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NORIELL HOFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE
(UNLIMITED JURISDICTION)

NORIELL HOFF, individually, and on
behalf of other aggrieved employees
pursuant to the Labor Code Private Attorneys
General Act of 2004,

Plaintiff,

vs.

ANTHEM MECHANICAL, a California
corporation; MICHAEL SOLOMON, an
individual; and DOES 1 to 25, inclusive,

Defendant(s).

Case No.: CVRI2401199

**NOTICE OF PLAINTIFF'S MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

*Assigned for All Purposes to
Hon. Harold W. Hopp in Department 1*

Action filed: 03/01/2024
Hearing Date: 05/08/2025
Hearing Time: 8:30 a.m.
Hearing Dept: 1

Reservation ID: 601781060090

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Maralle Messrelian;
3. Declaration of Noriell Hoff;
4. Declaration of Denise Islas; and
5. [Proposed] Order and Judgment Approving PAGA Settlement.

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

3 PLEASE TAKE NOTICE that on May 8, 2025 at 8:30 a.m., or as soon thereafter as the
4 matter may be heard, in Department 1 of the Riverside County Superior Court, located at 4050
5 Main Street, Riverside, CA 92501, Plaintiff Noriell Hoff ("Plaintiff" or "Hoff") will and hereby
6 does move this Court for an order approving the PAGA (Private Attorneys General Act, Labor
7 Code § 2698 *et seq.*) Settlement Agreement and Release (the "Agreement" or "PAGA
8 Settlement") and entering the [Proposed] Order and Judgment Approving PAGA Settlement.

9 The PAGA Settlement is on behalf of Hoff and all individuals who are, or were, employed
10 by Anthem Mechanical from December 27, 2022 through Court approval of the Settlement (the
11 "Aggrieved Employees"). Plaintiff alleges that Defendants are liable to him and other Aggrieved
12 Employees for (1) failure to compensate for all hours worked, including minimum and overtime
13 wages; (2) failure to provide accurate, itemized wage statements; (3) failure to pay all wages owed
14 during and at the end of employment; (4) failure to maintain accurate records; (5) failure to provide
15 rest breaks and meal periods; and (6) failure to reimburse business expenses. Plaintiff has sought
16 to impose civil penalties for violations of Labor Code sections §§ 201, 202, 203, 204, 226, 226.7,
17 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802, and IWC Wage Order No. 4-
18 2001.

19 The Motion is based on this Notice of Motion and Motion, the attached Memorandum of
20 Points and Authorities, the declarations of Maralle Messrelian, Noriell Hoff, and Denise Islas, the
21 PAGA Settlement, all papers and pleadings on file with the Court in this action, all matters
22 judicially noticeable, and on such oral and documentary evidence as may be presented in
23 connection with the hearing on the Motion.

24 Respectfully submitted,

MM LAW, APC

25
26 Dated: April 2, 2025

By: Maralle Messrelian
Maralle Messrelian
Attorneys for Plaintiff, Noriell Hoff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Noriell Hoff (“Plaintiff” or “Hoff”) submits this memorandum of points and authorities in support of his motion for approval of the PAGA Settlement Agreement and Release (the “Agreement” or “PAGA Settlement”)¹ for the civil penalties claim he brought against Defendants Anthem Mechanical and Michael Solomon (collectively, “Defendants” or “ANTHEM”) 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, subdivision (l), 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

ANTHEM first began to employ Plaintiff on or around March 6, 2023 as a “Commercial Construction Associate” for HVAC installation. Plaintiff’s employment ended in or around early December 2023. MM, ¶ 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 Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On September 15, 2023, Plaintiff, on behalf of himself and ANTHEM’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 Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. MM, ¶ 6, Ex. 3. The specific provisions alleged to have been violated in the PAGA notice letter included Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802 and IWC Wage Order No. 4.

¹ The Agreement is attached as Exhibit (“Ex.”) 1 to the Declaration of Maralle Messrelian (“MM”), which is submitted herewith under a separate cover.

1 **B. Plaintiff's Lawsuit**

2 On March 1, 2024, Plaintiff filed a lawsuit in Riverside County Superior Court (the
3 "Lawsuit") against Defendants. The Lawsuit alleged the following causes of action against
4 Defendants: (1) failure to pay all wages earned for all hours worked [*Lab. Code*, §§ 510, 1194,
5 1197, and 1198]; (2) failure to provide rest breaks [*Lab. Code*, §§ 226.7, 1198]; (3) failure to
6 provide meal periods [*Lab. Code*, §§ 226.7, 512, 1198]; (4) failure to indemnify [*Lab. Code*, §
7 2802]; (5) failure to provide accurate, itemized wage statements [*Lab. Code*, § 226]; (6) failure
8 to pay wages when employment ends [*Lab. Code*, §§ 201, 202, 203]; (7) failure to pay wages
9 owed every pay period [*Lab. Code*, § 204]; (8) imposition of civil penalties pursuant to California
10 Private Attorneys General Act ("PAGA") [*Lab. Code*, §§ 2698, *et seq.*]; and (9) unfair
11 competition [*Bus. & Prof. Code*, §§ 17200, *et seq.*]. MM, ¶ 7, Ex. 4. In response to Plaintiff's
12 assertions, Defendants filed their answer on April 29, 2024. MM, ¶ 7, Ex. 5.

13 The parties met and conferred and agreed that it may be in their mutual interests to discuss
14 Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation.
15 MM, ¶ 8.

16 **C. Mediation With Professional Neutral Katherine Edwards**

17 Upon mutual agreement of the parties, on September 26, 2024, the parties participated in
18 a full-day mediation session with professional neutral Katherine Edwards. MM, ¶ 8. At the
19 mediation, the parties agreed to settle the Action. Before agreeing to the terms of the Settlement,
20 the Parties engaged in informal discovery regarding ANTHEM's policies, practices, operations,
21 time and payroll information and other topics. In advance of mediation, Defendants provided
22 Plaintiff's counsel with information and documents relating to other Aggrieved Employees,
23 including timekeeping and payroll data. Through extensive, arm's length negotiations at the
24 mediation, and only after discovery and investigation were performed, the parties agreed to
25 settlement terms. Now that the parties have finalized the PAGA Settlement, Plaintiff submits it
26 to this Court for approval. MM, ¶ 9.

27 Defendants deny any liability or wrongdoing of any kind whatsoever associated with the
28 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. MM, ¶ 10.

III. OVERVIEW OF SETTLEMENT

A. “Aggrieved Employees” Definition

The Aggrieved Employees are all individuals who worked for Defendant Anthem Mechanical as a non-exempt hourly employee during the PAGA Period. Agreement, ¶ 4. The PAGA Period means the period of time from December 27, 2022 through Court approval of the Settlement. Agreement, ¶ 15.

B. Monetary Terms Of The Settlement

Defendants have agreed to pay a total of \$100,000.00 (“Gross Settlement Amount” or “GSA”) to settle the PAGA claims identified in Plaintiff’s LWDA letter and Complaint (described more fully below), from which all settlement payments to the Aggrieved Employees, to the State of California, to Plaintiff, to PAGA Counsel for Court approved attorneys’ fees and costs, and for settlement administration costs shall be paid. Agreement, ¶¶ 7, 31. 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 of ANTHEM in California during the PAGA Period. *See*, Agreement, ¶ 31(e). The GSA will be divided as follows:

1. PAGA Counsel’s Fees Payment amounting to \$33,333.33 (1/3 of the GSA),
2. PAGA Counsel’s Litigation Expenses Payment in the amount of \$9,188.43 (the Agreement provides up to \$10,000);
3. Plaintiff’s General Release Payment in the amount of \$10,000;
4. Administrator Expenses Payment of \$2,750.00 to Simpluris, Inc. (“Simpluris” or “Administrator”) to administer the Settlement;
5. Approximately \$44,728.24 (“Net Settlement Amount”), divided as follows:
 - a. \$ 33,546.18 to the LWDA (75%); and
 - b. \$ 11,182.06 to the Aggrieved Employees (25%)

Agreement, ¶ 31 (a) – (e).

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

2 Defendants shall deposit the GSA with the Administrator no later than four (4) months
3 from the Effective Date² of the Court’s Order granting final settlement approval. Agreement, ¶
4 31, 44.

5 Within fifteen (15) days after the later of 1) the Effective Date, and 2) the date the
6 Administrator provides Defendants with file transfer instructions for securely sending the
7 Aggrieved Employee Data to the Administrator, Defendant will deliver the Aggrieved Employee
8 Data to the Administrator in the form of a Microsoft Excel spreadsheet with each Aggrieved
9 Employee’s name, last-known mailing address, Social Security number, and number of PAGA
10 Pay Periods worked during the PAGA Period. Agreement, ¶ 43.

11 Within fifteen (15) days after Defendants deposit the GSA with the Settlement
12 Administrator, the Administrator will mail checks for all Individual PAGA, the PAGA Counsel
13 Fees Payment, the PAGA Counsel Litigation Expenses Payment, Plaintiff’s General Release
14 Payment, and the Administration Expenses Payment. Agreement, ¶ 45. Before mailing any
15 checks, the Administrator must update the recipients’ mailing addresses using the National
16 Change of Address Database. Agreement, ¶ 45.

17 The Administrator will issue each Aggrieved Employee a check for his or her pro rata
18 share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the
19 Aggrieved Employee worked during the PAGA Period along with the PAGA Group Letter
20 (Exhibit B to the Settlement; Exhibit 2 to MM Declaration) by First-Class United States mail,
21 postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement
22 and return all undeliverable Notices to the Administrator. Any check returned as non-deliverable
23 on or before the cashing deadline will be sent promptly via regular First-Class U.S. Mail to the
24 forwarding address affixed thereto. Agreement, ¶ 45.

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

26 The settlement checks issued to Aggrieved Employees will remain valid for one hundred
27 eighty (180) days. Agreement, ¶ 45. Any settlement checks remaining uncashed for more than
28 _____

² Effective Date means the date when the Court orders Final Settlement Approval.

one hundred eighty (180) days after issuance will be distributed to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Agreement, ¶ 45. The Individual PAGA Payments shall be deemed penalties and shall be reported using IRS tax form 1099. *Id.*

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

Upon the Effective Date of the Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants Anthem Mechanical and Michael Solomon, together with Defendants' directors, officers, employees, and agents (the "Released Parties"). The Released PAGA Claims means:

penalties related to claims under the California Labor Code and Wage Orders, rights, demands, liabilities and causes of action, whether known or unknown, arising during the PAGA Period, that were asserted or could have been asserted in the Action against Defendants based on the facts alleged or ascertained during the pendency of the Action, under federal and state laws, including statutory, or common law claims for wages, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other relief under Business & Professions Code section 17200, *et seq.* based on the alleged Labor Code violations, including, without limitations, the following categories: (a) any and all claims involving any alleged failure to pay overtime wages; (b) any and all claims involving any alleged failure to pay minimum wage; (c) any and all claims involving any alleged failure to pay employees for all hours worked, including but not limited to any claim for minimum, straight time, or overtime wages; (d) any and all claims involving any alleged failure to keep accurate records or to issue proper wage statements to employees; (e) any and all claims involving any alleged failure to timely pay wages, including but not limited to any claim that Defendants violated Labor Code sections 201, 202, or 204, and any claim for waiting time penalties under Labor Code section 203; (g) any and all claims involving any alleged failure to provide meal or rest breaks or pay premiums in lieu of breaks; (h) any and all claims involving any alleged failure to reimburse under Labor Code section 2802; and (i) any and all penalties pursuant to the Private Attorneys General Act ("PAGA") of 2004 arising out of any or all of the aforementioned claims. The PAGA Released Claims include all such claims arising under the California Labor Code including, but not limited to, sections 201-204, 223, 226, 226.3, 226.7, 510, 558, 512, 1102.5, 1174, 1174.5, 1175, 1194, 1197, 1198, 1197.1, 2802 and 2698 *et seq.*, applicable Industrial Welfare Commission Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*

Agreement, ¶ 19.

1 **IV. ARGUMENT**

2 **A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

3 The Settlement of a PAGA claim requires court approval. *Lab. Code*, § 2699, subd. (l)(2).
4 The Court necessarily has broad discretion in making the decision to approve or reject a
5 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
6 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
7 of penalties based on the facts and circumstances of the particular case. *See Lab. Code*, § 2699,
8 subds. (e)(1)-(2). Although the PAGA does not set forth the particular standards against which a
9 PAGA settlement should be evaluated, the LWDA has provided guidance for approval that
10 mirrors the standards for evaluating class action settlements. MM, ¶ 12; *See, e.g., Salazar v. Sysco*
11 *Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n. 4-5 (E.D. Cal. 2017) (stating, based on the
12 LWDA’s guidance, that approval of PAGA settlements may be had where the statutory
13 requirements of the PAGA are met and the terms of the settlement are fundamentally fair,
14 reasonable, and adequate). The established standards for evaluating whether class action
15 settlements are fair, reasonable, and adequate provide a familiar, useful framework for the Court
16 to evaluate PAGA settlements and have been adopted by several courts. *Id.*, *See Juarez v.*
17 *Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n. 4 (E.D. Cal. 2017) (*citing Officers for Justice v.*
18 *Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez*
19 *v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (*citing*
20 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017
21 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist.
22 LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist.
23 LEXIS 22886, *6 (S.D. Cal. 2018).

24 In making the determination whether a settlement taken as a whole is fair, reasonable,
25 and adequate, the Court should be careful to still give “proper deference to the private consensual
26 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
27 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
28 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or

1 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at, 1027. The law favors
2 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
3 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents*
4 *of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
5 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

6 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
7 **PAGA**

8 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
9 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
10 follows: 75 percent to the LWDA, and the remaining 25 percent to the Aggrieved Employees. *See*
11 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; *Lab. Code*, § 2699, subd. (i).
12 The parties’ Settlement so provides. MM, ¶ 13, Ex. 1. Second, the LWDA must be given notice
13 of the settlement so that it may be heard before the Court decides whether to grant approval. *Lab.*
14 *Code*, § 2699, subd. (l)(2). Here, notice is being given to the LWDA concurrently with the filing
15 of this motion. MM, ¶¶ 13, 42, Ex. 10. As a result, Plaintiff has met all procedural statutory
16 requirements for settling a PAGA action.

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

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

21 the strength of the Plaintiff’s case, the risk, expense, complexity and
22 likely duration of further litigation, the risk of maintaining class
23 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.

24 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS
25 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS
26 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886,
27 *6. However, this Court should begin its analysis with a presumption that the proposed
28 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through

1 arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
2 court to act intelligently; (3) counsel is experienced in similar litigation" *Dunk*, 48 Cal.
3 App. 4th at 1802.

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

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

17 The PAGA Settlement was reached only after informal discovery and arms' length
18 negotiations between experienced attorneys, which included a full-day mediation with
19 professional neutral Katherine Edwards. At all times, the negotiations were adversarial and
20 contentious, although still professional in nature. MM, ¶ 9.

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

1 **2. The Parties Conducted Sufficient Investigation and Discovery To Allow Counsel**
2 **and the Court To Act Intelligently.**

3 Plaintiff considered various sources of information in the lead-up to and during the
4 mediation of September 26, 2024 that enabled him to achieve the PAGA Settlement at issue. MM,

5 ¶ 20. Among other things, Plaintiff considered the following:

- 6 • Defendants produced and Plaintiff’s counsel reviewed Plaintiff’s personnel file.
- 7 • Plaintiff requested that Defendants provide any and all policies regarding overtime and
8 double-time wages, off the clock work, expense reimbursement, meal periods, rest
9 breaks, meal period waivers and agreements, compensation plans, and complaints about
10 working conditions in effect during the relevant time period beginning in December of
11 2022. Defendants produced those policies as part of their employee handbook.
- 12 • Plaintiff requested that Defendants provide the total number of employees, paychecks,
13 and the pay cycles during the relevant period. Defendants provided the answers to each
14 of these questions.
- 15 • Plaintiff requested a 20% sampling of time and payroll records. Defendants provided
16 Plaintiff’s counsel with anonymized payroll and time punch data for approximately 14
17 of its non-exempt employees during the relevant time period.
- 18 • Plaintiff retained a professional data analyst, James Toney, to examine the records and
19 determine the meal period violation rates, if there was any pay discrepancy in timesheet
20 hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is
21 prepared to provide the Court with the data analysis for *in camera* inspection upon its
22 request.
- 23 • Plaintiff analyzed the state of caselaw on PAGA claims, meal and rest break violations,
24 claims for “off the clock” work and business expense reimbursement, especially as it
25 relates to “manageability” arguments brought up by the defense.

26 MM, ¶ 20.

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

 Defendants estimated for purposes of mediation that there were approximately 71
Aggrieved Employees who worked approximately 3,304 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. MM, ¶ 21. 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

1 civil penalty amount per pay period. *Id.*

2 Plaintiff's analysis, which Defendants strongly dispute, revealed that 25.5% of pay
3 periods with shifts greater than 6 hours had at least one meal violation (late, short, or no meal).
4 Under the civil penalty formulas applicable under PAGA, Plaintiff calculated ANTHEM's
5 potential exposure as follows: \$50 penalty per pay period, assuming 25.5% violation, based on
6 Labor Code § 558 for violation of Labor Code § 512 (failure to provide meal periods) (3,304 x
7 \$50 x 25.5% = \$42,150); \$100 penalty per pay period under Labor Code sec. 2699(f)(2), assuming
8 25.5% violation rate for rest break violations (3,304 x \$100 x 25.5% = \$84,300); \$250 penalty
9 per pay period, assuming 25.5% violation rate, based on Labor Code § 226.3 for violation of
10 Labor Code § 226 (failure to provide compliant wage statements) (3,304 x \$250 x 25.5% =
11 \$210,750); \$100 penalty per pay period, assuming 25.5% violation rate, based on Labor Code §
12 210 for violation of Labor Code §§ 201-204 (untimely wages) (3,304 x \$100 x 25.5% = \$84,300).
13 Stacking each of these maximum recoverable civil penalty estimates yields a total amount of
14 \$421,500. Assuming that Plaintiff's calculations and analysis are accurate, the maximum
15 exposure also presumes that the Court will not reduce the penalty award as unjust, arbitrary,
16 oppressive, or confiscatory. The potential for recovery of approximately \$421,500 in civil
17 penalties depends on circumstances that are **extremely** unlikely independently and in
18 combination. It would depend on the Court stacking the maximum recoverable civil penalties for
19 meal period violations, rest break violations, faulty wage statement violations, and untimely wage
20 violations per pay period for all 3,304 pay periods for all 71 Aggrieved Employees during the
21 PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a
22 plaintiff and the other aggrieved employees she represents multiple civil penalties for the same
23 pay period under different Labor Code provisions. At best, Plaintiff could hope to recover one
24 penalty for each pay period (regardless of the different Labor Code violations that potentially
25 occurred for the same employee, during the same pay periods). Plaintiff had to substantially
26 discount the value of these claims in the settlement negotiations for this and a variety of other
27 reasons (outlined below). MM, ¶ 22.

28 There are risks to Plaintiff's meal and rest period claims. MM, ¶ 23. Defendants contend

1 that, to establish a violation for missed meal periods, a plaintiff must do more than show that a
2 meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
3 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
4 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
5 performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged,
6 or prohibited the employee from taking a proper break, or otherwise failed to release the
7 employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
8 reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s*
9 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of ANTHEM’s time
10 records the exact reasons why a meal period appears to be short or late would be difficult and
11 pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal
12 periods will be a challenge. Additionally, ANTHEM’s Employee Handbook contains legally
13 compliant meal period and rest break policies. Furthermore, Defendants provided evidence at
14 mediation of signed Lunch Break Compliance Forms. MM, ¶ 23.

15 Defendants contend they provided non-exempt employees with the opportunity to take
16 rest breaks in accordance with California law, and, accordingly, that Plaintiff’s rest break claim
17 has no support. Additionally, there are other risks to Plaintiff’s rest period claim. Employers are
18 not required to record rest periods and such periods are paid. Unlike meal periods, where there
19 are often records showing whether an employee clocked out or not, there is no such evidence to
20 prove a missed rest period or that the employer refused to authorize and permit one. MM, ¶ 24.

21 There are risks to Plaintiff’s claim for unreimbursed expenses. Plaintiff alleges that
22 Defendants did not reimburse him or the other Aggrieved Employees for using their own personal
23 tools. There is a risk that the Court may consider Plaintiff’s claims as to Defendants’ alleged
24 failure to indemnify for business expenses to be individual in nature. Moreover, upon receiving
25 Plaintiff’s LWDA letter, Defendants began to reimburse its employees for tool use. As such,
26 Plaintiff’s Counsel had to significantly discount the value of this claim during settlement
27 negotiations. MM, ¶ 25.

28 Additionally, PAGA states a court has discretion to award a lesser amount than the

1 maximum penalty. *See Lab. Code*, § 2699, subd. (e)(2) (“...a court may award a lesser amount
2 than the maximum civil penalty amount specified by this part if, based on the facts and
3 circumstances of the particular case, to do otherwise would result in an award that is unjust,
4 arbitrary and oppressive, or confiscatory.”); *see also Thurman v. Bayshore Transit Management,*
5 *Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that
6 the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s
7 evidence of willful and intentional conduct. MM, ¶ 26. *Carrington v. Starbucks* (2018) 30
8 Cal.App.5th 504 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial
9 court’s heavily discounted award of only \$5 per violation because it was within the Court’s
10 discretion to significantly reduce PAGA penalties even when there is a finding that a violation
11 of the California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in
12 excess of \$70 million and was successful in proving the PAGA claim during a bench trial.
13 However, the trial court reduced the total award after trial to only \$150,000 (30,000 violations x
14 \$5) and stated that this reduction was warranted because imposing the maximum penalty would
15 be “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
16 meal break obligations and because the Court found the violations were minimal. Applying the
17 same formula here and assuming there was one violation during each pay period, the award of
18 civil penalties could not exceed \$16,520 in PAGA penalties (3,304 violations x \$5). As such, this
19 Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
20 formula. Defendants have also posed formidable defenses to the Labor Code claims underlying
21 Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
22 Settlement Amount is uncertain. MM, ¶ 26.

23 All in all, considering all of the risks detailed above, as well as potential manageability
24 issues, the risk of not prevailing at trial, the risk that, even if Plaintiff prevailed, the damages
25 would be limited due to the largely discretionary nature of the damages, and taking into account
26 Defendant’s defenses on the merits, Plaintiff applied a 50% discount to the maximum PAGA
27 exposure of \$421,500, resulting in a risk-discounted realistic potential exposure of \$210,750.
28 Therefore, the Gross Settlement Amount of \$100,000 is a great result, amounts to relief consistent

1 with the underlying purpose of PAGA, and represents approximately 47% of the risk-discounted
2 realistic potential recovery. MM, ¶ 27. *See In re Cendant Corp., Derivative Action Litig.*, 232 F.
3 Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2% recovery based on
4 the estimated liability exposure).

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

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

21 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
22 support a significant downward departure from Plaintiff's estimated civil penalties amount. In
23 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
24 for these claims and is in the best interest of Plaintiff and Aggrieved Employees and thus,
25 warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3,
26 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable,
27 adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of the current
28 economic climate, and are the product of good faith, and informed arms-length negotiations

1 between the Parties consistent with public policy and fully comply with applicable provisions of
2 law. MM, ¶ 30.

3 As such, the settlement of PAGA penalties in the gross sum of \$100,000.00, of which
4 75% of the net amount after attorney's fees, litigation costs, Plaintiff's service payment, and
5 settlement administration costs (\$33,546.18) will be paid to the LWDA and 25% (\$11,182.06)
6 will be distributed to the Aggrieved Employees, is reasonable and appropriate under the
7 circumstances. MM, ¶ 31.

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

10 Each PAGA Employee will receive a portion of the civil penalties on a pro-rata basis
11 depending on the number of pay periods Defendants employed them for during the PAGA Period.
12 Agreement, ¶ 31(e). At the time of the mediation (September 26, 2024), Defendant estimated that
13 there are approximately 71 Aggrieved Employees who worked a total of 3,304 pay periods during
14 the PAGA Period. After deducting the requested Court-approved PAGA Counsel's Fees Payment
15 (\$33,333.33), PAGA Counsel's Litigation Expenses Payment (\$9,188.43), Plaintiff's General
16 Release Payment (\$10,000) and the Administration Costs (\$2,750.00), the Net Settlement
17 Amount will be approximately \$44,728.24 allocated as PAGA Penalties. Seventy five percent (75%)
18 of the PAGA Penalties will be paid to the Labor and Workforce Development Agency
19 ("LWDA") (\$33,546.18), and twenty five percent (25%) (\$11,182.06) of the PAGA Penalties will
20 be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of
21 pay periods during the PAGA Period. The average estimated individual recovery for an
22 Aggrieved Employee is approximately \$157.49 (\$11,182.06/71 Aggrieved Employees). Given
23 the discretionary nature of awarding PAGA penalties based upon Defendants' compliant policies
24 and Aggrieved Employees' pay and time data, and considering the risk of not being able to
25 proceed on a representative basis at all due to the risk of not prevailing at trial, and the risk that,
26 even if Plaintiff prevailed, the damages would be limited due to the largely discretionary nature
27 of the damages, this is an excellent result, amounting to relief consistent with the underlying
28 purpose of PAGA. MM, ¶ 32.

///

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

2 Plaintiff's counsel has considerable experience in wage and hour litigation and is
3 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with
4 litigation, and viability of possible affirmative defenses. *See* MM, ¶¶ 14-18, 36. Similarly,
5 Defendant's counsel, Alicia Belock and Skye Daley of Buchalter, have broad experience in
6 handling employment matters and wage and hour litigation. MM, ¶ 36.

7 **6. The Proposed Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable**
8 **and Should Be Approved.**

9 Of the 100,000.00 allocated towards the GSA, Plaintiff's counsel requests \$33,333.33 (1/3
10 of the GSA) in attorney's fees and \$9,188.43 in litigation costs, which is fair and reasonable. MM,
11 ¶ 33.

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

21 California courts have the discretion to employ (or decline to employ) a "lodestar cross-
22 check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
23 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made
24 clear that this cross-check is not required and approved one-third of the class action settlement
25 fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California
26 class action cases...." *Id.* at 574. As other courts have acknowledged since *Laffitte*, "California
27 courts routinely award attorneys' fees of one-third of the common fund." *Lopez v. Mgmt. &*
28 *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

1 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
2 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
3 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
4 reasonableness of a requested percentage fee.’” *Id.* (citing *Laffitte*)).

5 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
6 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
7 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
8 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
9 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
10 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
11 settlements. MM, ¶ 36.

12 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
13 fees, notwithstanding courts’ clear preference for the percentage method, Plaintiff’s Counsel’s
14 fee request of \$33,333.33 (1/3 of GSA) is fair and reasonable based on their lodestar as cross-
15 checked against the percentage of the recovery. MM, ¶ 34-35. Plaintiff’s counsel’s previous
16 experience in litigating wage and hour class and representative actions and the caliber of
17 opposing counsel also support the reasonableness of the fee request. MM, ¶ 36. The award of
18 attorneys’ fees sought is also justified by the contingency nature of the attorney-client
19 relationship, the risks of non-payment and non-reimbursement, the delay in payment and cost
20 reimbursement, and the great results Plaintiff’s Counsel has achieved for the Aggrieved
21 Employees. *Id.*

22 In addition, Plaintiff’s Counsel incurred substantial costs, \$9,188.43 to date, including the
23 costs of a mediator, to aid in the representation of the Aggrieved Employees. MM, ¶ 37, Ex. 7.
24 As the evidence submitted herewith shows, all of these costs are documented and reasonably
25 incurred. *Id.* Accordingly, they warrant the Court’s approval.

26 **7. Plaintiff’s General Release Payment Is Fair, Adequate, and Reasonable and**
27 **Should Be Approved.**

28 Plaintiff’s General Release Payment of \$10,000 is being paid to Plaintiff for providing
Defendants with a release of any and all individual (non-PAGA) claims, whether known or

1 unknown, he may have against Defendant **and** his service to the State of California and the
2 Aggrieved Employees in prosecuting the Lawsuit. MM, ¶ 38, 40, Agreement ¶¶ 3.2.1; 5.1-5.2.
3 By agreeing to settle the case in the best interests of the Aggrieved Employees and the State,
4 Plaintiff has given up the right to pursue his individual claims and recover more in unreimbursed
5 expenses, interest, waiting time penalties, and pay stub penalties that he will release as part of the
6 Settlement. Plaintiff did not seek an individual settlement for his claims at all, instead choosing
7 to prosecute this suit on behalf of the Aggrieved Employees and the State. *Id. See also* Declaration
8 of Noriell Hoff (“Hoff Decl.”).

9 There is authority for the General Release Payment to Plaintiff. While the statutory
10 language of the PAGA is silent on the issue of incentive awards to named Plaintiff, it nonetheless
11 provides implicit support for incentive payments to named Plaintiffs. Moreover, language from
12 the Ninth Circuit Court of Appeals and recent California district court caselaw indicates that such
13 awards are permitted. MM, ¶¶ 38-40.

14 **8. The Proposed Settlement Administration Costs Are Fair and Reasonable and**
Should Be Approved.

15 With regard to the settlement administration costs provision, it is reasonable. Before
16 agreeing to Simpluris Inc. (“Simpluris”), the Parties sought and reviewed bids from other
17 reputable third-party administrators and Simpluris’ bid was the lowest. MM, ¶ 41, Exs. 6-8;
18 Declaration of Denise Islas, Ex. C. Thus, the settlement administration costs provision should be
19 given approval.

20 **V. CONCLUSION**

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

23 Respectfully submitted,

MM LAW, APC

25 Dated: April 2, 2025

26 By: Maralle Messrelan
27 Maralle Messrelan
28 Attorneys for Plaintiff, Noriell Hoff

Make a Reservation

HOFF vs ANTHEM MECHANICAL

Case Number: CVRI2401199 Case Type: Civil Category: Unlimited Civil Other Employment
Date Filed: 2024-03-01 Location: Historic Court House - Department 1

Reservation

Case Name: HOFF vs ANTHEM MECHANICAL	Case Number: CVRI2401199
Type: Motion for Approval of PAGA Settlement	Status: RESERVED
Filing Party: NORIELL HOFF (Plaintiff)	Location: Historic Court House - Department 1
Date/Time: 05/08/2025 8:30 AM	Number of Motions: 1
Reservation ID: 601781060090	Confirmation Code: CR-QGSGWC8RDNGDQTXVJ

Fees

Description	Fee	Qty	Amount
Motion for Approval of PAGA Settlement	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a

-  [Print Receipt](#)
-  [Reserve Another Hearing](#)
-  [View My Reservations](#)