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MARGARITA SOTELO, and all others similarly situated

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

MARGARITA SOTELO, as an “aggrieved
employee” on behalf of herself and other
similarly situated “aggrieved employees”
under the Labor Code Private Attorneys
General Act of 2004,

Plaintiff,

vs.

LA REINA MARKETS, LLC; and DOES 1
to 25, inclusive,

Defendants.

Case No.: 30-2024-01373350-CU-OE-CXC

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

*Assigned for All Purposes to
Hon. Melissa R. McCormick, Dept. CX104*

Action filed: 01/16/2024
Hearing Date: 08/14/2025
Hearing Time: 2:00 p.m.
Hearing Dept: CX104

Reservation Number: 74528898

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Maralle Messrelian;
3. Declaration of Margarita Sotelo;
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 August 14, 2025 at 2:00 p.m., or as soon thereafter as
4 the matter may be heard, in Department CX104 of the Orange County Superior Court, located at
5 751 W. Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff Margarita Sotelo (“Plaintiff” or “Sotelo”)
6 will and hereby does move this Court for an order approving the California Private Attorneys’
7 General Act (PAGA) Settlement and Release Agreement (the “Agreement” or “PAGA
8 Settlement”) and entering the [Proposed] Order and Judgment Approving PAGA Settlement.

9 The PAGA Settlement is on behalf of Sotelo and all individuals the Defendant La Reina
10 Markets, LLC (“Defendant” or “LA REINA”) has employed or otherwise contracted with in
11 California as hourly, non-exempt employees from November 12, 2022 to the date the Court grants
12 approval of the settlement (the “Aggrieved Employees”). Plaintiff alleges that LA REINA is liable
13 to her and other Aggrieved Employees for Defendant’s failures to: pay all wages earned for all
14 hours worked at the correct rates of pay; provide meal and rest periods or pay correctly-calculated
15 premium wages in lieu thereof;; indemnify for business expenses; issue only accurate and
16 complete itemized wage statements; timely pay wages during and upon separation of employment;
17 provide paid sick leave/statements of sick leave available; and maintain accurate employment
18 records. Plaintiff has sought to impose civil penalties for violations of Labor Code sections 201,
19 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1174, 1194, 1197, 1198, 2802 and
20 Industrial Welfare Commission Order No. 7-2001.

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

26 Respectfully submitted,

27 MM LAW, APC

28 Dated: April 6, 2025

By: Maralle Messrelian
Maralle Messrelian,
Attorneys for Plaintiff, Margarta Sotelo

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Margarita Sotelo (“Plaintiff” or “Sotelo”) submits this memorandum of points and authorities in support of her motion for approval of the California Private Attorneys’ General Act (PAGA) Settlement and Release Agreement (the “Agreement” or “PAGA Settlement”)¹ for the civil penalties claim she brought against Defendant La Reina Markets, LLC (“Defendant” or “LA REINA”) 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 (s), 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

LA REINA first began to employ Plaintiff in or around April of 2022 to work in the Bakery department of its grocery store located at 508 N. East St. in Anaheim, California. LA REINA continuously employed her in that capacity until on or about February 1, 2023 when her employment ended. 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 October 14, 2023, Plaintiff, on behalf of herself and LA REINA’s other California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”) gave written notice by electronic service to the California Labor and Workforce Development Agency (“LWDA”) and via certified mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. 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, 246.5, 510, 512, 558, 1174, 1194, 1197, 1198, 2802 and Industrial Welfare Commission Order No. 7-2001.

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 January 16, 2024, Plaintiff filed a representative lawsuit with a single cause of action
3 for recovery of civil penalties against Defendant in the Orange County Superior Court (the
4 "Lawsuit") pursuant to PAGA based on the same allegations set forth in her LWDA letter dated
5 October 14, 2023. Specifically, Plaintiff alleged that Defendant had failed to pay her and the
6 Aggrieved Employees all wages earned for all hours worked at the correct rates of pay; provide
7 meal and rest periods or pay correctly-calculated premium wages in lieu thereof; indemnify for
8 business expenses; issue only accurate and complete itemized wage statements; timely pay wages
9 during and upon separation of employment; provide paid sick leave/statements of sick leave
10 available; and maintain accurate employment records. MM, ¶ 7, Ex. 4. In response to Plaintiff's
11 assertions, Defendant filed its Answer on March 11, 2024. MM, ¶ 7, Ex. 5.

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

15 **C. Mediation With Professional Neutral Steve Cerveris**

16 Upon mutual agreement of the parties, on August 29, 2024, the parties participated in a
17 full-day mediation session with professional neutral Steve Cerveris. MM, ¶ 8. At the mediation,
18 the parties agreed to settle the Action. Before agreeing to the terms of the Settlement, the Parties
19 engaged in informal discovery regarding LA REINA's policies, practices, operations, time and
20 payroll information and other topics. In advance of mediation, Defendant provided Plaintiff's
21 counsel with information and documents relating to other Aggrieved Employees, including
22 timekeeping and payroll data. Through extensive, arm's length negotiations at the mediation, and
23 only after discovery and investigation were performed, the parties agreed to settlement terms.
24 Now that the parties have finalized the PAGA Settlement, Plaintiff submits it to this Court for
25 approval. MM, ¶ 9.

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

///

1 **III. OVERVIEW OF SETTLEMENT**

2 **A. “Aggrieved Employees” Definition**

3 The Aggrieved Employees are all individuals the Defendant has employed or otherwise
4 contracted with in California as hourly, non-exempt employees during the PAGA Period.
5 Agreement, ¶ A. The PAGA Period means the period of time from November 12, 2022 through
6 to the date the Court grants approval of the settlement. Agreement, ¶ I.

7 **B. Monetary Terms Of The Settlement**

8 Defendant has agreed to pay a total of \$130,000.00 (“PAGA Settlement Amount”) to settle
9 the PAGA claims identified in Plaintiff’s LWDA letter and Complaint (described more fully
10 below), from which all settlement payments to the Aggrieved Employees, to the State of
11 California, for Court approved attorneys’ fees and costs, and for settlement administration costs
12 shall be paid. Agreement, ¶ 3. Each Aggrieved Employee will receive a portion of the civil
13 penalties on a pro-rata basis calculated based on the total number of pay periods each Aggrieved
14 Employee worked as a non-exempt hourly employee of LA REINA in California during the
15 PAGA Period. See, Agreement, ¶ 3(d). The PAGA Settlement Amount will be divided as follows:

- 16 1. Plaintiff’s Counsel’s Attorneys’ Fees Payment amounting to \$43,333.33
(1/3 of the PAGA Settlement Amount),
 - 17 2. Plaintiff’s Counsel’s Costs Payment in the amount of \$10,241.87 (the
18 Agreement provides up to \$11,500);
 - 19 3. Settlement Administrators Fees/Costs of \$2,750.00 to Simpluris Inc.
(“Simpluris” or “Administrator”) to administer the Settlement;
 - 20 4. Approximately \$73,674.80 (“Net Settlement Amount” or “NSA”),
21 divided as follows:
 - 22 a. \$ 55,256.10 to the LWDA (75%); and
 - 23 b. \$ 18,418.70 to the Aggrieved Employees (25%)
- 24 Agreement, ¶ 3 (a)-(c).

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

26 No later than thirty (30) days after the Effective Date , Defendant shall deposit the
27 PAGA Settlement Amount with the Settlement Administrator. Agreement ¶ 3(h).

28 Within seven (7) business days after the Effective Date, Defendant shall provide the
Settlement Administrator with a Microsoft Excel spreadsheet with identifying information for all

1 of the Aggrieved Employees , including full name, last known mailing address, social security
2 number and the number of pay periods worked during the PAGA Period. Agreement, ¶ 3(g).

3 Within fourteen (14) days after Defendant funds the PAGA Settlement, the Settlement
4 Administrator will mail checks for all Individual PAGA Payments, the LWDA Share payment,
5 the Settlement Administrator Fees and Costs payment, the Attorneys' Fees and Costs payment to
6 Plaintiff's counsel. Agreement, ¶ 3(i). Before mailing any checks, the Settlement Administrator
7 shall run all the addresses of Aggrieved Employees through the United States Postal Service
8 National Change of Address to obtain current address information. *Id.*

9 The Administrator will issue the Individual PAGA Payments to each Aggrieved
10 Employee for his or her pro rata share of 25% of the NSA calculated according to the number of
11 Pay Periods the Aggrieved Employee worked during the PAGA Period along with the
12 explanatory letter along with an explanatory letter (Exhibit A to the Settlement; Exhibit 2 to MM
13 Declaration) by First-Class United States mail, postage prepaid, with directions to the Postmaster
14 to forward the Notice of PAGA Settlement and return all undeliverable Notices to the
15 Administrator. Agreement, ¶ 3(i)i. Within 7 days of receiving a returned check, the Settlement
16 Administrator must re-mail checks to the USPS forwarding address provided or to an address
17 ascertained through all reasonably available sources, methods and means including, but not
18 limited to, the National Change of Address Database, skip traces and direct contact by the
19 Settlement Administrator with Aggrieved Employees. Agreement, ¶ 3(i)ii.

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

21 The settlement checks issued to Aggrieved Employees will remain valid for one hundred
22 eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty
23 (180) days after issuance will be distributed to the California State Controller's Office Unclaimed
24 Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA
25 Employee. All settlement payments to Aggrieved Employees shall be treated as civil penalties
26 (i.e., nonwage income) for all purposes and reported by the Settlement Administrator on IRS
27 Form 1099 to Aggrieved Employees and applicable governmental authorities. Agreement, ¶ 3(e).

28 ///

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

3 Upon the Effective Date of this Settlement, Plaintiff as representative for the State of
4 California and the Aggrieved Employees will be deemed to have forever released the Released
5 PAGA Claims with respect to Defendant LA REINA and its directors, officers, shareholders,
6 partners, members, assignees, successors, business managers, marital community, agents,
7 contractors, insurers, attorneys, and employees, past and present, and each of them.

8 The Released PAGA Claims means:

9 Plaintiffs and Aggrieved Employees' claims for PAGA civil penalties based on the
10 allegations in the Operative Complaint filed in the Action, and in the PAGA Notice,
11 including 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1174, 1194,
12 1197, 1198, 2802 and Industrial Welfare Commission Order No. 7-2001.

13 Agreement, ¶ 4.

14 **IV. ARGUMENT**

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

16 The Settlement of a PAGA claim requires court approval. *Lab. Code*, § 2699, subd. (l)(2).
17 The Court necessarily has broad discretion in making the decision to approve or reject a
18 settlement for civil penalties as the statutory scheme authorizes the Court to determine whether,
19 in certain circumstances, penalties should be assessed and, if so assessed, the appropriate amount
20 of penalties based on the facts and circumstances of the particular case. *See Lab. Code*, § 2699,
21 subds. (e)(1)-(2). Although the PAGA does not set forth the particular standards against which a
22 PAGA settlement should be evaluated, the LWDA has provided guidance for approval that
23 mirrors the standards for evaluating class action settlements. MM, ¶ 12; *See, e.g., Salazar v. Sysco*
24 *Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n. 4-5 (E.D. Cal. 2017) (stating, based on the
25 LWDA's guidance, that approval of PAGA settlements may be had where the statutory
26 requirements of the PAGA are met and the terms of the settlement are fundamentally fair,
27 reasonable, and adequate). The established standards for evaluating whether class action
28 settlements are fair, reasonable, and adequate provide a familiar, useful framework for the Court
to evaluate PAGA settlements and have been adopted by several courts. *Id.*, *See Juarez v.*
Villafan, 2017 U.S. Dist. LEXIS 137205, *5 n. 4 (E.D. Cal. 2017) (*citing Officers for Justice v.*

1 *Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez*
2 *v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing
3 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017
4 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist.
5 LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist.
6 LEXIS 22886, *6 (S.D. Cal. 2018).

7 In making the determination whether a settlement taken as a whole is fair, reasonable,
8 and adequate, the Court should be careful to still give “proper deference to the private consensual
9 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
10 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
11 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
12 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors
13 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
14 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents*
15 *of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
16 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

17 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
18 **PAGA**

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

28 ///

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

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

5 the strength of the Plaintiff's case, the risk, expense, complexity and
6 likely duration of further litigation, the risk of maintaining class
7 action status through trial, the amount offered in settlement, the
8 extent of discovery completed and the stage of the proceedings, and
9 the experience and views of counsel.

10 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS
11 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS
12 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886,
13 *6. However, this Court should begin its analysis with a presumption that the proposed
14 settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through
15 arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
16 court to act intelligently; (3) counsel is experienced in similar litigation" *Dunk*, 48 Cal.
17 App. 4th at 1802.

18 The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The
19 parties reached the Settlement through arm's-length bargaining with the aid of a respected
20 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
21 the Court to act intelligently. Plaintiff requested and Defendant provided the number Aggrieved
22 Employees, the total number of pay periods during the PAGA Period, all policies in effect during
23 the PAGA Period, and a sampling of anonymized payroll and time punch data for its California
24 non-exempt employees for the relevant period; and (3) Counsel for the Parties are experienced
25 with PAGA cases. MM, ¶ 19. Moreover, neither Plaintiff nor Plaintiff's Counsel have any
26 conflicts of interest with the absent Aggrieved Employees, there are no issues of ascertainability,
27 and the parties are not aware of any other cases that may be impacted by the Settlement. *Id.* For
28 the reasons discussed below, this Court should approve the PAGA Settlement.

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

3 The PAGA Settlement was reached only after informal discovery and arms' length

1 negotiations between experienced attorneys, which included a full-day mediation with
2 professional neutral Steve Cerveris. At all times, the negotiations were adversarial and
3 contentious, although still professional in nature. MM, ¶ 9.

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

13 **2. The Parties Conducted Sufficient Investigation And Discovery To Allow Counsel**
14 **And The Court To Act Intelligently.**

15 Plaintiff considered various sources of information in the lead-up to and during the
16 mediation of August 29, 2024 that enabled her to achieve the PAGA Settlement at issue. MM, ¶
17 20. Among other things, Plaintiff considered the following:

- 18 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 19 • Plaintiff's counsel requested that Defendant provide any and all policies regarding
20 overtime and double-time wages, off the clock work, expense reimbursement, meal
21 periods, rest breaks, meal period waivers and agreements, compensation plans, and
22 complaints about working conditions in effect during the relevant time period beginning
23 in November of 2022. Defendant produced those policies as part of their employee
24 handbook.
- 25 • Plaintiff's counsel requested that Defendant provide the total number of employees,
26 paychecks, and the pay cycles during the relevant period. Defendant provided the
27 answers to each of these questions.
- 28 • Plaintiff requested a 20% sampling of time and payroll records. Defendant provided
Plaintiff's counsel with anonymized payroll and time punch data for approximately 31
of its non-exempt employees during the relevant time period.
- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine

the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

- Plaintiff's counsel analyzed the state of caselaw on PAGA claims, meal and rest break violations, claims for "off the clock" work and business expense reimbursement, especially as it relates to "manageability" arguments brought up by the defense.

MM, ¶ 20.

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

Defendant estimated for purposes of mediation that, through August 29, 2024, there were approximately 153 Aggrieved Employees who incurred 9,370 pay periods during the relevant period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. 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 civil penalty amount per pay period. *Id.*

Plaintiff's analysis, which Defendant strongly disputes, revealed that 10.3% of pay periods with shifts greater than 5 hours had at least one meal violation (late, short, or no meal). Under the civil penalty formulas applicable under PAGA, Plaintiff calculated Defendant's potential exposure as follows: \$50 penalty per pay period, assuming 10.3% violation, based on Labor Code § 558 for violation of Labor Code § 512 (failure to provide meal periods)(9,370x \$50 x 10.3% =\$48,255.50); \$100 penalty per pay period under Labor Code sec. 2699(f)(2), assuming the same 6% violation rate for rest break violations (9,370x \$100 x 10.3% =\$96,511); \$250 penalty per pay period, based on Labor Code § 226.3 for violation of Labor Code § 226 (failure to provide compliant wage statements) (9,370 x \$250 x 10.3% = \$241,277.50). Stacking each of these maximum recoverable civil penalty estimates yields a total amount of \$386,044. 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. For the rest period violations, it also presumes that the meal and rest period violation rates were identical. The potential for recovery of approximately \$386,044 in civil

1 penalties depends on circumstances that are extremely unlikely independently and in
2 combination. It would depend on the Court stacking the maximum recoverable civil penalties for
3 meal period violations, rest break violations, and faulty wage statement violations per pay period
4 for all 9,370 pay periods for all 153 Aggrieved Employees during the PAGA Period. Plaintiff's
5 counsel is not aware of any California State court decision awarding a plaintiff and the other
6 aggrieved employees she represents multiple civil penalties for the same pay period under
7 different Labor Code provisions. At best, Plaintiff could hope to recover one penalty for each pay
8 period (regardless of the different Labor Code violations that potentially occurred for the same
9 employee, during the same pay periods). Plaintiff had to substantially discount the value of these
10 claims in the settlement negotiations for this and a variety of other reasons (outlined below). MM,
11 ¶ 22.

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

27 Defendant contends they provided non-exempt employees with the opportunity to take
28 rest breaks in accordance with California law, and, accordingly, that Plaintiff's rest break claim

1 has no support. Additionally, there are other risks to Plaintiff's rest period claim. Employers are
2 not required to record rest periods and such periods are paid. Unlike meal periods, where there
3 are often records showing whether an employee clocked out or not, there is no such evidence to
4 prove a missed rest period or that the employer refused to authorize and permit one. MM, ¶ 24.

5 There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that
6 Defendant did not reimburse her or the other Aggrieved Employees for uniform and mobile
7 phone expenses. There is a risk that the Court may consider Plaintiff's claims as to Defendant's
8 alleged failure to indemnify for business expenses to be individual in nature. Moreover,
9 Defendant provided evidence at mediation that it supplied all of its employees with two new
10 shirts and a hat every year. As such, Plaintiff's Counsel had to significantly discount the value of
11 this claim during settlement negotiations. MM, ¶ 25.

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

1 same formula here and assuming there was one violation during each pay period, the award of
2 civil penalties could not exceed \$46,850 in PAGA penalties (9,370 violations x \$5). As such, this
3 Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
4 formula. Defendant has also posed formidable defenses to the Labor Code claims underlying
5 Plaintiff's allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
6 Settlement Amount is uncertain. MM, ¶ 26.

7 All in all, considering all of the risks detailed above, as well as potential manageability
8 issues, the risk of not prevailing at trial, the risk that, even if Plaintiff prevailed, the damages
9 would be limited due to the largely discretionary nature of the damages, and taking into account
10 Defendant's defenses on the merits, Plaintiff applied a 50% discount to the maximum PAGA
11 exposure of \$386,044, resulting in a risk-discounted realistic potential exposure of \$193,022.
12 Therefore, the PAGA Settlement Amount of \$130,000 is a great result, amounts to relief
13 consistent with the underlying purpose of PAGA, and represents approximately 67% of the risk-
14 discounted realistic potential recovery. MM, ¶ 27. *See In re Cendant Corp., Derivative Action*
15 *Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2% recovery
16 based on the estimated liability exposure).

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

24 The settlement of the representative PAGA claim involves monetary relief to all
25 Aggrieved Employees, Plaintiff, her attorneys, and the State of California. The Settlement is
26 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
27 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
28 punishment statute. It provides for civil penalties only. Within the PAGA framework she is bound

1 by, Plaintiff, considering the evidence she faced, achieved a great result for the employees
2 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
3 civil penalties can pursue any damages they believe they are owed by the Defendant. The
4 Settlement does not require them to opt out to do so. MM, ¶ 29.

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

15 As such, the settlement of PAGA penalties in the gross sum of \$130,000.00, of which
16 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs
17 (\$55,256.10) will be paid to the LWDA and 25% (\$18,418.70) will be distributed to the
18 Aggrieved Employees, is reasonable and appropriate under the circumstances. MM, ¶ 31.

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

21 Each PAGA Employee will receive a portion of the civil penalties on a pro-rata basis
22 depending on the number of pay periods Defendant employed them for during the PAGA Period.
23 Agreement, ¶ 3(d). At the time of the mediation (August 29, 2024), Defendant estimated that there
24 are approximately 153 Aggrieved Employees who worked a total of 9,370 pay periods during the
25 PAGA Period. After deducting the requested Court-approved Plaintiff's counsel's Attorneys'
26 Fees payment (\$43,333.33), Plaintiff's counsel's Costs payment (\$10,241.87), the and the
27 Settlement Administrator's Fees/Costs (\$2,750.00), the NSA will be approximately \$73,674.80.
28 Seventy five percent (75%) of the NSA will be paid to the Labor and Workforce Development
Agency ("LWDA") (\$55,256.10), and twenty five percent (25%) (\$18,418.70) of the NSA will

1 be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of
2 pay periods during the PAGA Period. Based on this amount, the lowest estimated individual
3 recovery for an Aggrieved Employee would be \$1.97 (\$18,418.70 divided by 9,370 pay periods
4 as estimated at the time of mediation) if he/she worked only one (1) pay period during the PAGA
5 Period. The maximum estimated individual recovery for an Aggrieved Employee would be
6 approximately \$279.74 if he/she worked 142 pay periods (estimated total pay periods from
7 November 22, 2022 to approval hearing date of August 14, 2025 [\$1.97*142 pay periods]) under
8 the proposed settlement. The average estimated individual recovery for an Aggrieved Employee
9 is approximately \$120.38 (\$18,418.70/153 Aggrieved Employees). Given the discretionary nature
10 of awarding PAGA penalties based upon Defendant's compliant policies and Aggrieved
11 Employees' pay and time data, and considering the risk of not being able to proceed on a
12 representative basis at all due to the risk of not prevailing at trial, and the risk that, even if Plaintiff
13 prevailed, the damages would be limited due to the largely discretionary nature of the damages,
14 this is an excellent result, amounting to relief consistent with the underlying purpose of PAGA.
15 MM, ¶ 32.

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

17 Plaintiff's counsel has considerable experience in wage and hour litigation and is
18 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with
19 litigation, and viability of possible affirmative defenses. *See* MM, ¶¶ 14-18, 39. Similarly,
20 Defendant's counsel, Guillermo M. Tello and J. Anthony Flores of Clark Hill LLP, have broad
21 experience in handling employment matters and wage and hour litigation. MM, ¶ 39.

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

24 Of the \$130,000.00 allocated towards the PAGA Settlement Amount, Plaintiff's counsel
25 requests \$43,333.33 (1/3 of the PAGA Settlement Amount) in attorney's fees and \$10,241.87 in
26 litigation costs, which is fair and reasonable. MM, ¶ 36-37.

27 It is an accepted practice in wage and hour class action settlements to award attorneys'
28 fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the
parties. California courts have long recognized that an appropriate method for awarding attorneys'

1 fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20
2 Cal.3d 25, 48-49 [“when a number of persons are entitled in common to a specific fund, and an
3 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
4 of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund”]; *Wershba*
5 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*
6 (2000) 82 Cal.App.4th 19, 26-30.)

7 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
8 check” on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
9 1 Cal. 5th 480, 505 (“*Laffitte*”). However, the California Supreme Court in *Laffitte* has now made
10 clear that this cross-check is not required and approved one-third of the class action settlement
11 fund as reasonable attorney fees as “[t]he percentage of the fund method survives in California
12 class action cases...” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
13 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
14 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not “engage
15 in a full-blown lodestar analysis when the primary basis remains the percentage method...” The
16 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
17 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
18 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
19 reasonableness of a requested percentage fee.’” *Id.* (citing *Laffitte*)).

20 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
21 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
22 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
23 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
24 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
25 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
26 settlements. MM, ¶ 36.

27 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
28 fees, notwithstanding courts’ clear preference for the percentage method, Plaintiff’s Counsel’s

1 fee request of \$43,333.33 (1/3 of the PAGA Settlement Amount) is fair and reasonable based on
2 their lodestar as cross-checked against the percentage of the recovery. MM, ¶¶ 37-38, Ex. 7.
3 Plaintiff's counsel's previous experience in litigating wage and hour class and representative
4 actions and the caliber of opposing counsel also support the reasonableness of the fee request.
5 MM, ¶ 39. The award of attorneys' fees sought is also justified by the contingency nature of the
6 attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in
7 payment and cost reimbursement, and the great results Plaintiff's Counsel has achieved for the
8 Aggrieved Employees. *Id.*

9 In addition, Plaintiff's Counsel incurred substantial costs, \$10,241.87 to date as part of the
10 PAGA Settlement. This amount consists of the LWDA filing fee and certified mailing postage
11 fees, the complaint filing fees, the data analyst fees, mediator fees, court filing fees, and attorney
12 service fees in the Action. MM, ¶ 40, Ex. 8. As the evidence submitted herewith shows, all of
13 these costs are documented and reasonably incurred. *Id.* Accordingly, they warrant the Court's
14 approval.

15 **7. The Proposed Settlement Administration Costs Are Fair and Reasonable and**
16 **Should Be Approved.**

17 With regard to the settlement administration costs provision, it is reasonable. Before
18 agreeing to Simpluris, Inc. ("Simpluris"), the Parties sought and reviewed bids from other
19 reputable third-party administrators and Simpluris' bid was the lowest. MM, ¶ 41, Exs. 9-11;
20 Declaration of Denise Islas, Ex. C. Thus, the settlement administration costs provision should be
21 given approval.

22 **V. CONCLUSION**

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

25 Respectfully submitted,

MM LAW, APC

26 Dated: April 6, 2025

By: 

Maralle Messrelia

Attorneys for Plaintiff, Margarita Sotelo

Reservation Confirmation Details

Reservation Number:	74528898
Hearing Date:	Thursday, August 14, 2025
Hearing Time:	2:00 PM
Department:	CX104
Motion Type:	Motion - Other
Case Number:	30-2024-01373350-CU-OE-CXC
Case Title:	Sotelo vs. La Reina Markets, LLC
Judicial Officer:	Melissa R. McCormick
Email:	maralle@mmlawapc.com
Requestor Name:	Maralle Messrelian
Requestor Phone:	818-810-7747
Filing Party:	Margarita Sotelo
Date of Request:	April 6, 2025
Time of Request:	5:03 PM
Transaction Number:	1000542294