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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

**DECLARATION OF MARALLE
MESSRELIAN IN SUPPORT OF
PLAINTIFF'S UNOPPOSED 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

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

I, MARALLE MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of MM Law, APC and the attorney of record for Noriell Hoff (individually, “Hoff” or “Plaintiff”) in his lawsuit against Defendants Anthem Mechanical and Michael Solomon (collectively “ANTHEM” or “Defendants”).

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

3. A true and correct copy of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq.*) Settlement Agreement and Release (the “Settlement or “Agreement”) is attached hereto as **Exhibit 1**.

4. A true and correct copy of the notice to the below-defined Aggrieved Employees (the “PAGA Group Letter”) is attached hereto as **Exhibit 2**.

Factual and Procedural Background

5. 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.

6. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On 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. 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. 4-2001. A true and correct

1 copy of Plaintiff's letter to the LWDA is attached hereto as **Exhibit 3**.

2 7. On March 1, 2024, Plaintiff filed a lawsuit in Riverside County Superior Court
3 (the "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
10 California Private Attorneys General Act ("PAGA") [*Lab. Code*, §§ 2698, *et seq.*]; and (9) unfair
11 competition [*Bus. & Prof. Code*, §§ 17200, *et seq.*]. A true and correct copy of Plaintiff's
12 Lawsuit is attached hereto as **Exhibit 4**. In response to Plaintiff's assertions, Defendants filed
13 their answer on May 7, 2024. A true and correct copy of Defendant's Answer to Plaintiff's
14 Complaint filed on April 29, 2024 is attached as **Exhibit 5**.

15 8. The parties met and conferred and agreed that it may be in their mutual interests
16 to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private
17 mediation to resolve the representative PAGA claim and Plaintiff's individual claims. Upon
18 mutual agreement of the parties, on September 26, 2024, the parties participated in a full-day
19 mediation session with professional neutral Katherine Edwards.

20 9. At the mediation, the parties agreed to settle the Action. At all times, the
21 negotiations were adversarial and contentious, although still professional in nature. Before
22 agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding
23 ANTHEM's policies, practices, operations, time and payroll information and other topics. In
24 advance of mediation, Defendants provided Plaintiff's counsel with information and documents
25 relating to other Aggrieved Employees, including timekeeping and payroll data. Through
26 extensive, arm's length negotiations at the mediation, and only after discovery and investigation
27 were performed, the parties agreed to settlement terms. Now that the parties have finalized the
28 PAGA Settlement, Plaintiff submits it to this Court for approval.

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

4 11. Counsel for the parties have further investigated the applicable law as applied to
5 the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
6 violations claimed by Plaintiff. I am experienced in prosecuting PAGA lawsuits. Counsel for the
7 Defendants are experienced in defending PAGA cases. Based on the parties' own independent
8 investigations and evaluations, the parties and their respective counsel are of the opinion that the
9 Settlement for the consideration and on the terms set forth in the Agreement are fair, reasonable
10 and adequate and are in the best interests of Plaintiff, the Aggrieved Employees, the State, and
11 Defendants in light of all known facts and circumstances and the risks inherent in litigation.

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

20 13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are
21 met here. First, any civil penalties recovered, whether by judgment or settlement, must be
22 distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
23 employees. *See Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab.
24 Code, § 2699(i). The parties' Settlement so provides (*See Exhibit 1*). Second, the LWDA must
25 be given notice of the settlement so that it may be heard before the Court decides whether to
26 grant approval. Cal. Lab. Code § 2699(1)(2). Here, notice is being given to the LWDA
27 concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with
28

1 the LWDA and a confirmation email is attached as **Exhibit 10**. As a result, Plaintiff has met all
2 procedural statutory requirements for settling a PAGA action.

3 ***Background of Counsel***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 m) *Wendy Chavez v. Texas De Brazil (Fresno) Corporation, et al.*, Fresno
26 County Superior Court, Case No. 19CECG04249 (order and judgment approving PAGA
27 settlement by the court)

28 n) *Kevin Littleton v. Lincoln Military Property Management LP.*, San Diego

1 County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment
2 approving PAGA settlement by the court)

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

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

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

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

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

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

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

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

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

28 x) *Jose Angel Lopez v. Moreno & Associates, Inc., et al.*, Santa Clara Superior

1 Court, Case No. 23CV422622 (order and judgment approving PAGA settlement by the court).
2 y) *Irma Tapia v. Posada Associates, et al.*, Santa Cruz Superior Court, Case No.
3 23CV00355 (order and judgment approving PAGA settlement by the court).

4 z) *Andres Ibarra v. Stadco, et al.* Los Angeles Superior Court, Case No.
5 23STCV26591 (order and judgment approving PAGA settlement by the court).

6 ***Exposure and Risk Analysis***

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

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

- 19 • Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 20 • Plaintiff requested that Defendants provide any and all policies regarding overtime and
21 double-time wages, off the clock work, expense reimbursement, meal periods, rest
22 breaks, meal period waivers and agreements, compensation plans, and complaints about
23 working conditions in effect during the relevant time period beginning in December of
24 2022. Defendants produced those policies as part of their employee handbook.
- 25 • Plaintiff requested that Defendants provide the total number of employees, paychecks,
26 and the pay cycles during the relevant period. Defendants provided the answers to each
27 of these questions.
- 28 • Plaintiff requested a 20% sampling of time and payroll records. Defendants provided
anonymized payroll and time punch data for approximately 14 of its non-exempt
employees during the relevant time period.

- Plaintiff retained a professional data analyst, James Toney, to examine the records and determine the meal and rest 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 analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for “off the clock” work and business expense reimbursement, especially as it relates to “manageability” arguments brought up by the defense.

21. 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. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period.

22. Plaintiff’s analysis, which Defendants strongly dispute revealed that 25.5% of pay periods with shifts greater than 6 hours had at least one meal violation (late, short, or no meal). Under the civil penalty formulas applicable under PAGA, Plaintiff calculated ANTHEM’s potential exposure as follows: \$50 penalty per pay period, assuming 25.5% violation, based on Labor Code § 558 for violation of Labor Code § 512 (failure to provide meal periods)(3,304 x \$50 x 25.5%=\$42,150); \$100 penalty per pay period under Labor Code sec. 2699(f)(2), assuming 25.5% violation rate for rest break violations (3,304 x \$100 x 25.5% =\$84,300); \$250 penalty per pay period, assuming 25.5% violation rate, based on Labor Code § 226.3 for violation of Labor Code § 226 (failure to provide compliant wage statements) (3,304 x \$250 x 25.5% = \$210,750); \$100 penalty per pay period, assuming 25.5% violation rate, based on Labor Code § 210 for violation of Labor Code §§ 201-204 (untimely wages) (3,304 x \$100 x 25.5% = \$84,300). Stacking each of these maximum recoverable civil penalty estimates yields a total amount of \$421,500. Assuming that Plaintiff’s calculations and analysis are accurate, the maximum exposure also presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. The potential for recovery of approximately \$421,500 in civil penalties depends on circumstances that are **extremely** unlikely independently and in

1 combination. It would depend on the Court stacking the maximum recoverable civil penalties for
2 meal period violations, rest break violations, faulty wage statement violations, and untimely wage
3 violations per pay period for all 3,304 pay periods for all 71 Aggrieved Employees during the
4 PAGA Period. Plaintiff's counsel is not aware of any California State court decision awarding a
5 plaintiff and the other aggrieved employees she represents multiple civil penalties for the same
6 pay period under different Labor Code provisions. At best, Plaintiff could hope to recover one
7 penalty for each pay period (regardless of the different Labor Code violations that potentially
8 occurred for the same employee, during the same pay periods). Plaintiff had to substantially
9 discount the value of these claims in the settlement negotiations for this and a variety of other
10 reasons (outlined below).

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

26 24. Defendants contend they provided non-exempt employees with the opportunity to
27 take rest breaks in accordance with California law, and, accordingly, that Plaintiff's rest break
28 claim has no support. Additionally, there are other risks to Plaintiff's rest period claim.

1 Employers are not required to record rest periods and such periods are paid. Furthermore, there
2 is no evidence to prove that the employer refused to authorize and permit a rest break.

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

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

1 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
2 Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff's
3 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
4 Amount is uncertain.

5 27. All in all, considering all of the risks detailed above, as well as potential
6 manageability issues, the risk of not prevailing at trial, the risk that, even if Plaintiff prevailed,
7 the damages would be limited due to the largely discretionary nature of the damages, and taking
8 into account Defendant's defenses on the merits, Plaintiff applied a 50% discount to the
9 maximum PAGA exposure of \$421,500, resulting in a risk-discounted realistic potential
10 exposure of \$210,750. Therefore, the Gross Settlement Amount of \$100,000 is a great result,
11 amounts to relief consistent with the underlying purpose of PAGA, and represents approximately
12 47% of the risk-discounted realistic potential recovery. *See In re Cendant Corp., Derivative*
13 *Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2%
14 recovery based on the estimated liability exposure).

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

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

1 civil penalties can pursue any damages they believe they are owed by the Defendants. The
2 Settlement does not require them to opt out to do so.

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

13 31. As such, the settlement of PAGA penalties in the gross sum of \$100,000.00, of
14 which 75% of the net amount after attorney's fees, litigation costs, Plaintiff's service payment,
15 and settlement administration costs (\$33,546.18) will be paid to the LWDA and 25%
16 (\$11,182.06) will be distributed to the Aggrieved Employees, is reasonable and appropriate under
17 the circumstances.

18 ***Individual PAGA Payments***

19 32. Defendants represent that at the time of mediation there were approximately 53
20 Aggrieved Employees during the PAGA Period. After deducting the requested Court-approved
21 PAGA Counsel's Fees Payment (\$33,333.33), PAGA Counsel's Litigation Expenses Payment
22 (\$9,188.43), Plaintiff's General Release Payment (\$10,000) and the Administration Costs
23 (\$2,750.00), the Net Settlement Amount will be approximately \$44,728.24 allocated as PAGA
24 Penalties. Seventy five percent (75%) of the PAGA Penalties will be paid to the Labor and
25 Workforce Development Agency ("LWDA") (\$33,546.18), and twenty five percent (25%)
26 (\$11,182.06) of the PAGA Penalties will be paid to the Aggrieved Employees on a pro-rata basis
27 based upon their respective number of pay periods during the PAGA Period. Agreement, ¶
28 3.2.4.1. Based on this amount, the average estimated individual recovery for an Aggrieved

1 Employee is approximately \$157.49 (\$11,182.06/71 Aggrieved Employees). Given the
2 discretionary nature of awarding PAGA penalties based upon Defendants' compliant policies
3 and Aggrieved Employees' pay and time data, and considering the risk of not being able to
4 proceed on a representative basis at all due to the risk of not prevailing at trial, and the risk that,
5 even if Plaintiff prevailed, the damages would be limited due to the largely discretionary nature
6 of the damages, this is an excellent result, amounting to relief consistent with the underlying
7 purpose of PAGA.

8 *Attorneys' Fees and Costs*

9 33. I represent Plaintiff on a straight contingency basis. My firm's request for
10 \$33,333.33 in attorney fees and \$9,188.43 in litigation costs related to the PAGA Settlement is
11 fair and reasonable. "[R]egardless whether the percentage method or the lodestar method is used,
12 fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.*
13 (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995)
14 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe*
15 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund
16 amount).) This is also consistent with my experience in wage and hour class and PAGA
17 settlements.

18 34. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
19 awarding fees, notwithstanding courts' clear preference for the percentage method, my request
20 for attorneys' fees of \$33,333.33 (1/3 of the Gross Settlement Amount) is fair and reasonable
21 based on my firm's lodestar as cross-checked against the percentage of the recovery. To date, I
22 have investigated and prosecuted this matter for over 55.1 hours, including reviewing the initial
23 intake; researching the company; drafting, filing, and mailing the LWDA Notice; drafting and
24 mailing the evidence preservation and records request letter; reviewing correspondence from the
25 company; drafting the lawsuit, preparing the court filing forms and filing the lawsuit; reviewing
26 Plaintiff's personnel file and pay records; reviewing Defendant's sample production; selecting
27 the random sampling; drafting multiple joint CMC statements; reviewing Defendant's policies;
28 sending and receiving emails on the case with defense counsel, legal assistant, and data analyst;

1 having telephone discussions with defense; appearing for the initial CMC hearing; reviewing the
2 data analysis; drafting the mediation brief; preparing for and attending a full day mediation;
3 reviewing and revising the individual and PAGA Settlement Agreements; obtaining bids from
4 settlement administrators; and drafting the PAGA Approval Motion papers. I will make detailed
5 copies of such time records available to the Court for inspection upon its request. I also expect to
6 perform additional work on this case if the Court grants final approval of the Settlement, including
7 supervision of the Settlement Administrator's disbursement of the settlement funds to the
8 Aggrieved Employees.

9 35. To date, I have investigated and prosecuted this matter for over 55.1 hours as
10 detailed above. The hourly rate for my time is \$650.00 per hour which is my usual and customary
11 hourly rate charged for my services in similar PAGA and complex class actions. In this case,
12 my total lodestar amount through April 3, 2025 is \$35,815 (55 hours x \$650.00) without the use
13 of any multiplier, which results in a negative multiplier of 0.931 when compared against the
14 33,333.33 request for attorneys' fees.¹ Moreover, I will have waited for over two years to be
15 awarded attorneys' fees for work performed since August of 2023, when Plaintiff first contacted
16 my office.

17 36. My previous experience in litigating wage and hour actions also supports the
18 reasonableness of the fee request. Based on past experience with similar matter, I was able to
19 evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement.
20 Because it is reasonable to compensate me commensurate with my skill, reputation, and
21 experience, attorney's fees of approximately one-third of the Gross Settlement Amount is
22 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
23

24 ¹The negative multiplier of 0.931 is supported by California case law. Under California law, lodestar multipliers
25 can range from 2 to 4 or even higher. See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple*
26 *Computer, Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006
27 WL 5377849, *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar
28 in awarding fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson*
v. Bank of America Nat'l Trust & Sav. Ass'n., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate
awarded) (cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora*
Community Redevelopment Agency v. Demeter (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee
award 12 times estimated lodestar multiplier).

1 litigation, Alicia Belock and Skye Daley of Buchalter, also supports the fairness and
2 reasonableness of the requested fee award. The award of attorneys' fees sought is justified here
3 by the contingency nature of the attorney-client relationship, the risks of non-payment and non-
4 reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff's
5 Counsel has achieved for the Aggrieved Employees while bearing the substantial burdens of
6 contingency representation.

7 37. In addition, my firm incurred substantial costs to date, \$9,188.43 as part of the
8 PAGA Settlement. This amount consists of the LWDA filing fee and certified mailing postage
9 fees, the complaint filing fees, the data analyst fees, mediator fees, court filing fees, and attorney
10 service fees in the Action. A true and correct summary of my firm's costs and expenses incurred
11 to date along with invoices is attached as **Exhibit 6** to this declaration. As the evidence submitted
12 herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they
13 warrant the Court's approval.

14 ***PAGA Representative Service Payment***

15 38. Plaintiff's PAGA Representative Service Payment is being paid to Plaintiff for
16 providing Defendants with a release of any and all individual (non-PAGA) claims, whether
17 known or unknown, he may have against Defendants, and his service to the State of California
18 and the Aggrieved Employees in prosecuting the Lawsuit. By agreeing to settle the case in the
19 best interests of the Aggrieved Employees and the State, Plaintiff has given up the right to pursue
20 his individual claims and recover substantially more in unreimbursed expenses, interest, waiting
21 time penalties, and pay stub penalties that he will release as part of the Settlement. Plaintiff did
22 not seek an individual settlement for his claims at all, instead choosing to prosecute this suit on
23 behalf of the Aggrieved Employees and the State. *See generally* Declaration of Noriell Hoff
24 ("Hoff Decl.").

25 39. The PAGA statute does not forbid service awards. California federal district
26 court decisions recognize that incentive awards may be awarded in PAGA-only representative
27 actions. In *Mancini v. W.&S. Life Ins. Co.*, the court noted that the plaintiff had "asserted no
28 non-PAGA claims." *Mancini v. W.&S. Life Ins. Co.* (S.D. Cal. 2018) U.S. Dist. LEXIS 160320

1 at *7. The settlement agreement under consideration provided for \$5,000 as “an incentive award
2 to Plaintiff for his status as the PAGA representative.” *Id.* at *7. The district court took no issue
3 with the fact that the case involved claims solely under PAGA, instead holding that the terms of
4 the settlement agreement – including “the provision[] for incentive awards” – were
5 “reasonable.” *Id.* at *5. Further, in *Bruce v. Del Monte Foods, Inc.*, the district court granted an
6 incentive award to the named plaintiff out of a settlement sum “treated exclusively as a civil
7 penalty under PAGA.” *Bruce v. Del Monte Foods, Inc.* (N.D. Cal. 2018) U.S. Dist. LEXIS
8 53800 at *1. Although the court ultimately reduced the named plaintiff’s requested incentive
9 award, cautioning that “enhancement or incentive awards are to be treated with skepticism[,]”
10 the court nonetheless granted an additional award to the named plaintiff, noting that the named
11 plaintiff had made representations about “possible injury and expense above and beyond” that
12 sustained by other Plaintiff. *Id.* at *7.

13 40. Plaintiff’s PAGA Representative Service Payment of \$10,000 for his release of
14 any and all individual (non-PAGA) claims and his service to the State of California and the
15 Aggrieved Employees in prosecuting the Lawsuit is entirely reasonable given Plaintiff’s efforts
16 in the Lawsuit and the risks he undertook on behalf of the Aggrieved Employees. *See generally*
17 Hoff Decl. Plaintiff devoted many hours advancing the interests of the Aggrieved Employees.
18 *Id.* The work Plaintiff has done on this case includes hiring my firm, speaking with our office
19 on many occasions by phone, explaining what his employment at ANTHEM was like,
20 explaining what his employment at ANTHEM had in common with other employees who
21 worked for ANTHEM, explaining his claims to me and my staff, speaking with the mediator
22 during mediation, and communicating with me and my staff about the settlement agreement and
23 related documents. In doing this, Plaintiff has been exposed to significant risks, including the
24 risk of an order to pay Defendant’s attorneys’ fees and costs if this action had been unsuccessful
25 and in bad faith (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook
26 on behalf of the Aggrieved Employees show that the proposed Plaintiff’s Representative
27 Enhancement Payment to Plaintiff is fair, adequate, and reasonable, and thus warrants approval.
28 *See generally* Hoff Decl.

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A. Simpluris, Inc.= \$2,750.00
B. Phoenix Class Action Administration Solutions =\$3,300.00 ; and
C. ILYM Group, Inc. =\$3,650.00.

Notice of Settlement to the LWDA

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

Executed April 2, 2025, at Glendale, California.

MARALLE MESSRELIAN
MARALLE MESSRELIAN,
Declarant