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ANDRES IBARRA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

(UNLIMITED JURISDICTION)

ANDRES IBARRA,

Plaintiff,

vs.

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

Defendants.

Case No.: 23STCV26591

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

Action filed: October 30, 2023

Hearing Date: October 8, 2024

Hearing Time: 8:30 a.m.

Hearing Dept: 76, Hon. Christopher K.
Lui

Reservation Number: 528939987841

**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 Andres Ibarra (individually, “Ibarra” or “Plaintiff”) in his lawsuit against Defendants STADCO and Brett Matta (collectively “Defendants” or “STADCO”).

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**. A true and correct redline comparison of the PAGA Agreement to the Model LASC PAGA Agreement is attached hereto as **Exhibit 2**.

4. A true and correct copy of the parties agreed upon notice to the below-defined Aggrieved Employees (the “PAGA Notice”) is attached hereto as **Exhibit 3**.

Factual and Procedural Background

5. STADCO began to employ Plaintiff in or around November 1998 to work at its facility located at 107 S. Avenue 20 in Los Angeles, California. Plaintiff commenced his employment in a janitorial capacity, but eventually progressed to become a welding technician. Plaintiff continuously worked for Defendants for the next twenty-five years until his employment ended on June 15, 2023. Plaintiff’s last day worked for Defendant was on or about September 26, 2022.

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 July 21, 2023, Plaintiff, on behalf of himself and STADCO’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 Defendants of the specific provisions of the California

1 Labor Code alleged to have been violated, including the facts and theories to support the alleged
2 violations. The specific provisions alleged to have been violated in the PAGA notice letter
3 included Labor Code sections 201, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 558.1,
4 1174, 1174.5, 1193.6, 1194, 1197, 1198, 2802, and 2804, and Industrial Welfare Commission
5 Wage Order No. 1, sections 2(E), 7, 11- and 12. A true and correct copy of Plaintiff's letter to
6 the LWDA is attached hereto as **Exhibit 4**.

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

20 8. Upon mutual agreement of the parties, on June 26, 2024, the parties participated
21 in a full-day mediation session with professional neutral Todd A. Smith.

22 9. At the mediation, the parties agreed to settle the Action. Before agreeing to the
23 terms of the Settlement, the Parties engaged in informal discovery regarding STADCO's
24 policies, practices, operations, time and payroll information and other topics. In advance of
25 mediation, Defendant produced Plaintiff's personnel file, timekeeping records and earnings
26 statements. Moreover, prior to the mediation, Defendant provided Plaintiff's counsel with
27 information and documents relating to other Aggrieved Employees, including timekeeping and
28 payroll data. Through extensive, arm's length negotiations at the mediation, and only after

1 discovery and investigation were performed, the parties agreed to settlement terms. Now that
2 the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for approval.

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

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

16 12. The Settlement of a PAGA claim requires court approval. Lab. Code §2699(1)(2).
17 The Court necessarily has broad discretion in making the decision to approve or reject a
18 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
19 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
20 of penalties based on the facts and circumstances of the particular case. Although the PAGA
21 does not set forth the particular standards against which a PAGA settlement should be evaluated,
22 the LWDA has provided guidance for approval that mirrors the standards for evaluating class
23 action settlements.

24 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
25 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
26 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
27 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.
28 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must

1 be given notice of the settlement so that it may be heard before the Court decides whether to
2 grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA
3 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with
4 the LWDA and a confirmation email is attached as **Exhibit 9**. As a result, Plaintiff has met all
5 procedural statutory requirements for settling a PAGA action.

6 ***Background of Counsel***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al.*, Fresno

1 County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA
2 settlement by the court)

3 n) *Kevin Littleton v. Lincoln Military Property Management LP., San Diego*
4 County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment
5 approving PAGA settlement by the court)

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

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

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

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

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

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

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

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

28 w) *Mariana Ruelas v. Vista La Mesa Senior Living, Inc., et al., San Diego*

1 Superior Court, Case No. 37-2023-00050755-CU-OE-CTL (order and judgment approving
2 PAGA settlement by the court).

3 x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al.*, Santa Clara Superior
4 Court, Case No. 23CV422622 (order and judgment approving PAGA settlement by the court).

5 y) *Irma Tapia v. Posada Associates, et al.*, Santa Cruz Superior Court, Case No.
6 23CV00355 (order and judgment approving PAGA settlement by the court).

7 ***Exposure and Risk Analysis***

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

17 20. I considered various sources of information in the lead-up to the mediation of
18 June 26, 2024 that enabled Plaintiff to achieve the Settlement at issue. Among other things,
19 Plaintiff considered the following:

- 20 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 21 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
22 overtime and double-time wages, off the clock work, expense reimbursement, meal
23 periods, rest breaks, meal period waivers and agreements, compensation plans, and
24 complaints about working conditions in effect during the relevant time period beginning
25 in July of 2022. Defendant produced those policies as part of their employee handbook.
- 26 • Plaintiff's counsel requested that Defendant provide the total number of employees,
27 paychecks, and the pay cycles during the relevant period. Defendant provided the
28 answers to each of these questions.
- Defendant provided Plaintiff's counsel with anonymized payroll and time punch data for
all of its California non-exempt employees covering the period covering the period July

21, 2022, through April 30, 2024.

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

21. Defendant estimated for purposes of mediation that, through April 30, 2024, there were approximately 92 Aggrieved Employees who incurred 5,127 pay periods during the relevant period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. Based on this information, 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. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of approximately 437,250 for civil penalties for Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant strongly disputes, revealed a 57.9% violation rate for either late, short, or no meal periods for shifts over 5 hours. Since the total number of pay periods in the PAGA period through April 30, 2024, was 5,127 and since approximately 98.2% of the shifts in the data analysis were over 5 hours, the total number of pay periods to consider for potential meal break violations was 5,035 (98.2% x 5,127 pay periods). As such, with the 57.9% violation rate, the maximum exposure would be \$145,750, which is calculated as \$50 penalty multiplied by 2,915 pay periods (57.9% of the 5,035 pay periods). Plaintiff extrapolated the same 57.9% rate for rest break violations, which would equate to a maximum exposure of \$291,500 (\$100 penalty per pay period multiplied by 2,915 pay periods, which is 57.9% x 5,035 pay periods). As such, the aggregate maximum exposure for meal break and rest break claims would be \$437,250. Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure

1 presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or
2 confiscatory. For the rest period violations, it also presumes that the meal and rest period
3 violation rates were identical

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

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

26 25. There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges
27 that Defendant did not reimburse him or the other Aggrieved Employees for their tools and
28 mobile phone expenses. Defendant provided evidence at mediation that they provided all of the

1 employees with the necessary tools to perform their job and employees chose to bring and use
2 their own tools. Moreover, there is a risk that the Court may consider Plaintiff's claims as to
3 Defendant's alleged failure to indemnify for business expenses to be individual in nature. As
4 such, I had to significantly discount the value of this claim during settlement negotiations.

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

13 27. Additionally, PAGA states a court has discretion to award a lesser amount than
14 the maximum penalty. *See Lab. Code*, § 2699, subd. (e)(2) ("...a court may award a lesser amount
15 than the maximum civil penalty amount specified by this part if, based on the facts and
16 circumstances of the particular case, to do otherwise would result in an award that is unjust,
17 arbitrary and oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management,*
18 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that
19 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
20 evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
21 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
22 discounted award of only \$5 per violation because it was within the Court's discretion to
23 significantly reduce PAGA penalties even when there is a finding that a violation of the
24 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
25 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
26 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
27 that this reduction was warranted because imposing the maximum penalty would be "unjust,
28 arbitrary, and oppressive", based on Starbucks's "good faith attempts" to comply with meal break

1 obligations and because the Court found the violations were minimal. Applying the same formula
2 here and assuming there was one violation during each pay period, the award of civil penalties
3 could not exceed \$25,635 in PAGA penalties (5,127 violations x \$5). As such, this Settlement is
4 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
5 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff's
6 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
7 Amount is uncertain.

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

15 29. The settlement of the representative PAGA claim involves monetary relief to all
16 PAGA Employees, Plaintiff, his attorneys, and the State of California. The Settlement is
17 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
18 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
19 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
20 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees
21 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
22 civil penalties can pursue any damages they believe they are owed by the Defendants. The
23 Settlement does not require them to opt out to do so.

24 30. Furthermore, Plaintiff recognizes that continued litigation presents significant
25 risks that support a significant downward departure from Plaintiff's estimated civil penalties
26 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
27 compromise amount for these claims and is in the best interest of Plaintiff and PAGA Employees
28 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 Defendants, 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 \$205,000.00, of which 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs (\$92,945.82) will be paid to the LWDA and 25% (\$30,981.94) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

Individual PAGA Payments

32. Defendants represent that at the time of mediation there were approximately 92 Aggrieved Employees during the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees Payment (\$68,333.33) and PAGA Counsel's Litigation Expenses Payment (\$9,355.43), and the Administration Costs (\$3,383.48), the Net Settlement Amount will be approximately \$123,927.76 allocated as PAGA Penalties. Seventy five percent (75%) of the PAGA Penalties will be paid to the Labor and Workforce Development Agency ("LWDA") (\$92,945.82), and twenty five percent (25%) (\$30,981.94) of the PAGA Penalties will be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Agreement, ¶ 3.2. With a total of 92 Aggrieved Employees, the average estimated Individual PAGA Payment for each Aggrieved Employee is approximately \$336.76 (25% of the estimated PAGA Penalties of \$30,981.94 / 92 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails.

Plaintiff's Individual Settlement

33. Plaintiff negotiated an individual settlement agreement separate from the PAGA Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual settlement agreement was to settle his individual wage and hour claims, disability discrimination, retaliation, and wrongful termination claims.

34. As part of this confidential agreement, Plaintiff also provided Defendants with a

1 general release of all claims, whether known or unknown, including unknown claims covered
2 by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved
3 Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained
4 contact with my office and helped me gather information and evidence to prove the alleged
5 claims and has agreed to remain involved as a PAGA representative even if the Court does not
6 approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has
7 no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement
8 to the Court *in camera* for review if the Court requests. It represents a fair resolution for
9 Plaintiff's individual wage and hour claims and claims for disability discrimination/retaliation
10 and wrongful termination. *See generally* Declaration of Andres Ibarra.

11 35. The PAGA statute does not forbid service awards. Courts frequently award them
12 in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co.* (S.D. Cal. Sept.18, 2018),
13 2018 WL 4489590, at *2 (approving an incentive award of \$5,000 to named plaintiff in a PAGA-
14 only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013
15 WL 12415482, at *2 (awarding an incentive award of \$3,000 to a named plaintiff in a PAGA-
16 only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking
17 with our office on many occasions by phone, explaining what his employment at STADCO was
18 like, explaining what his employment at STADCO had in common with other employees who
19 worked for STADCO, explaining his claims to me and my staff, participating in mediation, and
20 communicating with me and my staff about the settlement agreement and related documents.
21 Despite this, Plaintiff is **not** asking for a service award for his involvement and the time he spent
22 assisting my firm with the PAGA action. *See generally* Declaration of Andres Ibarra.

23 *Attorneys' Fees and Costs*

24 36. I represent Plaintiff on a straight contingency basis. My firm's request for
25 \$68,333.33 in attorney fees and \$9,355.43 in litigation costs is fair and reasonable. "[R]egardless
26 whether the percentage method or the lodestar method is used, fee awards in class actions average
27 around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66,
28 fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*")

1 [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129
2 F.3d 1026, 1027 (“MGM”) (awarding 33% of total fund amount).) This is also consistent with my
3 experience in wage and hour class and PAGA settlements.

4 37. To date, I have investigated and prosecuted this matter vigorously, including
5 drafting the initial PAGA notice and Complaint; drafting informal discovery questions, reviewing
6 Defendants’ informal document production, including wage and hour policies; sending and
7 receiving emails on the case with defense counsel, including substantive discussions; sending the
8 PAGA data to Plaintiff’s expert for review/analysis and reviewing the expert’s
9 findings/conclusions; drafting a comprehensive mediation brief and engaging in a private
10 mediation; and drafting this PAGA approval motion. I also expect to perform additional work on
11 this case if the Court grants final approval of the Settlement, including supervision of the
12 Administrator’s disbursement of the settlement funds to the Aggrieved Employees.

13 38. My previous experience in litigating wage and hour actions also supports the
14 reasonableness of the fee request. Based on past experience with similar matter, I was able to
15 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.
16 Because it is reasonable to compensate me commensurate with my skill, reputation, and
17 experience, attorney’s fees of approximately one-third of the Gross Settlement Amount is
18 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
19 litigation, Daniel Parker Jett of Freeman, Mathis & Gary LLP, also supports the fairness and
20 reasonableness of the requested fee award. The award of attorneys’ fees sought is justified here
21 by the contingency nature of the attorney-client relationship, the risks of non-payment and non-
22 reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff’s
23 Counsel has achieved for the Aggrieved Employees while bearing the substantial burdens of
24 contingency representation.

25 39. In addition, my firm incurred substantial costs, \$9,355.43 to date, which consist of
26 mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct
27 summary of my firm’s costs and expenses incurred to date is attached as **Exhibit 7** to this
28 declaration. I will make detailed copies of such records available to the Court for *in camera*

1 inspection upon its request. As the evidence submitted herewith shows, all of these costs are
2 documented and reasonably incurred. Accordingly, they warrant the Court's approval.

3 ***Settlement Administration Costs***

4 40. With regard to the settlement administration costs provision, it is reasonable.
5 Before agreeing to Phoenix Class Action Administration Solutions ("Phoenix"), the parties
6 sought and reviewed bids from other reputable third-party administrator and Phoenix's bid was
7 comparable. A true and correct copy of the bid from Phoenix Class Action Administration
8 Solutions is attached hereto as **Exhibit 8**. Furthermore, the Declaration of Michael Moore with
9 attached exhibits, filed under separate cover, sets forth Phoenix's qualifications and costs to
10 administer the settlement. *See generally* Declaration of Michael Moore. Thus, the settlement
11 administration costs provision should be given approval.

12 ***Notice of Settlement to the LWDA***

13 41. Pursuant to Lab. Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement
14 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
15 copies of Plaintiff's submission with the LWDA and the confirmation email are collectively
16 attached as **Exhibit 9** to this declaration.

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

19 Executed on September 16, 2024 , at Glendale, California.

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22 MARALLE MESSRELIAN,
23 Declarant
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