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NATHALIE BARCENAS, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

(*UNLIMITED JURISDICTION*)

NATHALIE BARCENAS, as an "aggrieved employee" on behalf of herself and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

EL TORO MEAT SHOP; EULOGIO BONILLA; and DOES 1 to 25, inclusive,

Defendants.

Case No.: 30-2023-01351414-CU-OE-CXC

DECLARATION OF MARALLE MESSRELIAN IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT

Assigned for All Purposes to
Hon. Layne H. Melzer, Department CX102

Action filed:	09/27/2023
Hearing Date:	06/26/2025
Hearing Time:	2:00 p.m.
Hearing Dept:	CX102

Reservation Number: 74539320

DECLARATION OF MARALLE MESSRELIAN IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT

I, MARALLE MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of MM Law, APC and the attorney of record for Nathalie Barcenas (individually, "Barcenas" or "Plaintiff") in her lawsuit against Defendant El Toro Meat Shop ("Defendant" or "El Toro").

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

3. A true and correct copy of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq.)* Settlement Agreement (the "Settlement or "Agreement") is attached hereto as **Exhibit 1**.

4. A true and correct copy of the notice to the below-defined Aggrieved Employees (the "PAGA Notice") is attached hereto as **Exhibit 2**.

Factual and Procedural Background

5. El Toro first began to employ Plaintiff in or around August of 2022 as a cook at its meat shop located at 1340 W. 1st Street in Santa Ana, California. El Toro continuously employed her in that capacity until on or about May 29, 2023 when employment ended.

6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. ("PAGA"). On June 28, 2023, Plaintiff, on behalf of herself and El Toro's other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. MM, ¶ 6, Ex. 3. The specific provisions alleged to have been violated in the PAGA notice letter included Labor Code sections §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198 and IWC Wage Order No. 7-2001. A true and correct copy of Plaintiff's letter to the

LWDA is attached hereto as **Exhibit 3**.

7. On September 27, 2023, Plaintiff filed a representative lawsuit with a single cause of action for recovery of civil penalties against Defendant in the Orange County Superior Court (the "Lawsuit") pursuant to PAGA based on the same allegations set forth in her LWDA letter dated June 28, 2023. Specifically, Plaintiff alleged that Defendant had failed to pay her and the Aggrieved Employees all wages earned for all hours worked at the correct rates of pay; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to deduct wages lawfully; 5) failed to issue only accurate and complete itemized wage statements; 6) failed to timely pay wages during and upon separation from employment; and 8) failed to maintain accurate employment records. A true and correct copy of Plaintiff's Lawsuit is attached hereto as **Exhibit 4**. In response to Plaintiff's assertions, Defendant filed its Answer on December 7, 2023. A true and correct copy of Defendant's Answer to Plaintiff's Complaint filed on December 7, 2023 is attached as **Exhibit 5**.

8. The parties met and conferred and agreed that it may be in their mutual interests to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation to resolve the representative PAGA claim and Plaintiff's individual claims. Upon mutual agreement of the parties, on July 3, 2024, the parties participated in a full-day mediation session with professional neutral Gig Kyriacou.

9. At the mediation, the parties agreed to settle the Action. At all times, the negotiations were adversarial and contentious, although still professional in nature. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding El Toro's policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendant provided Plaintiff's counsel with information and documents relating to other Aggrieved Employees, including timekeeping and payroll data. Through extensive, arm's length negotiations at the mediation, and only after discovery and investigation were performed, the parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval pursuant to the Settlement and subject

to the court's approval in the Receivership Action.

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

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

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

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

the LWDA and a confirmation email is attached as **Exhibit 11**. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

Background of Counsel

14. In 2003, I earned a Bachelor of the Science degree with a major in Accounting from Cal State University, Northridge. In 2017, I earned a Juris Doctor degree from Southwestern University School of Law.

15. In December of 2017, the Supreme Court for the State of California admitted me as an Attorney and Counselor at Law and licensed me to practice law in all the Courts of this State.

16. I am experienced in handling employment law matters and specifically wage and hour cases. I have been practicing law since 2017. My experience has been almost exclusively in the area of employment law representing employees with claims of wrongful termination, harassment, whistleblower retaliation, discrimination, wage and hour, and family and medical leave violations. I am a member of the California Employment Lawyers Association (CELA).

17. In my representation of employees, I have prosecuted several lawsuits on behalf of employees with claims of rest and meal period and overtime violations or other wage claims.

18. I have been involved in the prosecution of numerous wage and hour class and representative actions at various stages of litigation. A small sampling of the wage and hour class and representative action cases in which I have been counsel of record is as follows:

a) *Joshua Silva v. Payo Laboratories, Inc*., *et al*., San Luis Obispo County Superior Court, Case No. 19CV-0689 (appointed Class Counsel and granted final approval of class action settlement by the court).

b) *Mervin Perkins v. CC Venice, LLC, et al.,* Los Angeles Superior Court, Case No. BC703660 (appointed Class Counsel and granted final approval of class action settlement by the court).

c) *Jashar Bryant v. Pinnacle Cabling & Construction, Inc., et al*., Orange County Superior Court, Case No. 30-2020-01123094-CU-OE-CXC (appointed Class Counsel and granted final approval of class action settlement by the court).

d) *Collins v. Spa Products Import & Distribution Co., LLC*, et al., Los Angeles County Superior Court, Case No. 19STCV10586 (granted final approval of class action settlement by the court)

e) *Sabrina Slater v. Avalon Care Center – Sonora, L.L.C., et al*., Tuolumne County Superior Court, Case No. CV62006 (granted final approval of class action settlement by the court)

f) *Violet Avalos v. Smithcare Incorporated, et al*., Tulare County Superior Court, Case No. VCU272975 (granted final approval of class action settlement by the court)

g) *David Contreras v. HTX Services LLC, et al*., Los Angeles County Superior Court, Case No. 19STCV43405 (granted final approval of class action settlement by the court)

h) *Devin Cherry v. LA Corral Three, Inc., et al.,* Kern County Superior Court, Case No., BCV-18-101817-DRL (granted final approval of class action settlement by the court)

i) *Vikki Curl and Anthony J. Gratton v. Reel Security Corp., et al.,* Los Angeles County Superior Court, Case No. 18STCV09302 (granted final approval of class action settlement by the court)

j) *Corrine Lashbrook and Joshua Sweat v. Andy's BP, Inc., et al.,* San Mateo County Superior Court, Case No. 19CIV02344 (granted final approval of class action settlement by the court)

k) *Stephen Aguirre and Christopher Walls v. Anlin Industries*, Fresno County Superior Court, Case No. 17CECG04326 (order and judgment approving PAGA settlement by the court)

l) *Rebecca Mallory v. Odyssey Healthcare Operating A, L.P*., Kern County Superior Court, Case No. BCV-19-102735 (order and judgment approving PAGA settlement by the court)

m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al*., Fresno County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA settlement by the court)

n) *Kevin Littleton v. Lincoln Military Property Management LP*., San Diego

County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment approving PAGA settlement by the court)

o) *Krystal Thomas v. Choice Physicians Network, Inc., et al*., San Bernardino County Superior Court, Case No. CIVDS2013964 (order and judgment approving PAGA settlement by the court)

p) *Otina Sengvong v. Probuild Company, LLC, et al*., United States District Court, Southern District of California, Case No. 3:19-cv-02231-MMA (JLB) (granted final approval of class action settlement by the court)

q) *Orland Perez Avalos v. Milagros Restaurant LLC, et al*., San Mateo County Superior Court, Case No. 22-CIV-01222 (order and judgment approving PAGA settlement by the court)

r) *David Xiqui Vasquez v. The Province LLC, et al*., Santa Clara County Superior Court, Case No. 22CV397541 (order and judgment approving PAGA settlement by the court)

s) *Manuel Melendrez v. Clean Auto Inc., et al*., San Mateo County Superior Court, Case No. 22CIV01967 (order and judgment approving PAGA settlement by the court)

t) *Arturo Vera Lopez v. Green Valley Landscape, et al*., Monterey County Superior Court, Case No, 22CV003751 (order and judgment approving PAGA settlement by the court)

u) *Erasmo Gomez v. A-1 Jay's Machining, Inc., et al*., Santa Clara County Superior Court, Case No. 22CV394795 (order and judgment approving PAGA settlement by the court)

v) *Iris Rodriguez v. Facility Masters, Inc*., Santa Clara County Superior Court, Case No. 23CV423999 (order and judgment approving PAGA settlement by the court)

w) *Mariana Ruelas v. Vista La Mesa Senior Living, Inc., et al*., San Diego Superior Court, Case No. 37-2023-00050755-CU-OE-CTL (order and judgment approving PAGA settlement by the court).

x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al*., Santa Clara Superior

Court, Case No. 23CV422622 (order and judgment approving PAGA settlement by the court).

y) *Irma Tapia v. Posada Associates, et al*., Santa Cruz Superior Court, Case No. 23CV00355 (order and judgment approving PAGA settlement by the court).

z) *Andres Ibarra v. Stadco, et al*. Los Angeles Superior Court, Case No. 23STCV26591 (order and judgment approving PAGA settlement by the court).

Exposure and Risk Analysis

19. The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The parties reached the Settlement through arm's-length bargaining with the aid of a respected mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. Plaintiff requested and Defendant provided the number Aggrieved Employees, the number of total pay periods during the PAGA Period, all policies in effect during the PAGA Period, and anonymized payroll and time punch data for all of its California non-exempt employees for the relevant period; and (3) Counsel for the parties are experienced with PAGA cases. Moreover, neither Plaintiff nor I have any conflicts of interest with the absent PAGA Employees and there are no issues of ascertainability.

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

- Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- Plaintiff requested that Defendant provide any and all policies regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, compensation plans, and complaints about working conditions in effect during the relevant time period beginning in June of 2022. Defendant produced those policies as part of their employee handbook.
- Plaintiff requested that Defendant provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendant provided the answers to each of these questions.
- Plaintiff requested a 20% sampling of time and payroll records. Defendant provided anonymized payroll and time punch data for approximately 46 of its non-exempt employees during the relevant time period.

- Plaintiff retained a professional data analyst, James Toney, to examine the records and determine the meal and rest period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

- Plaintiff analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for “off the clock” work and business expense reimbursement, especially as it relates to “manageability” arguments brought up by the defense.

21. Defendant estimated for purposes of mediation that there were approximately 254 Aggrieved Employees who worked approximately 10,632 pay periods during the PAGA Period. Based on this information and with the help of the data analyst, Plaintiff’s counsel prepared an estimate of the maximum possible civil penalties under the PAGA. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period.

22. Plaintiff’s analysis, which Defendant vehemently disputes, revealed a 31.4% violation rate for either late, short, or no meal periods for pay periods with shifts greater than 6 hours. Since the total number of pay periods in the PAGA period was 10,632 and since approximately 91.6% of the shifts in the sample analysis were over 6 hours, the total number of pay periods to consider for potential meal break violations was 9,739 (91.6% x 10,632 pay periods). Under the civil penalty formulas applicable under PAGA, Plaintiff calculated El Toro’s potential exposure as follows: $50 penalty per pay period, assuming 31.4% violation, based on Labor Code § 558 for violation of Labor Code § 512 (failure to provide meal periods)(9,739 x 31.4% = 3,058 x $50 =$152,900); $100 penalty per pay period under Labor Code sec. 2699(f)(2), assuming the same 31.4% violation rate for rest break violations (9,739 x 31.4% = 3,058 x $100 =$305,800); $250 penalty per pay period, assuming 31.4% violation rate, based on Labor Code § 226.3 for violation of Labor Code § 226 (failure to provide compliant wage statements) (9,739 x 31.4% = 3,058 x $250 = $764,500). Stacking each of these maximum recoverable civil penalty estimates yields a total amount of $1,223,200. Assuming that Plaintiff’s calculations and analysis are accurate, the maximum exposure also presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. The potential for recovery of

approximately $1.2 million in civil penalties depends on circumstances that are extremely unlikely independently and in combination. It would depend on the Court stacking the maximum recoverable civil penalties for meal period violations, rest break violations, and faulty wage statement violations per pay period for all 10,632 pay periods for all 254 Aggrieved Employees during the PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a plaintiff and the other aggrieved employees she represents multiple civil penalties for the same pay period under different Labor Code provisions. At best, Plaintiff could hope to recover one penalty for each pay period (regardless of the different Labor Code violations that potentially occurred for the same employee, during the same pay periods). Plaintiff had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons (outlined below).

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

24. Defendant contends it provided non-exempt employees with the opportunity to take rest breaks in accordance with California law, and, accordingly, that Plaintiff's rest break claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.

Employers are not required to record rest periods and such periods are paid. Unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one.

25. As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest period violations, there would be issues with proof. The sampling did not reveal any rounding as hours were paid to the second decimal point. There would be no regular rate issue, since there were no non-discretionary bonus payments seen in the sample. As it relates to any overtime issues, the data showed the average workday was 7.7 hours, which means that overtime pay was not an issue. Regardless, when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. Defendant also provided evidence at mediation that any deductions from employees' pay for work shoes was completely voluntary. Moreover, Defendant provided overall strong written policies as it related to wage and hour practices and showed that Plaintiff acknowledged the policies.

26. Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. *See Lab. Code,* § 2699, subd. (e)(2) ("…a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily discounted award of only $5 per violation because it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of $70 million and was successful in proving the PAGA claim during a bench trial. However, the trial court reduced the total award after trial to only $150,000 (30,000 violations x $5) and stated that this reduction was warranted because imposing the maximum penalty would be "unjust,

arbitrary, and oppressive", based on Starbucks's "good faith attempts" to comply with meal break obligations and because the Court found the violations were minimal. Applying the same formula here and assuming there was one violation during each pay period, the award of civil penalties could not exceed $53,160 in PAGA penalties 10,632 violations x $5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff's allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is uncertain.

27. All in all, considering all of the risks detailed above, as well as potential manageability issues, the risk of not prevailing at trial, the risk that, even if Plaintiff prevailed, the damages would be limited due to the largely discretionary nature of the damages, and taking into account Defendant's defenses on the merits, Plaintiff applied a 50% discount to the maximum PAGA exposure of 1,223,200, resulting in a risk-discounted realistic potential exposure of $611,600. Therefore, the Gross Settlement Amount of $295,000 is a great result, amounts to relief consistent with the underlying purpose of PAGA, and represents approximately 48% of the risk-discounted realistic potential recovery. *See In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2% recovery based on the estimated liability exposure).

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

29. The settlement of the representative PAGA claim involves monetary relief to all Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure

and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound by, Plaintiff, considering the evidence he faced, achieved a great result for the employees concerned. Furthermore, any employees who are dissatisfied with the amount they received in civil penalties can pursue any damages they believe they are owed by the Defendant. The Settlement does not require them to opt out to do so.

30. Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated civil penalties amount. Among those risks is the very real possibility that the Court in the Receivership Action does not approve the Gross Settlement Amount (El Toro has been operating under a court-ordered receivership since September 6, 2011). As a result, this settlement is expressly contingent upon the approval of the Court in the Receivership Action. In view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and is in the best interest of Plaintiff and the Aggrieved Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of the current economic climate, and are the product of good faith, and informed arms-length negotiations between the parties consistent with public policy and fully comply with applicable provisions of law.

31. As such, the settlement of PAGA penalties in the gross sum of $295,000.00, of which 75% of the net amount after attorney's fees, litigation costs, Plaintiff's enhancement payment, and settlement administration costs ($127,526.30) will be paid to the LWDA and 25% ($42,508.77) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

Individual PAGA Payments

32. At the time of the mediation (July 3, 2024), Defendant estimated that there are approximately 254 Aggrieved Employees who worked a total of 10,632 pay periods during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees Payment

($98,333.33), PAGA Counsel's Litigation Expenses Payment ($13,631.60), the Enhancement Payment to Plaintiff ($10,000) and the Administrator Expense Payment ($3,000), the Net Settlement Amount ("NSA") will be approximately $170,035.07. Seventy five percent (75%) of the NSA will be paid to the Labor and Workforce Development Agency ("LWDA") ($127,526.30), and twenty five percent (25%) ($42,508.77) of the NSA will be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Based on this amount, the lowest estimated individual recovery for an Aggrieved Employee would be $4.00 ($42,508.77 divided by 10,632 pay periods) if he/she worked only one (1) pay period during the PAGA Period. The maximum estimated individual recovery for an Aggrieved Employee would be $420.00 if he/she worked 105 pay periods (estimated pay periods from June 28, 2022 to July 3, 2024) under the proposed settlement. The average estimated individual recovery for an Aggrieved Employee is approximately $167.36 ($42,508.77/254 Aggrieved Employees). Given the discretionary nature of awarding PAGA penalties based upon Defendant's compliant policies and Aggrieved Employees' pay and time data, and considering the risk of not being able to proceed on a representative basis at all due to the risk of not prevailing at trial, and the risk that, even if Plaintiff prevailed, the damages would be limited due to the largely discretionary nature of the damages, this is an excellent result, amounting to relief consistent with the underlying purpose of PAGA.

Attorneys' Fees and Costs

33. I represent Plaintiff on a straight contingency basis. My firm's request for $98,333.33 in attorney fees and $13,631.60 in litigation costs related to the PAGA Settlement is fair and reasonable. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my experience in wage and hour class and PAGA settlements.

34. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding fees, notwithstanding courts' clear preference for the percentage method, my request for attorneys' fees of $98,333.33 (33 1/3 % of the GSA) is fair and reasonable based on my firm's lodestar as cross-checked against the percentage of the recovery. To date, I have investigated and prosecuted this matter for over 61.30 hours, including the initial intake and research, drafting the initial PAGA notice and Lawsuit; drafting informal discovery questions, reviewing Defendant's informal document production, including wage and hour policies; sending and receiving emails on the case with defense counsel, including substantive discussions; sending the PAGA data to Plaintiff's expert for review/analysis and reviewing the expert's findings/conclusions; drafting a mediation brief, preparing for mediation and engaging in a full day private mediation; and drafting this PAGA approval motion. I also expect to perform additional work on this case if the Court grants final approval of the Settlement, including supervision of the Administrator's disbursement of the settlement funds to the Aggrieved Employees.

35. My hourly rate during this case is $650.00/ hour (8th year attorney handling wage and hour class and PAGA actions). In this case, my firm has a total lodestar of approximately $39,845 without the use of any multiplier, which results in a multiplier of 2.468 when compared against the $98,333.33 request for attorneys' fees.[1] True and correct copies of the time records of my firm are collectively attached as **Exhibit 6** to this declaration. I will have waited for over two years to be awarded attorneys' fees for work performed since June of 2023, when Plaintiff first contacted my office, compared to Defendant's counsel who have been paid as they performed work during this case.

36. My previous experience in litigating wage and hour actions also supports the

[1]The multiplier of 2.468 is supported by California case law. Under California law, lodestar multipliers can range from **2 to 4 or even higher**. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer, Inc*., 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849, *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of America Nat'l Trust & Sav. Ass'n*., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded) (cited in 3 Newberg & Conte, Newberg on Class Actions, section 1403, at 14-5 n. 21), and *Glendora Community Redevelopment Agency v. Demeter* (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12 times estimated lodestar multiplier).

reasonableness of the fee request. Based on past experience with similar matter, I was able to evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorney's fees of approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation, Brian J. Mills and Alexis Sadakane of Snell & Wilmer, also supports the fairness and reasonableness of the requested fee award. The award of attorneys' fees sought is justified here by the contingency nature of the attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved Employees while bearing the substantial burdens of contingency representation.

37. In addition, my firm incurred substantial costs to date, $13,631.60 as part of the PAGA Settlement. This amount consists of the LWDA filing fee and certified mailing postage fees, the complaint filing fees, the data analyst fees, mediator fees, court filing fees, and attorney service fees in the Action . A true and correct summary of my firm's costs and expenses incurred to date is attached as **Exhibit 7** to this declaration. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

Plaintiff's Enhancement Payment

38. Plaintiff's Enhancement Payment is being paid to Plaintiff for providing Defendant with a release of any and all individual (non-PAGA) claims, whether known or unknown, she may have against Defendant, **and** her service to the State of California and the Aggrieved Employees in prosecuting the Lawsuit. By agreeing to settle the case in the best interests of the Aggrieved Employees and the State, Plaintiff has given up the right to pursue her individual claims and recover substantially more in interest, waiting time penalties, and pay stub penalties that she will release as part of the Settlement. Plaintiff did not seek an individual settlement for her claims at all, instead choosing to prosecute this suit on behalf of the Aggrieved Employees and the State. *See generally* Declaration of Nathalie Barcenas ("Barcenas Decl.").

39. The PAGA statute does not forbid service awards. California federal district court decisions recognize that incentive awards may be awarded in PAGA-only representative actions. In *Mancini v. W.&S. Life Ins. Co.,* the court noted that the plaintiff had "asserted no non-PAGA claims." *Mancini v. W.&S. Life Ins. Co.* (S.D. Cal. 2018) U.S. Dist. LEXIS 160320 at *7. The settlement agreement under consideration provided for $5,000 as "an incentive award to Plaintiff for his status as the PAGA representative." *Id.* at *7. The district court took no issue with the fact that the case involved claims solely under PAGA, instead holding that the terms of the settlement agreement – including "the provision[] for incentive awards" – were "reasonable." *Id.* at *5. Further, in *Bruce v. Del Monte Foods, Inc.*, the district court granted an incentive award to the named plaintiff out of a settlement sum "treated exclusively as a civil penalty under PAGA." *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. 2018) U.S. Dist. LEXIS 53800 at *1. Although the court ultimately reduced the named plaintiff's requested incentive award, cautioning that "enhancement or incentive awards are to be treated with skepticism[,]" the court nonetheless granted an additional award to the named plaintiff, noting that the named plaintiff had made representations about "possible injury and expense above and beyond" that sustained by other Plaintiff. *Id.* at *7.

40. Plaintiff's Enhancement Payment of $10,000 for her release of any and all individual (non-PAGA) claims **and** her service to the State of California and the Aggrieved Employees in prosecuting the Lawsuit is entirely reasonable given Plaintiff's efforts in the Lawsuit and the risks she undertook on behalf of the Aggrieved Employees. *See generally* Barcenas Decl. Plaintiff devoted many hours advancing the interests of the Aggrieved Employees. *Id*. The work Plaintiff has done on this case includes hiring my firm, speaking with our office on many occasions by phone, explaining what her employment at El Toro was like, explaining what her employment at El Toro had in common with other employees who worked for El Toro, explaining her claims to me and my staff, and communicating with me and my staff about the settlement agreement and related documents. In doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if this action had been unsuccessful and in bad faith (*See* Labor Code §§ 218.5-218.6). The efforts

and risks that Plaintiff undertook on behalf of the Aggrieved Employees show that the proposed Enhancement Payment to Plaintiff is fair, adequate, and reasonable, and thus warrants approval. *See generally* Barcenas Decl.

Settlement Administration Costs

41. With regard to the settlement administration costs provision, it is reasonable. Before agreeing to Phoenix Settlement Administrators ("Phoenix"), the parties sought and reviewed bids from other reputable third-party administrator and Phoenix's bid was comparable.

A. Simpluris, Inc.= $3,000
B. Phoenix Settlement Administrators =$3,000 ; and
C. ILYM Group, Inc. =$4,850.

A true and correct copy of the bid from Simpluris is attached hereto as **Exhibit 8**. A true and correct copy of the bid from Phoenix is attached hereto as **Exhibit 9**. A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 10**. Furthermore, the Declaration of Michael Moore with attached exhibits, filed under separate cover, sets forth Phoenix's qualifications and costs to administer the settlement. *See generally* Declaration of Michael Moore. Thus, the settlement administration costs provision should be given approval.

Notice of Settlement to the LWDA

42. Pursuant to Lab. Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement with the LWDA at the same time the Settlement is being filed with the Court. True and correct copies of Plaintiff's submission with the LWDA and the confirmation email are collectively attached as **Exhibit 11** to this declaration.

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

Executed April 16, 2025 , at Glendale, California.

Maralle Messrelian

MARALLE MESSRELIAN,
Declarant