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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

12 **(UNLIMITED JURISDICTION)**

13 ANDRES IBARRA,

14 *Plaintiff,*

15 vs.

16 STADCO, a California corporation; BRETT
17 MATTA, an individual; and DOES 1 to 25,
18 inclusive,

19 *Defendants.*

Case No.: 23STCV26591

20 **MEMORANDUM OF POINTS AND**
21 **AUTHORITIES IN SUPPORT OF**
22 **PLAINTIFF'S UNOPPOSED MOTION FOR**
23 **APPROVAL OF PAGA SETTLEMENT**

24 Action filed: October 30, 2023
25 Hearing Date: October 8, 2024
26 Hearing Time: 8:30 a.m.
27 Hearing Dept: 76, Hon. Christopher K.
28 Lui

Reservation Number: 528939987841

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 STADCO specializes in innovative designs, engineering, fabrication and machining of
14 complex, high-precision, close tolerance parts, assemblies, and tooling. STADCO began to
15 employ Plaintiff in or around November 1998 to work at its facility located at 107 S. Avenue 20
16 in Los Angeles, California. Plaintiff commenced his employment in a janitorial capacity, but
17 eventually progressed to become a welding technician. Plaintiff continuously worked for
18 Defendants for the next twenty-five years until his employment ended on June 15, 2023.
19 Plaintiff’s last day worked for Defendant was on or about September 26, 2022. MM, ¶ 5.

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

21 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the
22 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On
23 July 21, 2023, Plaintiff, on behalf of himself and STADCO’s other California non-exempt hourly
24 employees (hereafter collectively the “Aggrieved Employees”) gave written notice by electronic
25 service to the California Labor and Workforce Development Agency (“LWDA”) and via certified
26 mail to Defendants of the specific provisions of the California Labor Code alleged to have been

27 ¹ The Agreement and a redlined version of the parties’ Agreement showing all modifications
28 made to the LASC Model Agreement are attached as Exhibit (“Ex.”) 1 and Exhibit 2 to the
Declaration of Maralle Messrelian (“MM”), which is submitted herewith under a separate cover.

1 violated, including the facts and theories to support the alleged violations. MM, ¶ 6, Ex. 4. The
2 specific provisions alleged to have been violated in the PAGA notice letter included Labor Code
3 sections 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6,
4 1194, 1197, 1198, 2802, and 2804, and Industrial Welfare Commission Wage Order No. 1,
5 sections 2(E), 7, 11 and 12.

6 **B. Plaintiff's Lawsuit**

7 On October 30, 2023, Plaintiff filed a lawsuit in Los Angeles County Superior Court (the
8 "Lawsuit") against Defendants. The Lawsuit alleged the following relevant causes of action
9 against Defendants: (1) failure to pay all wages earned for all hours worked [*Lab. Code*, §§ 510,
10 1194, 1197, and 1198]; (2) failure to provide rest breaks [*Lab. Code*, §§ 226.7, 1198]; (3) failure
11 to provide meal periods [*Lab. Code*, §§ 226.7, 512, 1198]; (4) failure to indemnify [*Lab. Code*, §
12 2802]; (5) failure to provide accurate, itemized wage statements [*Lab. Code*, § 226]; (6) failure
13 to pay wages when employment ends [*Lab. Code*, §§ 201, 202, 203]; (7) failure to pay wages
14 owed every pay period [*Lab. Code*, § 204]; (8) imposition of civil penalties pursuant to California
15 Private Attorneys General Act ("PAGA") [*Lab. Code*, §§ 2698, *et seq.*]; and (17) unfair
16 competition [*Bus. & Prof. Code*, §§ 17200, *et seq.*]. MM, ¶ 7, Ex. 5. On January 18, 2024,
17 Defendant filed its Answer to Plaintiff's Complaint. MM, ¶ 7, Ex. 6.

18 **C. Mediation With Professional Neutral Todd Smith**

19 Upon mutual agreement of the parties, on June 26, 2024, the parties participated in a full-
20 day mediation session with professional neutral Todd A. Smith. MM, ¶ 8. At the mediation, the
21 parties agreed to settle the Action. Before agreeing to the terms of the Settlement, the Parties
22 engaged in informal discovery regarding STADCO's policies, practices, operations, time and
23 payroll information and other topics. In advance of mediation, Defendant produced Plaintiff's
24 personnel file, timekeeping records and earnings statements. Moreover, prior to the mediation,
25 Defendant provided Plaintiff's counsel with information and documents relating to other
26 Aggrieved Employees, including timekeeping and payroll data. Through extensive, arm's length
27 negotiations at the mediation, and only after discovery and investigation were performed, the
28 parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement,

1 Plaintiff submits it to this Court for approval. MM, ¶ 9.

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

5 **III. OVERVIEW OF SETTLEMENT**

6 **A. "Aggrieved Employees" Definition**

7 The Aggrieved Employees are all persons employed by STADCO in California and
8 classified as a non-exempt, who worked for STADCO for one or more pay periods during the
9 PAGA Period. Agreement, ¶ 1.4. The PAGA Period means the period of time from July 21, 2022,
10 through Court approval of the Settlement Agreement. Agreement, ¶ 1.22.

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

12 Defendant has agreed to pay a total of \$205,000.00 ("Gross Settlement Amount" or
13 "GSA") to settle the PAGA claims. In consideration for Plaintiff's general release of all claims
14 and the Aggrieved Employees' release of all PAGA violations identified in Plaintiff's LWDA
15 letter (described more fully below), Defendant has agreed to pay \$205,000.00 as the gross
16 settlement amount ("GSA") from which all settlement payments to the Aggrieved Employees, to
17 the State of California, for Court approved attorneys' fees and costs, and for settlement
18 administration costs shall be paid. Each Aggrieved Employee will receive a portion of the civil
19 penalties on a pro-rata basis calculated based on the total number of pay periods each PAGA
20 Employee worked as a non-exempt hourly employee of STADCO in California during the PAGA
21 Period. See, Agreement, ¶¶ 3.1, 3.2. The GSA will be divided as follows:

- 22 1. PAGA Counsel's Fees Payment amounting to \$68,333.33 (33% of the
23 GSA),
- 24 2. PAGA Counsel's Litigation Expenses Payment in the amount of \$9,355.43
25 (the Agreement provides up to \$10,000);
- 26 3. Administration Expenses Payment of \$3,383.48 to Phoenix Class Action
27 Administration Solutions ("Phoenix" or "Administrator") to administer the
28 Settlement;

- 1 4. Approximately \$123,927.76 (“Net Settlement Fund”), divided as
2 follows:
3 a. \$ 92,945.82 to the LWDA (75%); and
4 b. \$ 30,981.94 to the Aggrieved Employees (25%)

5 Agreement, ¶ 3.2.

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

7 No later than 30 days after the Effective Date², STADCO shall deposit the GSA with the
8 Administrator. Agreement, ¶ 4.3.

9 Within thirty (30) calendar days of the Effective Date, Defendants shall provide the
10 Administrator with the Aggrieved Employee Data, which states each Aggrieved Employee’s
11 name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
12 Agreement, ¶¶ 1.5, 4.2.

13 Within 15 days after STADCO funds the GSA and provides all information relevant to
14 administer the settlement, the Administrator will mail checks to each Aggrieved Employee for
15 his or her share of 25% of the PAGA Penalties, the LWDA PAGA payment, PAGA Counsel’s
16 Fees Payment and PAGA Counsel’s Litigation Expenses Payment, and the Administration
17 Expenses Payment. Agreement, ¶ 4.4.

18 The Administrator will issue each Aggrieved Employee a check for his or her pro rata
19 share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the
20 Aggrieved Employee worked during the PAGA Period along with the Notice of PAGA
21 Settlement (Exhibit 2 to MM Declaration) by First-Class United States mail, postage prepaid,
22 with directions to the Postmaster to forward the Notice of PAGA Settlement and return all
23 undeliverable Notices to the Administrator. The Administrator will promptly skip trace return
24 mail and perform a single re-mailing. Agreement, ¶¶ 4.4.1, 4.4.2.

25 **D. Individual PAGA Payments and Uncashed Checks**

26 The settlement checks issued to Aggrieved Employees will remain valid for one hundred
27 eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty

28 ² “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a
Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is
final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

(180) days after issuance will be distributed to the California State Controller’s Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Employee. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which an IRS Form 1099 will be issued by the Administrator if required by law. Agreement, ¶ 4.4.1, 4.4.3.

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

Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendant STADCO and each of its former and present directors, officers (including Defendant Matta), shareholders, owners, attorneys, insurers, predecessors, successors, assigns, employees, parent and subsidiary companies, affiliates, holding companies, joint ventures, insurers and re-insurers, present and former spouses and heirs (the “Released Parties”). The Released PAGA Claims means:

all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including California Labor Code sections 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, 2804, and IWC Wage Order 1, §§ 2(E), 7, 11 and 12.

Agreement, ¶¶ 1.26, 5.2.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The Settlement of a PAGA claim requires court approval. *Lab. Code*, § 2699, subd. (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. *See Lab. Code*, § 2699, subds. (e)(1)-(2). 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. MM, ¶ 12; *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n. 4-5 (E.D. Cal. 2017) (stating, based on the LWDA’s guidance, that approval of PAGA settlements may be had where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate). The established standards for evaluating whether class action settlements are fair, reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n. 4 (E.D. Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

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

B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA

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

1 follows: 75 percent to the LWDA, and the remaining 25 percent to the Aggrieved Employees. See
2 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; *Lab. Code*, § 2699, subd. (i).
3 The parties' Settlement so provides. MM, ¶ 13, Ex. 1. Second, the LWDA must be given notice
4 of the settlement so that it may be heard before the Court decides whether to grant approval. *Lab.*
5 *Code*, § 2699, subd. (l)(2). Here, notice is being given to the LWDA concurrently with the filing
6 of this motion. MM, ¶¶ 13, 41, Ex. 9. As a result, Plaintiff has met all procedural statutory
7 requirements for settling a PAGA action.

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

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

12 the strength of the Plaintiff's case, the risk, expense, complexity and
13 likely duration of further litigation, the risk of maintaining class
14 action status through trial, the amount offered in settlement, the
extent of discovery completed and the stage of the proceedings, and
the experience and views of counsel.

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

23 The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The
24 parties reached the Settlement through arm's-length bargaining with the aid of a respected
25 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
26 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
27 Employees, the total number of pay periods during the PAGA Period, all policies in effect during
28 the PAGA Period, and anonymized payroll and time punch data for all of its California non-

1 exempt employees for the relevant period; and (3) Counsel for the Parties are experienced with
2 PAGA cases. MM, ¶ 19. Moreover, neither Plaintiff nor Plaintiff's Counsel have any conflicts of
3 interest with the absent Aggrieved Employees and there are no issues of ascertainability. MM, ¶
4 19. For the reasons discussed below, this Court should approve the PAGA Settlement.

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

7 The PAGA Settlement was reached only after informal discovery and arms' length
8 negotiations between experienced attorneys, which included a full-day mediation with
9 professional neutral Todd A. Smith. At all times, the negotiations were adversarial and
10 contentious, although still professional in nature. MM, ¶ 9.

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

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

23 Plaintiff considered various sources of information in the lead-up to and during the
24 mediation of June 26, 2024 that enabled him to achieve the PAGA Settlement at issue. MM, ¶ 20.
25 Among other things, Plaintiff considered the following:

- 26 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 27 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
28 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

1 in July of 2022. Defendant produced those policies as part of their employee handbook.

- 2 • Plaintiff's counsel requested that Defendant provide the total number of employees,
3 paychecks, and the pay cycles during the relevant period. Defendant provided the
4 answers to each of these questions.
- 5 • Defendant provided Plaintiff's counsel with anonymized payroll and time punch data for
6 all of its California non-exempt employees covering the period July 21, 2022, through
7 April 30, 2024.
- 8 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
9 the records and determine the meal period violation rates, if there was any pay
10 discrepancy in timesheet hours versus paid hours, and if there was any rounding/time
11 shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in*
12 *camera* inspection upon its request.
- Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break
violations, claims for "off the clock" work and business expense reimbursement,
especially as it relates to "manageability" arguments brought up by the defense.

13 MM, ¶ 20.

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

16 Defendant estimated for purposes of mediation that, through April 30, 2024, there were
17 approximately 92 Aggrieved Employees who incurred 5,127 pay periods during the relevant
18 period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum
19 possible civil penalties under the PAGA. MM, ¶ 21. The maximum possible civil penalties under
20 the PAGA is the total number of pay periods with one or more violations multiplied by the
21 maximum possible civil penalty amount per pay period.

22 Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a
23 maximum possible exposure of approximately 437,250 for civil penalties for Plaintiff's strongest
24 disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant
25 strongly disputes, revealed a 57.9% violation rate for either late, short, or no meal periods for
26 shifts over 5 hours. Since the total number of pay periods in the PAGA period through April 30,
27 2024, was 5,127 and since approximately 98.2% of the shifts in the data analysis were over 5
28 hours, the total number of pay periods to consider for potential meal break violations was 5,035

1 (98.2% x 5,127 pay periods). As such, with the 57.9% violation rate, the maximum exposure
2 would be \$145,750, which is calculated as \$50 penalty multiplied by 2,915 pay periods (57.9%
3 of the 5,035 pay periods). Plaintiff extrapolated the same 57.9% rate for rest break violations,
4 which would equate to a maximum exposure of \$291,500 (\$100 penalty per pay period multiplied
5 by 2,915 pay periods, which is 57.9% x 5,035 pay periods). As such, the aggregate maximum
6 exposure for meal break and rest break claims would be \$437,250. Assuming that Plaintiff's
7 calculations and analysis are accurate, the maximum exposure presumes that the Court will not
8 reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. For the rest period
9 violations, it also presumes that the meal and rest period violation rates were identical. MM, ¶
10 22.

11 There are risks to Plaintiff's meal and rest period claims. MM, ¶ 23. Defendant contends
12 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
13 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
14 So long as an employer provides employees with a "reasonable opportunity" to take a duty-free
15 meal period, it has no further duty to "police meal breaks and ensure no work thereafter is
16 performed." *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
17 or prohibited the employee from taking a proper break, or otherwise failed to release the
18 employee of all control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the
19 reason that a particular employee may have failed to take a meal break." *Washington v. Joe's*
20 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendant's time
21 records the exact reasons why a meal period appears to be short or late would be difficult and
22 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal
23 periods will be a challenge. Additionally, Defendants provided evidence at mediation that upon
24 receiving Plaintiff's July 21, 2023 LWDA Notice, they stopped auto-deducting the employees'
25 meal breaks on July 31, 2023. Moreover, STADCO's Employee Handbook contains legally
26 compliant meal period and rest break policies. MM, ¶ 23.

27 Defendant contends it provided its non-exempt employees with the opportunity to take
28 rest breaks in accordance with California law, and, accordingly, that Plaintiff's rest break claim

1 has no support. Additionally, there are other risks to Plaintiff's rest period claim. Employers are
2 not required to record rest periods and such periods are paid. Unlike meal periods, where there
3 are often records showing whether an employee clocked out or not, there is no such evidence to
4 prove a missed rest period or that the employer refused to authorize and permit one. MM, ¶ 24.

5 There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that
6 Defendant did not reimburse him or the other Aggrieved Employees for their tools and mobile
7 phone expenses. Defendant provided evidence at mediation that they provided all of the employees
8 with the necessary tools to perform their job and employees chose to bring and use their own
9 tools. Moreover, there is a risk that the Court may consider Plaintiff's claims as to Defendant's
10 alleged failure to indemnify for business expenses to be individual in nature. As such, Plaintiff's
11 Counsel had to significantly discount the value of this claim during settlement negotiations. MM,
12 ¶ 25.

13 Moreover, Plaintiff's counsel is unaware of any California State court decision awarding
14 a plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same
15 pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that
16 the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes.
17 Plaintiff's counsel had to substantially discount the value of these claims in the settlement
18 negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one
19 penalty for each pay period (regardless of the different Labor Code violations that potentially
20 occurred for the same employee, during the same pay periods). MM, ¶ 26.

21 Additionally, PAGA states a court has discretion to award a lesser amount than the
22 maximum penalty. *See Lab. Code*, § 2699, subd. (e)(2) ("...a court may award a lesser amount
23 than the maximum civil penalty amount specified by this part if, based on the facts and
24 circumstances of the particular case, to do otherwise would result in an award that is unjust,
25 arbitrary and oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management,*
26 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that
27 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
28 evidence of willful and intentional conduct. MM, ¶ 27. *Carrington v. Starbucks* (2018) 30

1 Cal.App.5th 504 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial
2 court’s heavily discounted award of only \$5 per violation because it was within the Court’s
3 discretion to significantly reduce PAGA penalties even when there is a finding that a violation
4 of the California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in
5 excess of \$70 million and was successful in proving the PAGA claim during a bench trial.
6 However, the trial court reduced the total award after trial to only \$150,000 (30,000 violations x
7 \$5) and stated that this reduction was warranted because imposing the maximum penalty would
8 be “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
9 meal break obligations and because the Court found the violations were minimal. Applying the
10 same formula here and assuming there was one violation during each pay period, the award of
11 civil penalties could not exceed \$25,635 in PAGA penalties (5,127 violations x \$5). As such, this
12 Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
13 formula. Defendants have also posed formidable defenses to the Labor Code claims underlying
14 Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
15 Settlement Amount is uncertain. MM, ¶ 27.

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

23 The settlement of the representative PAGA claim involves monetary relief to all
24 Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is
25 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
26 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
27 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
28 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees

1 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
2 civil penalties can pursue any damages they believe they are owed by the Defendants. The
3 Settlement does not require them to opt out to do so. MM, ¶ 29.

4 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
5 support a significant downward departure from Plaintiff's estimated civil penalties amount. In
6 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
7 for these claims and is in the best interest of Plaintiff and Aggrieved Employees and thus,
8 warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3,
9 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable,
10 adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of the current
11 economic climate, and are the product of good faith, and informed arms-length negotiations
12 between the Parties consistent with public policy and fully comply with applicable provisions of
13 law. MM, ¶ 30.

14 As such, the settlement of PAGA penalties in the gross sum of \$205,000.00, of which
15 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs
16 (\$92,945.82) will be paid to the LWDA and 25% (\$30,981.94) will be distributed to the
17 Aggrieved Employees, is reasonable and appropriate under the circumstances. MM, ¶ 31.

18 **4. Each PAGA Employee Will Be Paid Based on the Potential Extent of His or Her**
19 **Injury Compared to Other Aggrieved Employees**

20 Each PAGA Employee will receive a portion of the civil penalties on a pro-rata basis
21 depending on the number of pay periods Defendants employed them for during the PAGA Period.
22 Agreement, ¶ 3.2.3.1. With a total of 92 Aggrieved Employees, the average estimated Individual
23 PAGA Payment for each Aggrieved Employee is approximately \$336.76 (25% of the estimated
24 PAGA Penalties of \$30,981.94) / 92 Aggrieved Employees). This is a great result given the
25 uncertainties this lawsuit entails. MM, ¶ 32.

26 **5. Counsel for the Parties Are Experienced in Similar Litigation**

27 Plaintiff's counsel has considerable experience in wage and hour litigation and is
28 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with

litigation, and viability of possible affirmative defenses. See MM, ¶¶ 14-18, 38. Similarly, Defendant’s counsel, Daniel Parker Jett of Freeman, Mathis & Gary LLP, has broad experience in handling employment matters and wage and hour litigation. MM, ¶ 38.

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

Of the \$205,000.00 allocated towards the GSA, Plaintiff’s counsel requests \$68,333.33 (33% of the GSA) in attorney’s fees and \$9,355.43 in litigation costs, which is fair and reasonable. MM, ¶ 36-37.

It is an accepted practice in wage and hour class action settlements to award attorneys’ fees to Plaintiff’s counsel based on a percentage of the total settlement value agreed upon by the parties. California courts have long recognized that an appropriate method for awarding attorneys’ fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49 [“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

“[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA settlements. MM, ¶ 36.

Plaintiff’s counsel’s previous experience in litigating wage and hour class and representative actions and the caliber of opposing counsel also support the reasonableness of the fee request. MM, ¶ 38. The award of attorneys’ fees sought is also justified by the contingency nature of the attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff’s Counsel has achieved

1 for the Aggrieved Employees. *Id.*

2 In addition, Plaintiff's Counsel incurred substantial costs, \$9,355.43 to date, including the
3 costs of a mediator, to aid in the representation of the Aggrieved Employees. MM, ¶ 39, Ex.7. As
4 the evidence submitted herewith shows, all of these costs are documented and reasonably
5 incurred. *Id.* Accordingly, they warrant the Court's approval.

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

8 With regard to the settlement administration costs provision, it is reasonable. Before
9 agreeing to Phoenix Class Action Administration Solutions ("Phoenix"), the Parties sought and
10 reviewed bids from other reputable third-party administrators and Phoenix's bid was comparable.
11 MM, ¶ 40, Ex. 8. *See generally* Declaration of Michael Moore. Thus, the settlement
12 administration costs provision should be given approval.

13 **V. CONCLUSION**

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

16 Respectfully submitted,

17 MM LAW, APC

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19 Dated: September 16, 2024

20 By: Maralle Messrelian
21 Maralle Messrelian
22 Attorneys for Plaintiff,
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