Court-approved deductions from the GSA, it is estimated that the Net Settlement
17 Amount (“NSA”) will be \$174,133.23. California Labor Code § 2699(i) states that “civil penalties
18 recovered by aggrieved employees shall be distributed in accordance with Labor Code § 2699 *et*
19 *seq.* as follows: 75% to the LWDA for enforcement of labor laws, including the administration of
20 this part, and for education of employers and employees about their rights and responsibilities
21 under this code, to be continuously appropriated to supplement and not supplant the funding to the
22 agency for those purposes; and 25% to the aggrieved employees.” Therefore, of the NSA,
23 \$130,599.92 (75% of the NSA) will go to the LWDA and \$43,533.31 (25% of the NSA) will be
24 distributed to Aggrieved Employees.⁴

25
26

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

27 ⁴ Aggrieved Employees are estimated to receive an average payment of approximately \$60.80
28 [\$43,533.31 divided by approximately 716 Aggrieved Employees during the PAGA Period (per
the preliminary data provided by Defendant)].

1 **a. Calculation of the Settlement Payments to the Aggrieved Employees**

2 Subject to the terms and conditions of the Settlement Agreement, the Settlement
3 Administrator will calculate and issue Individual Settlement Shares to Aggrieved Employees based
4 on the following formula:

5 Each Aggrieved Employee will receive a proportionate share of the NSA that is
6 equal to (i) the number of pay periods he or she worked for Defendant in California
7 during the PAGA Period based on the Database provided by Defendant, divided by
8 (ii) the total number of pay periods worked by all Aggrieved Employees based on
9 the same Database, which is then multiplied by the NSA. One day worked in a
given pay period will be credited as a pay period for purposes of this calculation.
Therefore, the value of each Aggrieved Employee's Individual Settlement Share
ties directly to the amount of pay periods that he or she worked.

10 **Exhibit 1** at Section III, B(1)(a). One hundred percent (100%) of each Individual Share is
11 considered to be a civil penalty. Payroll tax withholdings and deductions will not be withheld from
12 these Individual Settlement Shares. Each Individual Settlement Share will be reported on IRS 1099
13 Forms. *See Exhibit 1* at Section III, B(2).

14 **b. Funding and Disbursement**

15 Within fifteen (15) business days after the Effective Date,⁵ Defendant will provide
16 Simpluris an electronic database, which will list for each Aggrieved Employee: (1) first and last
17 name; (2) last known mailing address; (3) social security number; and (4) the total number of pay
18 periods during which the Aggrieved Employee performed work during the PAGA Period as an
19 Aggrieved Employee ("Database"). *See Exhibit 1* at Section III, E(2)(a). Simpluris will conduct a
20 skip trace for the address of all Aggrieved Employees who are former employees of Defendant
21 and an NCOA search on all addresses. *Id.*

22 The Gross Settlement Amount will be wired by Defendant to Simpluris within fifteen (15)

23 _____
24 ⁵ The Effective Date of this Agreement will be the date on which the following events have
25 occurred: (1) this Settlement Agreement has been executed by all Parties and their counsel; (2) the
26 Court has entered an order granting Approval of the Settlement; (3) the Court has entered a
27 Judgment; (4) the period for filing any appeal, writ or other appellate proceeding opposing the
28 Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed
(i.e., within 60 calendar days after entry of the Judgment); or (5) when any appeal, writ or other
appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no
right to pursue further remedies or relief; or (6) when any appeal, writ or other appellate proceeding
has upheld the Court's Judgment with no right to pursue further remedies or relief.

business days of the Effective Date. *See Exhibit 1* at Section I, K. Simpluris will disburse the GSA within fifteen (15) business days after funding. The Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Aggrieved Employees; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel; (3) the Administration Costs, as approved by the Court; and (4) the LWDA Payment. *See Exhibit 1* at Section III, E(2)(d). A Notice of PAGA Settlement, substantially similar to the form attached to the Settlement Agreement as **Exhibit A**, subject to Court approval, shall accompany each check mailed to the Aggrieved Employees.

c. Undelivered Checks

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will take reasonable steps to obtain an updated address. *See Exhibit 1* at Section III, E(2)(e).

d. Uncashed Checks

Checks will remain negotiable for 180 days. Individual Settlement Share checks remaining un-cashed, shall be transmitted by Simpluris to the State of California unclaimed property fund in the name of the Aggrieved Employee. *See Exhibit 1* at Section III, E(6)(b).

e. Release of Claims

Upon entry of the order and judgment granting approval of the Settlement Agreement, Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, will be forever barred from pursuing against Released Parties⁶ any and all Released Claims during the

⁶ "Released Parties" means Defendant and its respective past, present, or future affiliates, related entities, parents, subsidiaries, owners, members, partners, officers, directors, board members, managers, supervisors, employees, co-employers, predecessors, successors, assigns, agents, shareholders, investors, insurers, legal representatives, representatives, independent contractors, and any staffing agencies ALOM contracts with for the placement of employees or workers, including specifically Silicon Valley Technical Staffing *aka* Silicon Valley Staffing Group, Inc., Coast Personnel Services *aka* the Staffing Solutions Group, Robert Half *aka* Robert Half Staffing, and Real Time Staffing Services, LLC *aka* Select Staffing, as well as their related entities. *See Exhibit 1* at Section I, Y.

PAGA Period. “Released Claims” means all penalties under the California Private Attorneys’ General Act (Labor Code section 2698, *et seq.*) that were or could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s operative Complaint, and Plaintiff’s pre-filing letter to the LWDA on April 26, 2023, that accrued at any time between April 26, 2022 through March 4, 2024. Aggrieved Employees retain their rights to pursue claims for wages, statutory penalties and any other damages. *See Exhibit 1* at Section I, X.

V. THE COURT SHOULD APPROVE OF THE SETTLEMENT

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

In evaluating the adequacy of the settlement amount, a court is not concerned with the amount the aggrieved employees are to receive, but rather, a court must focus on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.* (E.D. Cal. July 1, 2010) 2010 WL 2650571 *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) 2010 WL 1340777 *4. Moreover, a court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to

1 recover civil penalties for the government that otherwise may not have been assessed and collected
2 by overburdened state enforcement agencies.” *Id.*

3 As with any settlement, a court must be mindful in conducting its inquiry that “[s]ettlement
4 is a compromise, which balances the possible recovery against the risks inherent in litigating
5 further.” *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S.
6 Dist. LEXIS 103222, *24. Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes
7 and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.* (9th Cir. 1982)
8 688 F.2d 615, 624], as “it is the very uncertainty of outcome in litigation and avoidance of wasteful
9 and expensive litigation that induce consensual settlements.” *Id.* at 625.

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

16 Under *Hanlon*, a court must conclude that a settlement is “fundamentally fair, adequate,
17 and reasonable” before it approves of the settlement. *Hanlon*, 150 F.3d at 1026. The analysis in
18 *Hanlon* is typically used in federal district courts to evaluate proposed class action settlements. In
19 California state courts, settlements are more typically evaluated under the standards set forth in the
20 cases *Dunk v. Ford Motor Co.* (“*Dunk*”) (1996) 48 Cal.App.4th 1794, and *Kullar v. Foot Locker*
21 *Retail, Inc.* (“*Kullar*”) (2008) 168 Cal.App.4th 116. Similar to *Hanlon*, *Dunk* found that in deciding
22 whether to approve a proposed class action settlement under California Code of Civil Procedure §
23 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk*, 48
24 Cal.App.4th at 1801.

25 A proposed settlement is presumed fair under the following circumstances: (1) the Parties
26 reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient
27 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
28 and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802. Here, as will be shown

1 herein, all of these elements bearing on the fairness of the proposed settlement—with the exception
2 of the percentage of objectors, which is not applicable in a PAGA action⁷—are present.

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

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

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

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

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

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

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

2 Both Plaintiff's Counsel and Defendant's Counsel are particularly experienced in wage and
3 hour employment law and class actions. Plaintiff's Counsel has significant experience in litigating
4 unpaid wages, unprovided meal and rest periods, and overtime claims. Indeed, Mara Law Firm,
5 PC, was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject
6 case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
7 1004. Mara Dec. ¶ 4. Plaintiff's Counsel has prosecuted numerous wage and hour cases on behalf
8 of employees for California Labor Code violations and thus are experienced and qualified to
9 evaluate the claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate
10 the viability of the defenses. Mara Dec. ¶¶ 2-11. This experience instructed Plaintiff's Counsel on
11 the risks and uncertainties of further litigation and guided their determination to endorse the
12 proposed settlement. Defendant's Counsel practices labor and employment law and have
13 represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel
14 are experienced in wage and hour employment law and class and representative actions.

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

16 An understanding of the amount in controversy is an important factor into whether the
17 settlement of the Aggrieved Employees' "claims is reasonable in light of the strengths and
18 weaknesses of the claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th 116,
19 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
20 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits,
21 balanced against the amount offered in settlement." *Id.*

22 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
23 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
24 that of the attorneys." *Kullar*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
25 statement of the maximum amount the Aggrieved Employees could recover if it prevailed on all
26 its claims, provided there is a record which allows "an understanding of the amount that is in
27 controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409.
28 Put differently, "as the court does when it approves a settlement as in good faith under *Code of*

1 *Civil Procedure* section 877.6, the court must at least satisfy itself that the [PAGA] settlement is
2 within the ‘ballpark’ of reasonableness.” *Kullar*, 168 Cal.App.4th at 133, citing *Tech-Bilt v.*
3 *Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.

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

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

8 At the time of mediation, Plaintiff determined that there were approximately 716
9 Aggrieved Employees who worked approximately 10,851 pay periods based upon the data
10 provided by Defendant.

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

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

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

21 California courts have interpreted this language to require notice to the employer that an initial
22 violation occurred before penalties for subsequent violations could be assessed. *See Amaral v.*
23 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1210. Under *Amaral*, “subsequent” has a special
24 meaning within the California Labor Code that triggers heightened statutory penalties only after
25 an employer has learned that its conduct violates the Labor Code—that is, pursuant to
26 *Amaral*, courts may reject a purely chronological understanding of the term “subsequent” and
27 interpret its use in California Labor Code to require that “the employer has been notified that it is
28 violated a Labor Code provision” before higher penalties are triggered. *Amaral*, 163 Cal.App.4th

1 at 1157, 1207–09. Each of Plaintiff’s claims, with the exception of Plaintiff’s claim for failure to
2 pay wages at the time of termination, occurred at least once in every pay period. Plaintiff’s claim
3 for failure to pay wages at the time of termination only occurred in a maximum of 514 pay periods.

4 Thus, Defendants’ **maximum** exposure under §2699(f)(2) is \$6,562,000:

5
$$\$100 \times 6 \text{ PAGA violations} \times 10,851 \text{ pay periods} = \$6,510,600$$

6
$$\$100 \times 1 \text{ PAGA violations} \times 514 \text{ pay periods} = \$51,400$$

7
$$\text{Maximum Exposure: } \$6,562,000$$

8 Mara Dec. ¶ 28.

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

20 Courts have used this discretion to massively discount PAGA penalties imposed where it
21 found the defendant employer took its Labor Code obligations seriously, even if the employer fell
22 short of complying with them. In *Thurman v. Bayshore Transit Management, Inc.* (“*Thurman*”)
23 (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum penalty
24 allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
25 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th
26 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has
27 taken its obligations to comply with the law seriously. *Id.* In *Kaanaana v. Barrett Business*
28 *Services, Inc.* (2018) 29 Cal.App.5th 778, 788 & 809, the Court of Appeals took no issue with the

1 trial court exercising its discretion in slashing PAGA civil penalties for violations of Labor Code
2 section 512 to 13% of the total recoverable penalties. In *Carrington v. Starbucks* (2018) 30
3 Cal.App.5th 504, the plaintiff requested penalties in excess of \$70 million, based on a \$25 to \$75
4 penalty per violation. The court reduced the award, stating that awarding the maximum penalty
5 would be unjust, arbitrary, and oppressive based on Starbucks's good faith attempts to comply with
6 the law. The lower court's reduced award of \$150,000 was affirmed on appeal, which reflects .2%
7 of the total recoverable penalties sought.⁸

8 Thus, the projected value of PAGA claims is a variable value of two predictive indexes: 1)
9 the likelihood that Plaintiff will succeed in proving the underlying claims were violated, and 2) the
10 extent to which the Court will impose Civil Penalties permitted under PAGA. This is to be
11 distinguished from the projected values of class claims of Labor Code and Wage Order violations.
12 For instance, and relevant to the underlying claims in this action, class claims alleging California's
13 meal and rest break, minimum wage, and wage statement laws were violated, the predictive value
14 for purposes of determining whether settlement values are fair and reasonable rests only on the
15 likelihood of prevailing on the merits and the exposure related thereto, as there is no judicial
16 discretion to award lesser amounts owed for adjudged violations. It is for these reasons that, in
17 assessing and judging the reasonableness of PAGA settlements, the touchstone feature is the
18 "remedial purpose" achieved in the settlement amount, which takes into account the defendant
19 employer's "good faith" belief that it complied with the laws claimed to be violated. *Bernstein*,
20 365 F. Supp. 3d at 991.

21 Based on this blind spot of how the Court would exercise its discretion in addition to the
22 likelihood the Court would side with Plaintiff on the underlying Labor Code violations, Plaintiff
23 necessarily and substantially had to discount the settlement value off of the full PAGA penalty
24 amounts. As discussed earlier, Defendant argues its meal and rest policies and practices track the

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 Labor Code and Wage Order requirements and the standards articulated in *Brinker* and *Augustus*.
2 Likewise, Defendant argues that they pay employees for all time worked and reimbursed all
3 business expenses. Thus, even if Defendant was proven wrong and ultimately found to have
4 violated the underlying Labor Code claims, the court could find a good faith reliance on *Brinker*,
5 *Augustus*, and other governing authorities justifiably instructed Defendant's actions and thereby
6 impose a massive reduction of PAGA penalties akin to the Courts in *Kaanaana* and *Carrington*.

7 Good faith settlement negotiations, after considerable discovery, investigation, and
8 litigation, necessarily had to focus on amounts far less than that potential exposure. The proposed
9 PAGA settlement here of \$310,530, which takes into account the realistic exposure, the very real
10 impediments of succeeding on the merits, the risk of further litigation, and, even if Plaintiff
11 succeeded on the merits, persuading against a robust discount, reflects an appropriate, balanced,
12 and reasonable settlement value of the PAGA claims. The settlement amount fits within the
13 "remedial purpose" of PAGA of enforcing compliance with important employee protections in the
14 Labor Code and Wage Order.

15 **b. The Court Should Approve the Requested Attorneys' Fees and Costs**

16 The PAGA provides that any employee who prevails is entitled to an award of reasonable
17 attorneys' fees and costs. Cal. Lab. Code § 2699(g)(1). The PAGA statute provides for approval
18 of the settlement but does not specifically provide that the amount or reasonableness of attorneys'
19 fees and costs is subject to court approval. Cal. Lab. Code §§ 2699(g)(1) and (l)(2). A reasonable
20 interpretation of the PAGA is that the amount of attorneys' fees need only be addressed by a court
21 when the LWDA objects because there is no need to provide absent employees' due process rights
22 in a PAGA settlement since the aggrieved employees do not have their own substantive rights. *See*
23 *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436. And, the LWDA,
24 as the real party in interest and the primary beneficiary of the settlement, has an opportunity to
25 review the settlement before it is approved. Cal. Lab. Code § 2699(l)(2). Unlike a class action,
26 where the purpose of court approval is to protect absent class members, in a PAGA settlement the
27 real party in interest, the LWDA, has the opportunity to review and consider the reasonableness of
28 the fees and object before the court hears the approval motion. If a court considers the

1 reasonableness of the attorneys' fees requested, it should be guided by the common fund doctrine
2 typically applied in class action cases.

3 **i. The Requested Attorneys' Fee and Cost Award is Within the Range of**
4 **Fees Approved in Comparable Common Fund Cases**

5 California state and federal courts have recognized that an appropriate method for
6 determining an award of attorneys' fees is based on a percentage of the total value of benefits to
7 class members by a settlement, also known as the "common fund" method. *Serrano v. Priest*
8 (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent*
9 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. "Despite its primacy, the lodestar
10 method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.*
11 (2000) 82 Cal.App.4th 19, 27 [*"Lealao"*]; *Dunk*, 48 Cal. App. 4th at 1808 (the percentage method
12 calculates attorney fees as a reasonable percentage of the common fund and may be used where
13 the amount of the settlement is a certain or easily calculable sum of money). The purpose of the
14 common fund/percentage approach is to "spread litigation costs proportionally among all the
15 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557
16 F.2d at 769. *In Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne
17 who expends attorneys' fees in winning a suit which creates a fund from which others derive
18 benefits may require those passive beneficiaries to bear a fair share of the litigation costs."

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

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

14 Here, PAGA Counsel applies for an award of attorneys’ fees in the sum of \$103,510 (which
15 is one-third of the GSA). The requested fee falls in the mid-range of percentage class fee awards,
16 which commonly range from 20% to 50% of a common fund, and constitutes fair compensation
17 for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis
18 and compensates PAGA Counsel for their efforts, as well as the result achieved for the benefit of
19 the State of California and the Aggrieved Employees. *Mara Dec.* ¶ 29.

20 Numerous state and federal courts in California routinely approve fee requests equal to or
21 greater than one-third of the common fund. In short, PAGA Counsel’s fee request of \$103,510 is
22 in line with awards in California and nationwide and demonstrates that PAGA Counsel’s fee
23 request is consistent with market rates and is reasonable.

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

25 PAGA Counsel’s fee request is reasonable when calculated using the lodestar method.
26 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
27 spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977)
28 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a

1 range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree
2 of success achieved. *Id.*, at 49; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *PLCM*
3 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
4 Cal.App.4th 819, 834, (“[t] there is no ... rule limiting the factors that may justify an exercise of
5 judicial discretion to [adjust the] lodestar”).

6 As of the date of filing this motion, Plaintiff’s counsel has worked a total of 181 hours on
7 this case and calculated the base lodestar at \$127,400 at rates reflecting those currently earned in
8 the marketplace. Mara Dec. ¶¶ 30-33, **Exhibit 3**. All of the work and tasks performed by Plaintiff’s
9 counsel were reasonable and necessary to the prosecution of this case. Mara Dec. ¶¶ 30-33, **Exhibit**
10 **3**. As PAGA Counsel’s lodestar fee is in excess of their fee request, a multiplier on their lodestar
11 fee is not sought herein. Mara Dec. ¶ 34. In fact, the requested fee results in a so-called “negative
12 multiplier” which suggests the percentage of the fund amount is reasonable and fair. *See Chun-*
13 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc.*
14 *Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

15 **iii. PAGA Counsel’s Hourly Rates are Reasonable**

16 PAGA Counsel’s hourly rates are between \$600 and \$800 and are in line with rates
17 typically approved in wage and hour class action and PAGA litigation and which rates have been
18 approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda,
19 Orange and San Diego County Superior Courts. Mara Dec. ¶ 35; **Exhibit 4**, Westlaw Court
20 Express’s Legal Billing Report, Volume 14, Number 3, California Region for December 2012;
21 **Exhibit 5**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC
22 GIC834348; **Exhibit 6**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners
and Associates).

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

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

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

10 In determining a lodestar fee, reasonable hours include, in addition to time spent during
11 litigation, the time spent before the action was filed, including time spent interviewing clients,
12 investigating the facts and the law, and preparing the initial pleadings.⁹ Further, the fee award
13 should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Priest*
14 (1982) 32 Cal.3d 621, 639 (“*Serrano IV*”). PAGA Counsel has expended a total of 181 hours on
15 this case. The work performed by PAGA Counsel in order to achieve a settlement that will provide
16 valuable consideration to the State of California and the Aggrieved Employees is summarized by
17 PAGA Counsel in the declarations submitted herewith. Mara Dec. ¶¶ 30, 32.

18 Counsel’s many tasks, in summary form, included the following: pre-filing investigation
19 and legal research; communicating with Plaintiff; drafting PAGA letter notifying the LWDA of
20 Plaintiff’s claims; investigation into Defendant’s pay-structures and policies; draft and file
21 pleadings; numerous conferences with Defendant’s Counsel regarding a variety of issues
22 throughout the litigation; draft case management statements and various stipulations; attend case
23 management conferences; draft and propound discovery; review handbooks, policies, and
24 employee records produced by Defendant; extensive analysis of employee records produced by
25 Defendant with the assistance of expert; prepare for and attend mediation; draft mediation brief
26 and mediation damage and exposure models; review, revise, and negotiate memorandum of
27 understanding; draft, revise, and negotiate the settlement agreement; discussions with settlement

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

1 administrator regarding their duties; draft settlement approval motion and supporting papers;
2 review settlement administrator's declaration; and appearing at the settlement approval hearing.
3 Mara Dec. ¶¶ 30, 32. All of the tasks and work performed were reasonable and necessary to the
4 prosecution of this case.

5 **v. Costs of Litigation**

6 PAGA Counsel seeks reimbursement of the litigation costs and expenses of \$26,886.77.
7 These costs were all reasonable and necessary to the prosecution of this case and the results
8 achieved, and are fair, reasonable, and unopposed by Defendant. Mara Dec. ¶ 36, **Exhibit 3**.

9 **c. The Administration Costs are Reasonable**

10 The Parties agreed to hire Simpluris as the Administrator.¹⁰ Simpluris will be responsible
11 for formatting, printing, and mailing an agreed upon Notice of Settlement of PAGA Action to be
12 sent along with the checks to be mailed to the Aggrieved Employees. It will also be responsible
13 for updating addresses and re-mailing checks returned as undeliverable, responding to Aggrieved
14 Employee inquiries, and answering questions from the Parties. Simpluris also provided a
15 declaration for filing with the settlement motion. Simpluris seeks a fee of up to \$7,500¹¹, currently
16 estimated to be \$6,000, for the services it will provide in conjunction with this settlement. *See*
17 *Springer Dec.*, **Exhibit C**. Plaintiff now requests that the Court approve a fee of up to \$7,500 to
18 Simpluris for services to be rendered. Following the grant of approval, Simpluris will calculate
19 and mail the checks to the Aggrieved Employees, disburse other payments as ordered by the Court,
20 and perform such other duties as set forth in the Settlement Agreement. Simpluris' fee of up to
21 \$7,500 for services rendered and to be rendered is fair and reasonable and should be granted.

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25 ¹⁰ *See Springer Dec.*, which outlines Simpluris' qualifications and experience.

26 ¹¹ 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 \$6,000. 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 \$7,500 in
administration costs. *See Exhibit 1* at Section I, B.

1 **VI. CONCLUSION**

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

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5 Dated: July 29, 2024

MARA LAW FIRM, PC

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David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff

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