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Attorneys for Plaintiff,

RUBEN ORTIZ SALGADO, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

(UNLIMITED JURISDICTION)

RUBEN ORTIZ SALGADO, on behalf of
himself and all others similarly situated, and
the general public, and as an “Aggrieved
Employee” on behalf of other “Aggrieved
Employees” under the Private Attorneys
General Act of 2004,

Plaintiff(s),

vs.

BOB BAFFERT RACING, INC., a
California corporation; and DOES 1 to 25,
inclusive,

Defendants.

Case No.: 24STCV00686

**DECLARATION OF MARALLE
MESSRELIAN IN SUPPORT OF
PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Action filed: 1/9/2024
Hearing Date: 10/22/2024
Hearing Time: 10:00 a.m.
Hearing Dept: SSC-6, Hon. Elihu M.
Berle

1 **DECLARATION OF MARALLE MESSRELIAN IN SUPPORT OF PLAINTIFF’S**
2 **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF JOINT**
3 **STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

4 I, MARALLE MESSRELIAN, declare as follows:

5 1. I am an attorney duly licensed to practice law in the State of California and am
6 an attorney of record for Plaintiff Ruben Ortiz Salgado (“Plaintiff”) in his lawsuit against
7 Defendant Bob Baffert Racing, Inc. (“Defendant”). Plaintiff and Defendant are collectively
8 referred to as the “Parties”.

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

11 3. The Joint Stipulation of Class Action and PAGA Settlement and Release (the
12 “Settlement”) is attached hereto as **Exhibit 1**.

13 ***Factual and Procedural Background***

14 4. Defendant Bob Baffert Racing, Inc. first began to employ Plaintiff in or around
15 June 2023 as a horse groomer to work at the Los Alamitos Race Course. Plaintiff’s job title was
16 “Extra Groom” and his job duties included taking care of the same five horses, cleaning the
17 stable, bathing the horses, and walking the horses, among others.

18 5. On September 15, 2023 Plaintiff notified Defendant and the California Labor
19 and Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
20 General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”), of alleged Labor
21 Code violations committed by Defendant. A true and correct copy of the letter to the LWDA
22 dated September 15, 2023 is attached hereto as **Exhibit 2**.

23 6. On January 9, 2024, Plaintiff filed a Class Action Complaint in the Los Angeles
24 Superior Court, Case No, 24STCV00686 against Defendant on behalf of himself and others
25 similarly situated, alleging causes of action on a class-wide basis for (1) Failure to Pay All
26 Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194,
27 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure
28 to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab.
Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
(6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203); (7) Civil
Penalties (Lab. Code §§ 2698, et seq.); and (8) Unfair Competition (Bus. & Prof. Code, §

17200 esq.). A true and correct copy of the complaint is attached hereto as **Exhibit 3**. On January 23, 2024, the Court issued its Initial Status Conference Order staying the case and Defendant's responsive pleading deadline. On February 27, 2024, Defendant filed a Notice of Appearance.

7. 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.

8. On June 4, 2024, the Parties attended and participated in good faith, arms' length settlement discussions at a mediation session with Laurie Quigley Saldaña, Esq., a highly experienced professional mediator. At the conclusion of the mediation, the Parties agreed to the material terms of the Settlement.

9. In advance of the mediation, and before agreeing to the terms of the Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendant produced its employee handbook, copies of Defendant's relevant company written policies, time-keeping records, and time and payroll data for a random sample of putative class members specifically selected by Plaintiff's counsel. Now that the Parties have finalized the long-form Settlement, Plaintiff submits it to this Court for preliminary approval.

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

Ascertainable and Numerous Class

11. A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. Here, Plaintiff maintains that the above-defined Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information from its records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

12. The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. The California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates that there are approximately 143 Class Members. Plaintiff maintains that it would be impractical and economically inefficient to require each Settlement Class Member to separately

maintain an individual action or be joined as a named plaintiff in this action. In light of these considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

13. A question of law or fact is common to the members of a class if it may be resolved through common proof. In this case, there are many predominant common questions. Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant's alleged uniform policy of failing to properly account for all time worked and failing to, among other things, properly pay minimum and overtime wages, provide off-duty meal and rest periods, indemnify Class Members for business expenses, timely pay wages during employment and upon separation of employment, and provide compliant wage statements, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the Class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the Class one additional hour of pay on workdays they failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant failed to indemnify the Class for all necessary business expenditures incurred during the discharge of their duties including, but not limited to, personal mobile phones; (5) Whether Defendant failed to provide the Class with paid sick leave and/or statements of sick leave available; Whether Defendant knowingly and intentionally failed to provide the Class with accurate and complete itemized wage statements; (6) Whether Defendant willfully failed to provide the Class with timely final wages; and (7) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class. Therefore, common questions predominate.

Typicality

14. Plaintiff contends that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff, like absent Class Members was subject to the same relevant policies and procedures governing his compensation, hours of work, and meal and rest periods. Because Plaintiff contends that he was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine

1 Defendant's *prima facie* liability to all the Class Members. Moreover, Plaintiff's claims could
2 potentially be subject to the same primary affirmative defenses as those of absent Class
3 Members. Accordingly, Plaintiff's claims are typical of the Class.

4 ***Adequacy***

5 15. The adequacy requirement is met where the plaintiff is represented by counsel
6 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic
7 to the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff
8 may represent the entire class absent any disabling conflicts of interest that might hinder the
9 plaintiff's ability to represent the class.

10 16. To the best of my knowledge, neither Plaintiff nor I have any conflicts of
11 interest with the absent Settlement Class Members. Plaintiff contends that he is an adequate
12 class representative. Plaintiff and the Class Members have strong and co-extensive interests in
13 this litigation because they all worked for Defendant during the relevant time period, allegedly
14 suffered the same alleged injuries from the same alleged course of conduct, and there is no
15 evidence of any conflict of interest between Plaintiff and the Class Members. Moreover,
16 Plaintiff has demonstrated his commitment to the Settlement Class by, among other things,
17 retaining experienced counsel, providing counsel with documents and extensively speaking
18 with them to assist in identifying the claims asserted in this case, and exposing himself to the
19 risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus,
20 Plaintiff is adequate to serve as Settlement Class Representative.

21 ***Background of Class Counsel***

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

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

28 19. I am experienced in handling employment law matters and specifically wage
and hour cases. I have been practicing law since 2017. My experience has been almost
exclusively in the area of employment law representing employees with claims of wrongful
termination, harassment, whistleblower retaliation, discrimination, wage and hour, and family

1 and medical leave violations. I am a member of the California Employment Lawyers
2 Association (CELA).

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

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

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

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

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

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

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

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

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

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

- 1 i) *Vikki Curl and Anthony J. Gratton v. Reel Security Corp., et al.*, Los
2 Angeles
3 County Superior Court, Case No. 18STCV09302 (granted final approval of class action
4 settlement by the court)
- 5 j) *Corrine Lashbrook and Joshua Sweat v. Andy's BP, Inc., et al.*, San Mateo
6 County Superior Court, Case No. 19CIV02344 (granted final approval of class action
7 settlement by the court)
- 8 k) *Stephen Aguirre and Christopher Walls v. Anlin Industries*, Fresno County
9 Superior Court, Case No. 17CECG04326 (order and judgment approving PAGA settlement by
10 the court)
- 11 l) *Rebecca Mallory v. Odyssey Healthcare Operating A, L.P.*, Kern County
12 Superior Court, Case No. BCV-19-102735 (order and judgment approving PAGA settlement
13 by the court)
- 14 m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al.*, Fresno
15 County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA
16 settlement by the court)
- 17 n) *Kevin Littleton v. Lincoln Military Property Management LP.*, San Diego
18 County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment
19 approving PAGA settlement by the court)
- 20 o) *Krystal Thomas v. Choice Physicians Network, Inc., et al.*, San Bernardino
21 County Superior Court, Case No. CIVDS2013964 (order and judgment approving PAGA
22 settlement by the court)
- 23 p) *Otina Sengvong v. Probuild Company, LLC, et al.*, United States District
24 Court, Southern District of California, Case No. 3:19-cv-02231-MMA (JLB) (granted final
25 approval of class action settlement by the court)
- 26 q) *Orland Perez Avalos v. Milagros Restaurant LLC, et al.*, San Mateo County
27 Superior Court, Case No. 22-CIV-01222 (order and judgment approving PAGA settlement by
28 the court)
- r) *David Xiqui Vasquez v. The Province LLC, et al.*, Santa Clara County
Superior Court, Case No. 22CV397541 (order and judgment approving PAGA settlement by
the court)

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

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

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

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

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

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

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

18 ***Class Action Treatment Is Superior***

19 22. A class action is also superior to other means adjudicating the issues in this
20 action. The predominance of common legal and factual questions shows that this Court could
21 fairly adjudicate the claims of Class Members through a single class action. In view of the
22 *theoretical* alternatives that proposed class members could potentially utilize—representative
23 PAGA action (where there is less relief available), individual civil lawsuits or wage claims
24 through the Division of Labor Standards Enforcement (where there would be relatively little
25 money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
26 superior to all of them. Thus, this consideration supports conditional class action treatment for
27 purposes of this Settlement only.

28 ***The Settlement is Presumptively Fair***

29 23. The class settlement here satisfies all of the *Kullar* factors. The Settlement
30 resulted from thorough, arms' length, negotiations between experienced counsel with the
31 assistance of a respected mediator after sufficient discovery was exchanged to assess the

1 relative strengths and weaknesses of their respective cases and Defendant's estimated exposure.
2 Both defense counsel and I are particularly experienced in employment law and wage and hour
3 class actions. We are experienced and qualified to evaluate the class claims, the viability of the
4 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
5 negotiated many wage and hour class settlements, including many involving the same issues
6 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
7 settlement in light of the complexities of the case and uncertainties of class certification and
litigation, and a fair result for the Class Members.

8 ***Exposure & Risk Analysis***

9 24. The Parties reached the Settlement through arm's-length bargaining with the aid
10 of a respected mediator. The Parties conducted sufficient investigation and discovery to allow
11 Counsel and the Court to act intelligently. I considered various sources of information in the
12 lead-up to and during the mediation of June 4, 2024 that enabled Plaintiff to achieve the
Settlement at issue.

- 13 • Defendant produced and I reviewed Plaintiff's payroll records.
- 14 • My office requested that Defendant produce any and all policies on "off the clock"
15 work, meal and rest periods, sick leave, and reimbursement of expenses in effect during
16 the relevant time period. Defendant produced policies as part of its employee
17 handbook.
- 18 • My office requested that Defendant provide the total number of employees, paychecks,
19 and the pay cycles during the relevant period. Defendant provided the answers to each
of these questions.
- 20 • My office requested sample time and payroll records for the relevant time period.
21 Defendant produced time and pay records for all of its employees for 36 pay periods
22 throughout the Class Period that I randomly selected from a list provided by the
defense.
- 23 • My office then retained a professional data analyst, James Toney, to examine the
24 records and determine if there was any pay discrepancy in timesheet hours versus paid
25 hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff is
26 prepared to provide the Court with the data analysis for *in camera* inspection upon its
request.
- 27 • I analyzed the state of caselaw on meal and rest break claims, claims for off-the-clock
28 work, claims for unreimbursed expenses, and claims for not providing sick leave.

25. Defendant disclosed that there were approximately 14,959 workweeks during the Class Period (which translates to approximately 7,480 bi-weekly paychecks). Based on this information and with the aid of the data analyst, I prepared “damages” estimates to determine Defendant’s maximum exposure in connection with the settlement negotiations. I calculated the maximum potential damages for meal period violations, rest period violations, unreimbursed expenses violations, and minimum wage violations, to be approximately \$1,390,209.13 (exclusive of penalties and interest); maximum damages for derivative claims of \$270,000 for wage statement penalties and \$330,876 for waiting time penalties; and \$1,246,850 in potential civil penalties under the PAGA. The estimates are in essence “home run” projections that do not factor in any of the risks involved in litigating this Action and are not in line with reality, especially when considering Defendant’s policies and its position on the issues. A detailed explanation of Plaintiff’s valuation is set forth below.

A. Meal Break Violations

Plaintiff alleges that Defendant failed to provide Plaintiff and Settlement Class Members lawful meal breaks. Expert analysis of the sample time and payroll records revealed a 66.8% violation rate. Accordingly, Plaintiff calculates the maximum potential damages for meal break violations as follows:

$$\begin{array}{r} 56,115 \text{ (Class Shift Count = } 82,280 \times 68.2\% \text{ (Shifts } > 5 \text{ hours in sample))} \\ \times \quad 66.8\% \text{ (violate rate in sample)} \\ \hline \times \quad \$15.15 \text{ (average hourly rate)} \\ \hline \$567,894.62 \end{array}$$

B. Rest Break Violations

Plaintiff also contends that Defendant failed to authorize and permit lawful rest breaks. Based on information provided by Plaintiff, Plaintiff estimates a 20% violation rate. Plaintiff calculates the maximum potential damages for rest break violations as follows:

$$\begin{array}{r} 58,007 \text{ (Class Shift Count = } 82,280 \times 70.5\% \text{ (Shifts } > 3.5 \text{ hours in sample))} \\ \times \quad 20\% \text{ (violation rate)} \\ \hline \times \quad \$15.15 \text{ (average hourly rate)} \\ \hline \end{array}$$

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There are risks to Plaintiff’s rest period claim. Employers are not required to record rest periods and such periods are paid. Thus, unlike unpaid 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. Managing such claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

C. Off-the-Clock Work

Plaintiff contends that Defendant violated minimum and overtime wages by requiring employees to work off-the-clock. Plaintiff calculates the maximum potential damages due to off-the-clock work as follows:

$$\begin{array}{r} 14,959 \text{ workweeks} \\ \times 1.8 \text{ hours (average unpaid hours per week based on 20 min OTC per shift;} \\ \qquad \qquad \qquad 5.5 \text{ shifts per week in sample)} \\ \hline \times \$22.73 \text{ (average overtime rate)} \\ \hline \$612,032.53 \end{array}$$

C. Failure to Reimburse Business Expenses

Plaintiff alleges that Defendant required him and the others to use their personal cell phones in the course of performing their duties. Plaintiff calculates the maximum potential damages for unreimbursed expenses as follows:

Based on a \$50 estimated monthly phone bill and an estimate of 20% estimate of phone use for work per week:

$$\begin{array}{r} \$ 2.31 \text{ work phone use per week} \\ \times 14,959 \text{ workweeks affected} \\ \hline \$34,520.77 \end{array}$$

D. Failure to Timely Pay Wages Upon Termination

Plaintiff alleges that Defendant failed to pay employees premium wages for meal and

rest period violations and failed to pay all wages owed. As a result, discharged and quitting employees were not paid in full as required by the Labor Code. Plaintiff calculates the maximum value of this claim as follows:

$$\begin{array}{rcl}
 & 91 \text{ (total number of former employees)} & \\
 \times & \$15.15 \text{ (average hourly rate)} & \\
 \times & 8.00 \text{ (average hours per day)} & \\
 \times & \underline{30 \text{ days}} & \\
 & \$330,876.00 &
 \end{array}$$

E. Failure to Furnish Accurate Itemized Wage Statements

Plaintiff alleges that because Defendant required employees to work off the clock, Class Members' hours worked and wages earned were not accurately listed on the wage statements.

Plaintiff calculates the maximum value of this claim as follows:

$$\begin{array}{rcl}
 & 2,750 \text{ (total number of paychecks issued during 226 period)} & \\
 \times & \$100 \text{ (statutory penalty/paycheck)} & \\
 - & \underline{5,000 \text{ ($50/1st paycheck/100 class members during 226 period)}} & \\
 & \$270,000 &
 \end{array}$$

F. Civil Penalties Under PAGA

Under Labor Code § 2699, Defendant is subject to a civil penalty in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each subsequent violation for each aggrieved employee for each pay period. Defendant represented that there were approximately 2,750 total pay periods for all of the Aggrieved Employees during the PAGA Period. Applying the same violation rates to the total pay periods, Plaintiff calculates the maximum value of the PAGA claim as follows:

Violation	Lab.Code secs.	Civil Penalty	Paychecks	Totals
Unpaid minimum wage violations civil penalties	1194/1197/1197.1	\$ 100.00	2,750	\$ 275,000.00
Unprovided meal period violations civil penalties	512/558	\$ 50.00	1,837	\$ 91,850.00
Unprovided rest period violations civil penalties	1198/2699	\$ 100.00	550	\$ 55,000.00
Faulty wage statement violations civil penalties	226/1198/2699	\$ 100.00	2,750	\$ 275,000.00
Untimely wages violations civil penalties	201-204/210	\$ 100.00	2,750	\$ 275,000.00
Unreimbursed expense violations civil penalties	1198/2802/2699	\$ 100.00	2,750	\$ 275,000.00
Total Civil Penalties				\$ 1,246,850.00

1 As mentioned above, this estimate does not reflect the realities of this case and did not
2 take into account any of the risks discussed above and assumed a violation for every single pay
3 period. As such, the Parties discounted potential civil penalties for multiple reasons. For one,
4 Plaintiff's PAGA claims are predicated on the wage underpayment, meal, rest, business
5 expense reimbursement, and wage statement violations described above, and thus subject to the
6 same disputes and defenses. Plaintiff's counsel also assessed multiple penalties for the same
7 pay period for the same alleged violations of different Labor Code provisions and derivative
8 violations. I am not aware of any California state courts awarding plaintiffs multiple PAGA
9 penalties for the same violation for the same pay period under different Labor Code provisions.
10 This may be because the PAGA does not provide for what many employers characterize as
11 claim splitting and not merely stacking. Additionally, PAGA states a court has discretion to
12 award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman v.*
13 *Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA
award).

14 26. The Settlement obviates the significant risk that this Court may deny
15 certification of some or all of Plaintiff's claims. Even if Plaintiff obtained certification of some
16 or all of the claims, continued litigation would be expensive, involving a trial and possible
17 appeals, and would substantially delay and reduce any recovery by the Class Members. While
18 Plaintiff is confident in the merits of his case, a legitimate controversy exists as to each cause of
19 action. To illustrate this consideration, below is brief summary of some of Defendant's
20 arguments, all of which Plaintiff disputes, but nevertheless acknowledges as potential threats to
the Settlement Class' claims.

- 21 • Defendant contends that individualized proof will be needed to establish liability on
22 Plaintiff's meal period claims. Defendant argues that Settlement Class Members will
23 testify that they were plainly advised by their supervisors, and fully understood, that
24 they were authorized to take meal periods within each five-hour period worked and, in
25 fact, took such breaks. Moreover, Defendant's timekeeping data cannot show why a
26 meal break does not appear in the time records. For example, a meal period may have
been authorized and taken, but simply not punched in and out.
- 27 • Defendant contends that there is no common proof for Plaintiff's claim that he was
28 required to work off-the clock ("OTC") and that some of that OTC work, if properly

1 accounted for, would have resulted in work to be compensated at overtime rates. In
2 fact, Defendant argues, time records do not provide common proof because, by
3 definition, they do not show such time. Defendant argues that one would have to
4 examine, and cross-examine for credibility, each individual's separate claims of
5 supposed OTC work. Further, Defendant argues, each Class Member would need to
6 overcome this credibility hurdle in the face of his/her own time records, which show no
7 OTC work and further would have to prove that his/her individual manager knowingly
suffered or permitted the work.

- 8 • Defendant contends that Plaintiff cannot recover waiting time or wage statement
9 penalties based upon the failure to pay Labor Code section 226.7 premium wages for
10 meal and rest period violations. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2019) 40
11 Cal. App. 5th 444 (review granted Jan. 20, 2020) (actions for violations of Labor
12 Code's meal break provisions do not entitle employees to pursue derivative waiting
13 time and itemized wage statement penalties).
- 14 • There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged
15 failure to indemnify for business expenses to be individual in nature and unfit for class
16 wide resolution.

17 27. As noted above, Defendant contests liability, as well as the propriety of
18 certification, and is prepared to vigorously oppose certification and to defend against
19 Plaintiff's claims if the Action is not settled. Given the potential damages, as well as the
20 substantial risks to recovery discussed herein, including the uncertainties in achieving class
21 certification, Plaintiff's counsel had to dramatically discount the value of the claims during
22 settlement negotiations. Plaintiff's counsel estimates a 50 percent likelihood of obtaining and
23 maintaining certification of all of Plaintiff's claims, which reduces the value of these claims
24 from approximately \$3,237,935.13 to approximately \$1,618,967.57. Defendant, however,
25 asserts that there are significantly lower prospects of certification. Plaintiff's counsel further
26 estimates that there is a 50 percent chance that Plaintiff will prevail at trial on his claims,
27 further reducing the value of the claims to approximately \$809,483.78. Defendant contends
28 that Plaintiff's prospects of success at trial are much lower. If this case advanced to trial and
Class Counsel succeeded on all of Plaintiff's claims, attorney's fees and costs may have
significantly reduced the recovery awarded to the Class. Furthermore, there is always a risk

1 that a trial of this magnitude can become unmanageable. A settlement of \$490,000(
2 approximately 15% of the maximum exposure and 60% of the potential recovery) is a great
3 result and a proportion sanctioned by existing case law. *See In re Cendant Corp., Derivative*
4 *Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a
5 2% recovery based on the estimated liability exposure).

6 28. While Plaintiff believes the evidence gathered through Plaintiff's discovery
7 supports the merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued
8 litigation presents significant risks that support a downward departure from Defendant's
9 estimated liability exposure. In view of the risks, the Settlement reflects Class Counsel's
10 estimate of the total amount of damages, monetary penalties or other relief that the class could
11 reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and
12 other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for
13 these claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No.
14 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

15 ***Allocation of the PAGA Payment***

16 29. The settlement of PAGA penalties in the sum of \$50,000, of which 75%
17 (\$37,500) will be paid to the LWDA and 25% (\$12,500) will be distributed to the Class, is
18 reasonable and appropriate under the circumstances. The Parties negotiated a good faith
19 amount for PAGA penalties to be paid to the LWDA and to the Settlement Class. Where, as
20 here, the parties reach a substantial settlement providing employees with monetary
21 compensation for underlying Labor Code violations, many of PAGA's underlying policy
22 objectives are satisfied. Accordingly, there exists a substantial likelihood that the Court would
23 exercise its discretion and reduce the amount awarded for PAGA penalties even if Plaintiff
24 proved successful at trial. Additionally, PAGA's shorter statute of limitations justifies a limited
25 allocation when compared to the amount allocated for Labor Code violations. Here, the
26 \$50,000 PAGA Settlement Amount is well within the range approved by California courts and
27 therefore should be approved. *See Nordstrom Comm. Cases* (2010) 186 Cal.App.4th 576, 589
(finding no abuse of discretion in the trial court's approval of a release that included PAGA
28 claims, but allocated \$0 to PAGA penalties).

29 ***Attorneys' Fees and Costs***

30. I intend to request Class Counsel Attorneys' Fees of \$163,333.33 (one-third of

1 the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I
2 currently estimate to be approximately \$6,452.61 and will be no more than \$10,000.00 at the
3 conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this
4 case these amounts are well within the range of reasonableness and thus warrant this Court's
5 preliminary approval. In addition, based on my experience in wage and hour class action
6 matters, fee awards of approximately one-third of the settlement fund are routinely approved as
7 reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund
8 in several recent wage and hour class actions.

9 31. The amount of fees and costs requested are commensurate with (1) the risk
10 Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to
11 the case, (3) the skill and determination Class Counsel has shown, (4) the results Class
12 Counsel achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6)
13 the other cases Class Counsel turned down to devote time to this matter. Class Counsel also
14 met and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed
15 hundreds of pages of data and documents provided by Defendant, researched applicable law,
16 prepared estimates of "damages" for purposes of settlement discussions, and engaged in a full
17 day of mediation, among other tasks.

18 32. Class Counsel have borne all the risks and costs of litigation and will receive no
19 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-
20 hour class action litigation and used that experience to obtain a fair result for the Class.
21 Considering the amount of the attorney fees requested, the work performed, and the risks
22 incurred, the requested fees and costs are reasonable and should be awarded.

23 ***Class Representative Enhancement Payment***

24 33. The Settlement provides that Plaintiff may seek a Class Representative
25 Enhancement Payment of \$10,000.00. This amount is entirely reasonable given Plaintiff's
26 efforts in this Action and the risks he undertook on behalf of Class Members. Here, Plaintiff
27 has devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this
28 by, among other things, retaining experienced counsel, providing them with information about
his work history with Defendant and Defendant's policies and practices with respect to the
wage and hour claims at issue, assisting counsel in identifying witnesses, and being actively
involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In

1 doing this, Plaintiff has been exposed to significant risks, including the risk of an order to pay
2 Defendant's attorneys' fees and costs if this action had been unsuccessful (See Labor Code §§
3 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class
4 shows that the proposed Class Representative Enhancement Payment is fair, adequate, and
5 reasonable, and thus warrant preliminary approval.

6 ***Individual Settlement Payments***

7 34. The Individual Settlement Payments will be paid to each Class Member based
8 on the number of Workweeks a Class Member worked during the Class Period and the number
9 of PAGA Pay Periods a PAGA Member worked during the PAGA Period, respectively.
10 Settlement, ¶ 45. Because this method compensates Class Members based on the extent of their
11 potential injuries, in that Class Members who worked for Defendant longer would have been
12 subject to more alleged violations, it is fair, adequate, and reasonable.

13 ***Notice By First Class U.S. Mail Only (No Email)***

14 35. The Settlement requires distribution of the Notice by First Class U.S. mail only.
15 Settlement, ¶ 49. Although there are current employee Class Members, it is uncertain whether
16 Defendant's records of their contact information include email addresses and Class Members,
17 who perform all of their work away from a desk, are not in a position to check their emails. As
18 such, notice by mail alone is fair, adequate, and reasonable. The Class Notice (attached as
19 Exhibit 1 to the Settlement) provides Class Members with all pertinent information that they
20 need to fully evaluate their options and exercise their rights under the Settlement. Specifically,
21 it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who
22 is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an
23 exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6)
24 how the Settlement will be allocated; (7) how payments to Class Members will be calculated;
25 (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for
26 each Class Member. Additionally, the Notice will include the number of Workweeks a Class
27 Member had during the Class Period and the number of PAGA Periods a PAGA Member had
28 during the PAGA Period. Accordingly, the Class Notice should be approved because it
describes the Settlement with sufficient clarity and specificity to explain to Class Members
what this action is about, their rights under the Settlement, and how to exercise those rights. As
such, the parties' proposed Class Notice fully complies with California Rules of Court 3.766(d)

1 and 3.769(f) and will allow Class Members to make informed responses to the proposed
2 settlement.

3 ***Settlement Administration Duties***

4 36. The duties of the Settlement Administrator are spelled out in paragraphs 34 and
5 60 of the Settlement and in the bid provided by Phoenix Class Action Administration Solutions
6 a true and correct copy of which is attached hereto as **Exhibit 7**.

7 ***Settlement Administration Costs***

8 37. With regard to the settlement administration costs provision (Settlement ¶ 40), it
9 is reasonable. Before agreeing to Phoenix Class Action Administration Solutions, the Parties
10 sought and reviewed bids from other reputable third-party administrators:

11 A. ILYM Group, Inc. = \$13,500;

12 B. CPT Group, Inc. = \$10,000;

13 C. Simpluris, Inc. = \$8,000; and

14 D. Phoenix Class Action Administration Solutions = \$7,000.

15 A true and correct copy of the bid from ILYM Group, Inc. is attached hereto as **Exhibit 4**. A
16 true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 5**. A true
17 and correct copy of the bid from Simpluris, Inc. is attached hereto as **Exhibit 6**. A true and
18 correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto
19 as **Exhibit 7**. The bid provided by Phoenix Class Action Administration Solutions was the
20 lowest. Thus, settlement administration costs provision should be given preliminary approval.

21 ***Uncashed Checks***

22 38. Participating Class Members shall have one hundred and eighty (180) days from
23 the date of the check's issuance to cash their Individual Settlement Payment checks. The
24 Participating Class Members shall mean all Class Members who do not submit timely and valid
25 Requests for Exclusion. After the expiration of the 180-day period, the Settlement
26 Administrator will transfer any proceeds represented by Individual Settlement Payment checks
27 remaining un-cashed to the California State Controller Unclaimed Property Fund in the name of
28 the Class Member. Settlement, ¶ 62.

Notice of Settlement to the LWDA

39. Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted a copy of the
Settlement with the Labor and Workforce Development Agency ("LWDA") at the same time

1 Plaintiff's Motion is being filed with the Court. A true and correct copy of Plaintiff's
2 submission with the LWDA and a confirmation email is attached hereto as **Exhibit 8**.

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

5 Executed on Saturday, September 18, 2024 at Los Angeles, California.

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7 MARALLE MESSRELIAN,
8 Declarant
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