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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA
(*UNLIMITED JURISDICTION*)

SAHID IRAD MAGANA SEGURA, *Plaintiff*, vs. DWH RESTAURANTS, INC.; DANIEL WILLIAM HOLDER.; and DOES 1 to 25, inclusive, *Defendants*.	Case no.: 24CV428664 **NOTICE OF PLAINTIFF'S MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Action filed: January 5, 2024 Hearing Date: October 2, 2025 Hearing Time: 1:30 p.m. Hearing Dept: 7, Hon. Charles F. Adams <u>Submitted Herewith Under Separate Cover:</u> 1. Memorandum of Point and Authorities; 2. Declaration of Harout Messrelian; 3. Declaration of Maralle Messrelian; 4. Declaration of Sahid Irad Magana Segura; 5. Declaration of Lisa Mullins; and 6. [Proposed] Order and Judgment Approving PAGA Settlement.

TO ALL PARTIES, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 2, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department 7 of the Santa Clara County Superior Court, located at 191 N. First St., San Jose, CA 95113, Plaintiff Sahid Irad Magana Segura ("Plaintiff" or "Segura") will and hereby does move this Court for an order approving the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement") and entering the [Proposed] Order and Judgment Approving PAGA Settlement.

The PAGA Settlement is on behalf of Segura and all persons within the State of California who are or were employed by Defendant DWH Restaurants, Inc. ("Defendant" or "DWH") during the PAGA Period of September 26, 2022 to March 12, 2025 (the "Aggrieved Employees"). Plaintiff alleges that Defendant is liable to him and other Aggrieved Employees for (1) failure to compensate for all hours worked, including minimum and overtime wages; (2) failure to provide accurate, itemized wage statements; (3) failure to pay all wages owed during and at the end of employment; (4) failure to maintain accurate records; (5) failure to give rest breaks and meal breaks; and (6) failure to reimburse for business expenses.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the declarations of Harout Messrelian, Maralle Messrelian, Sahid Irad Magana Segura, and Lisa Mullins, the PAGA Settlement, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: September 9, 2025

By: Maralle Messrelian

Harout Messrelian
Maralle Messrelian (Of Counsel)
Attorneys for Plaintiff, Sahid Irad Magana Segura

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sahid Irad Magana Segura ("Plaintiff" or "Segura") submits this memorandum of points and authorities in support of his motion for approval of the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement")[1] for the civil penalties claim he brought against Defendant DWH Restaurants, Inc. ("Defendant" or "DWH") under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). Plaintiff brings this motion because Labor Code section 2699(*l*)(2) of the PAGA requires Court-approval of any civil penalties sought as part of a proposed settlement agreement. Through this motion, Plaintiff respectfully requests for this Court to approve the PAGA Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff started working for DWH at its Jack Holders Bar & Grill on or around mid-2023. Plaintiff's employment with DWH ended on or around September 2023. HM, ¶ 5.

A. Plaintiff's Written Notice to the State of California

Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the PAGA. On September 26, 2023, Plaintiff, on behalf of himself and Defendant'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. HM, ¶ 6, Ex. 3.

B. Plaintiff's Lawsuit

On January 5, 2024, Plaintiff filed a Complaint alleging the following relevant causes of action against Defendant: 1) Failure To Compensate For All Hours Worked; 2) Failure To Pay Minimum Wages; 3) Failure To Pay Overtime; 4) Failure To Provide Accurate Itemized Wage Statements; 5) Failure To Pay Wages Owed Every Pay Period; 6) Failure To Pay Wages When

[1] The PAGA Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of Harout Messrelian ("HM"), which is submitted herewith under a separate cover.

Employment Ends; 7) Failure To Give Rest Breaks; 8) Failure To Give Meal Breaks; 9) Failure To Reimburse Business Expenses; 10) Private Attorneys General Act ("Paga"); 11) Failure To Provide Personnel Records; 12) Failure To Provide Pay Records; 13) Discrimination On The Basis Of Physical Disability In Violation Of Fair Employment And Housing Act ("FEHA"); 14) Failure To Accommodate Physical Disability In Violation of FEHA; 15) Failure To Engage In Interactive Process To Determine Reasonable Accommodation Of FEHA; 16) harassment Based On Race/Ethnicity/National Origin/Ancestry In Violation Of FEHA; 17) Retaliation In Violation of FEHA; 18) Failure To Prevent Discrimination, Harassment, And Retaliation In Violation Of FEHA; 19) Wrongful Termination In Violation Of Public Policy; 20) Harassment On The Basis Of Physical Disability In Violation Of FEHA; 21) Violation Of California Business And Professions Code Section 17200. HM, ¶ 7, Ex. 4. On July 3, 2024, Defendant filed its Answer to Plaintiff's Lawsuit. *Id*., Ex. 5.

C. Mediation With Kael Briski

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. HM, ¶ 8. On March 12, 2025, the parties attended a full day mediation session with mediator Kael Briski, Esq. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor Code § 2698, et seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendant produced Plaintiff's personnel file, including time and payroll data through data sampling. Moreover, prior to the mediation, Defense counsel provided Plaintiff's counsel with information and documents relating to other Aggrieved Employees, including time 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. HM, ¶ 9.

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. HM, ¶ 10.

III. OVERVIEW OF SETTLEMENT

A. "Aggrieved Employees" Definition

The Aggrieved Employees all individuals who are, or were, employed by Defendant DWH Restaurants, Inc. as non-exempt employees in California during the PAGA Period. Agreement, ¶ 1.4, The PAGA Period means September 26, 2022 through March 12, 2025. Agreement, ¶ 1.19.

B. Monetary Terms Of The Settlement

Defendant has agreed to pay a total of $157,500.00 ("Gross Settlement Amount" or "GSA") to settle the PAGA lawsuit. In consideration for the release of all claims of Plaintiff and the Aggrieved Employees against Defendant (described more fully below), Defendant agreed to pay $157,500.00 toward the GSA from which all settlement payments for the Aggrieved Employees, Court approved attorneys' fees and costs, and settlement administration costs shall be paid. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis calculated based on the total number of pay periods each Aggrieved Employee worked as a non-exempt hourly employee in California during the PAGA Period. Agreement, ¶¶ 3.1-3.2; The GSA will be divided as follows:

1. PAGA Counsel's Fees amounting to $52,500 (1/3 of the GSA), and PAGA Counsel's Litigation Costs in the amount of $7,006.42 (the Agreement provides up to $8,000);

2. "Settlement Administrator's Costs" of $3,950.00 to ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to administer the Settlement;

3. Approximately $94,043.58 ("Net Settlement Amount"), divided as follows:
   a. $ 70,532.69 to the LWDA (75%) (the "LWDA Payment"); and
   b. $ 23,510.90 to the Aggrieved Employees (25%) ("PAGA Group Payment" or "PAGA=GP")

Agreement, ¶ 3.2.

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C. Funding and Distribution of the Settlement

DWH Restaurants, Inc. shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date.[2] Agreement, ¶ 4.3.

Within thirty (30) days of the Effective Date, Defendant will provide to the Settlement Administrator the "Aggrieved Employees' Data," which shall consist of an electronic database containing each Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods. Agreement, ¶ 1.5, 4.2.

Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will issue each Aggrieved Employee their Individual PAGA Payment along with the Notice of PAGA Settlement (Exhibit 2 to HM Declaration) by First-Class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. Agreement, ¶ 4.4.1. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. Agreement, ¶ 4.4.2. The Settlement Administrator will also issue the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment.

D. Individual PAGA Payments and Uncashed Checks

The settlement checks issued to Aggrieved Employees will remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty (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 Aggrieved Employee. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator if required by law. Agreement, ¶¶ 3.2.3.2., 4.4.1, 4.4.3.

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[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.

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

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, PAGA Counsel, 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 DWH Restaurants, Inc. and Daniel William Holder and each of their former and present directors, officers, 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 PAGA Released 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, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and IWC Wage Order 5, §§ 7, 11-12.

Agreement, ¶¶ 1.25-1.26, 5.1-5.3.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

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. *See id.* at § 2699(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. HM, ¶ 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 Synocor 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 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. HM, ¶ 13, Ex. 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. HM, ¶¶ 13, 40, Ex. 10. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

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

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

> the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class 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.

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

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 total number of pay periods during the PAGA Period, all policies in effect during the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced with PAGA cases. HM, ¶ 14. Moreover, neither Plaintiff nor Plaintiff's Counsel have any conflicts of interest with the absent Aggrieved Employees and there are no issues of ascertainability. HM, ¶ 14. For the reasons discussed below, this Court should approve the PAGA Settlement.

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

The PAGA Settlement was reached only after litigation and arms' length negotiations between experienced attorneys, which included a full day mediation with Kael Briski, Esq. At all times, the negotiations were adversarial and contentious, although still professional in nature. HM, ¶ 9.

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. Plaintiff's counsel is 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, especially in this post pandemic era, where businesses are struggling to remain afloat, much less prosper and make a large profit. HM, ¶ 11.

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

Plaintiff considered various sources of information in the lead-up to and during the mediation of March 12, 2025 that enabled him to achieve the PAGA Settlement at issue. HM, ¶ 15. Among other things, Plaintiff considered the following:

- Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- Plaintiff's counsel 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 September of 2022. Defendant produced those policies as part of its employee handbook.
- Plaintiff's counsel 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's counsel requested a 20% sample of time and payroll records for the relevant time period. The Parties agreed to a sampling of time and pay records for 20% of the Pay Periods in the PAGA Period.

- 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.

HM, ¶ 15.

3. <u>The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation</u>

Defendant estimated for purposes of mediation there were approximately 109 Aggrieved Employees who worked approximately 4500 pay periods during the PAGA Period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. HM, ¶ 16. 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.

Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of approximately $316,600 for civil penalties for Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant vehemently disputes, revealed a 54.3% violation rate for either late, short, or no meal periods for shifts over 6 hours. Since the total number of pay periods in the PAGA period was 4,500 and since approximately 93.8% of the shifts in the sample analysis were over 3.5 hour and 72% 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 3,240 (72% x 4,500 pay periods) and for rest break violations was 4,221 (93.8% x 4,500 pay periods). As such, with the 54.2% violation rate, the maximum exposure for meal violations would be $87,800, which is calculated as $50 penalty multiplied by 1,756 pay periods (54.2% of the 3,240 pay periods). Plaintiff extrapolated the same

54.2% rate for rest break violations, which would equate to a maximum exposure of $228,800 ($100 penalty per pay period multiplied by 2,288 pay periods, which is 54.2% x 4,221 pay periods). As such, the aggregate maximum exposure for meal break and rest break claims would be $316,600. Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. For the rest period violations, it also presumes that the meal and rest period violation rates were identical. HM, ¶ 17.

There are risks to Plaintiff's meal and rest period claims. HM, ¶ 18. 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 Defendant'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, Defendant provided evidence that they provide employees with the opportunity to take meal and rest breaks and paid meal premium payments throughout the PAGA Period. Moreover, meal period premium payments were observed in the sample records. In addition, DWH's Handbook contains legally compliant meal period and rest break policies. HM, ¶ 18.

Defendant contends they provided their non-exempt employees with the opportunity to take rest periods in accordance with California law, and, accordingly, 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. HM, ¶ 19.

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 bonus payments seen in the sample. As it relates to any overtime issues, the data showed the average workday was 6.3 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. Moreover, Defendant provided overall strong written policies as it related to wage and hour practices and showed that Plaintiff acknowledged the policies. There are also risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that Defendant did not reimburse him or the other Aggrieved Employees for uniform items. Defendant provided evidence at mediation that it provided its employees with all uniform items. Moreover, there is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature. As such, Plaintiff's Counsel had to significantly discount the value of this claim during settlement negotiations. Plaintiff's other claims for violations of Labor Code sections 203, 204, and 226 (for not being paid all wages owed every pay period or at the end of employment as well as not receiving accurate, itemized wage statements) would not be triggered since they are derivative claims, and no rounding/overtime issues were identified. Based on the above calculations, Plaintiff's aggregate exposure for the strongest disputed claims would be $316,600. Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. Based on the above analysis, a gross settlement in the amount of $157,500, which represents approximately 49.75% of the maximum penalty calculation for the strongest claims for meal and rest break violations, is a very strong result, especially in light of the risk factors as discussed above. HM, ¶ 20.

Moreover, Plaintiff's counsel is unaware 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. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. 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). HM, ¶ 21.

Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. *See* Lab. Code § 2699(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. HM, ¶ 22. *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 $22,500 in PAGA penalties (4,500 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. HM, ¶ 22.

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. HM, ¶ 23.

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. HM, ¶ 24.

Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated civil penalties amount. 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 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. HM, ¶ 25.

As such, the settlement of PAGA penalties in the gross sum of $157,500.00, of which

75% of the net amount after attorney's fees, litigation costs, and settlement administration costs ($70,532.69), will be paid to the LWDA and 25% ($23,510.90) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. HM, ¶ 26.

4. <u>Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees</u>

Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis depending on the number of pay periods Defendant employed them for during the PAGA Period. Agreement, ¶ 3.2.3.1. With a total of 109 Aggrieved Employees, the average estimated individual PAGA payment for each Aggrieved Employee is approximately $215.70 ($23,510.90 [25% of the estimated PAGA Penalties]) / 109 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails. HM, ¶ 27.

5. <u>Counsel for the Parties Are Experienced in Similar Litigation</u>

Plaintiff's counsel has considerable experience in wage and hour litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Similarly, Defendant's counsel, Daniel J. Muller of Ventura Hersey & Muller, LLP, has vast experience in handling employment matters and wage and hour litigation. *See* HM, ¶¶ 2, 36; Declaration of Maralle Messrelian ("MM"), ¶¶ 5-7.

6. <u>The Proposed Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable and Should Be Approved.</u>

Of the $157,500.00 allocated towards the GSA, Plaintiff's counsel requests $52,500.00 (1/3 of the GSA) in attorney's fees and $7,006.42 in litigation costs, which is fair and reasonable. HM, ¶ 31.

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.)

California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern*, *Inc*. (2016) 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made clear that this cross-check is not required and approved one-third of the class action settlement fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California class action cases...." *Id.* at 574. As other courts have acknowledged since *Laffitte, "*California courts routinely award attorneys' fees of one-third of the common fund." *Lopez v. Mgmt. & Training Corp*., 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not "engage in a full-blown lodestar analysis when the primary basis remains the percentage method…" The lodestar calculation is merely a "useful perspective on the reasonableness of a given percentage award." *Id. See also Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 ("Trial courts 'also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.'"[3] *Id.* (citing *Laffitte*)).

"[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. HM, ¶ 31.

Should the Court elect to use Plaintiff's Counsel's lodestar as the method for awarding

[3] The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to unpublished decisions from the lower federal courts. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18 ["Citing unpublished federal opinions does not violate our rules."].) Like published decisions of the lower federal courts, unpublished decisions are not binding on us even on questions of federal law, but they are persuasive authority. (*Western Heritage Ins*. *Co*. *v*. *Frances Todd*, *Inc*. (2019) 33 Cal.App.5th 976, 989, fn. 6.)

fees, notwithstanding courts' clear preference for the percentage method, Plaintiff's Counsel's fee request of $52,500 (1/3 of GSA) is fair and reasonable based on their lodestar as cross-checked against the percentage of the recovery. HM, ¶¶ 32-34, MM, ¶ 8-10. 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. HM, ¶ 36, MM, ¶¶ 5-7. 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 for the Aggrieved Employees. HM, ¶ 37.

In addition, Plaintiff's Counsel incurred substantial costs, $7,006.42 to date, including the costs of a mediator, to aid in the representation of the Aggrieved Employees. HM, ¶ 35, Ex. 6. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. *Id*. Accordingly, they warrant the Court's approval.

7. <u>The Proposed Settlement Administration Costs Are Fair and Reasonable and Should Be Approved.</u>

With regard to the settlement administration costs provision, it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. HM, ¶¶ 38-39, Exs. 7-9. *See generally* Declaration of Lisa Mullins. Thus, the settlement administration costs provision should be given approval.

<u>V. CONCLUSION</u>

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

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: September 9, 2025

By: Maralle Messrelian

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