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Attorneys for Plaintiff,
LUKAS JAVIER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – NORTH COUNTY
(*UNLIMITED JURISDICTION*)

LUKAS JAVIER, as an "aggrieved employee" on behalf of himself and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

HYATT CORPORATION dba THE SEABIRD; and DOES 1 to 25, inclusive,

Defendants.

Case No.: 37-2024-00018273-CU-OE-NC

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

Action filed:	04/15/2024
Hearing Date:	08/15/2025
Hearing Time:	1:30 p.m.
Hearing Dept:	N-31, Hon. Michael D. Washington

DECLARATION OF MARALLE MESSRELIAN

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 Lukas Javier (individually, "Javier" or "Plaintiff") in his lawsuit against Defendant Hyatt Corporation dba The Seabird ("Defendant" or "Seabird").

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 (the "Settlement or "Agreement") is attached hereto as **Exhibit 1**.

Factual and Procedural Background

4. SEABIRD first began to employ Plaintiff in or around August 2022 to work at The Seabird hotel located at 101 Mission Ave, Oceanside, CA 92054 and the Mission Pacific Beach Resort hotel located next door at 201 N Myers St, Oceanside, CA 92054. During his employment, Plaintiff's job title was "Housekeeping Supervisor." Plaintiff's employment ended or around December 19, 2023.

5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the PAGA. On February 1, 2024, Plaintiff, on behalf of himself and Seabird'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 (the "LWDA Notice"). A true and correct copy of Plaintiff's PAGA Notice is attached hereto as **Exhibit 2**.

6. On April 15, 2024, Plaintiff filed a representative lawsuit with a single cause of action for recovery of civil penalties against Defendant in the San Diego County Superior Court (the "Lawsuit") pursuant to PAGA based on the same allegations set forth in his LWDA letter.

Specifically, Plaintiff alleged that Defendant had 1) failed to pay him and the Aggrieved Employees all wages earned for all hours worked at the correct rates of pay; 2) failed to provide meal periods or pay correctly-calculated premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof; 4) failed to deduct wages lawfully; 5) failed to issue only accurate and complete itemized wage statements; 6) failed to timely pay wages during and upon separation from employment; and 7) failed to maintain accurate employment records. A true and correct copy of Plaintiff's Complaint is attached hereto as **Exhibit 3**.

7. On May 21, 2024, Defendant filed its Answer to Plaintiff's Complaint. A true and correct copy of Defendant's Answer is attached hereto as **Exhibit 4**.

8. Upon mutual agreement of the parties, on May 21, 2025, the parties participated in a full-day mediation session with Gig Kyriacou, Esq, an experienced and well-regarded neutral, who has considerable experience mediating complex wage and hour actions.

9. The negotiations during the mediation were adversarial and contentious, although professional in nature. Ultimately, at the mediation, the parties reached a good-faith agreement to settle the Action. Notably, in advance of the mediation, the Parties engaged in informal discovery regarding Seabird's policies, practices, operations, time and payroll information, and other topics. Specifically, Defendant provided Plaintiff's counsel with information and documents relating to the Aggrieved Employees, including timekeeping and payroll data for all of the Aggrieved Employees who worked during the PAGA Period. Defendant also produced Plaintiff's personnel file, timekeeping records, and earnings statements. Through extensive, arm's length negotiations at the mediation, and only after discovery and investigation were performed, the parties agreed to settlement terms. Now that the parties have finalized the PAGA Settlement, Plaintiff submits the PAGA Settlement to this Court for approval.

10. While Defendant has agreed to the PAGA Settlement, Defendant denies any liability or wrongdoing of any kind whatsoever associated with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and discharge all claims known or unknown

related to those alleged in Plaintiff's lawsuit.

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

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

13. PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here. First, any civil penalties recovered, whether by judgment or settlement, must be distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See Moorer v. Noble L.A. Events, Inc*. (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i). The parties' Settlement so provides (*See* **Exhibit 1**). Second, the LWDA must be given notice of the settlement so that it may be heard before the Court decides whether to grant approval. Cal. Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. A true and correct copy of Plaintiff's submission with the LWDA and a confirmation email is attached as **Exhibit 7**. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

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My Experience and Qualifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

n) *Kevin Littleton v. Lincoln Military Property Management LP*., San Diego County Superior Court, Case No. 37-2018-00061799-CU-OE-NC (order and judgment approving PAGA settlement by the court)

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

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

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

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

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

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

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

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

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

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

y) *Irma Tapia v. Posada Associates, et al*., Santa Cruz Superior Court, Case No.

23CV00355 (order and judgment approving PAGA settlement by the court).

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

aa) *Alfredo Betancourt v. L3 Technologies, Inc.*, San Mateo County Superior Court, Case no. 23-CIV-05704 (appointed Class Counsel and granted final approval of class action settlement by the court).

Exposure and Risk Analysis

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

20. I considered various sources of information in the lead-up to the mediation of May 21, 2025 that enabled Plaintiff to achieve the Settlement at issue. Among other things, Plaintiff considered the following:

- Defendant produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- Plaintiff's counsel requested that Defendant provide any and all policies regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, compensation plans, and complaints about working conditions in effect during the relevant time period beginning in February of 2023. Defendant produced its pertinent wage and hour policies, including those contained within its employee handbook.
- Plaintiff's counsel requested that Defendant provide the total number of employees, paychecks, and the pay cycles during the relevant PAGA Period. Defendant provided the answers to each of these questions.
- Defendant provided Plaintiff's counsel with anonymized payroll and time punch data as

well as attestation records for all of its non-exempt employees who worked at the Seabird location during the PAGA Period.

- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

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

21. Defendant estimated for purposes of mediation that, there were approximately 823 Aggrieved Employees who worked approximately 21,000 pay periods when the mediation took place. 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. Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of approximately $466,500 for civil penalties for Plaintiff's *strongest* disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant disputes, revealed that there was a 4.1% violation rate for shifts greater than 6 hours where an employee does not clock out for a meal period, a 10.7% violation rate for shifts greater than 6 hours where the employee clocks out for the first time more than 5 hours after the first punch in, and a 0.4% violation rate for shifts greater than 6 hours where the employee clocks out for a meal period that is less than 30 minutes long – a 15.2% total violation rate for either late, short, or no meal periods for shifts over 6 hours (Plaintiff's analysis focused on shifts greater than 6 hours since Defendant provided evidence of valid meal period waivers in place for shifts less than 6 hours). Since the total number of pay periods in the PAGA period was 21,000 and since approximately 95.1% of the shifts in the data analysis were over 6 hours and 98.6% of the shifts were over 3.5 hours, the total number of pay periods to consider for potential meal break violations was 19,971 (95.1% x 21,000 pay periods) and rest break violations was 20,706 (98.6% x 21,000 pay periods). As such, with the 15.2% violation rate, the maximum

exposure for meal break would be $151,800, which is calculated as $50 penalty multiplied by 3,036 pay periods (15.2% of the 19,971 pay periods to consider for meal violations). Plaintiff extrapolated the same 15.2% rate for rest break violations, which would equate to a maximum exposure of $314,700 ($100 penalty per pay period multiplied by 3,147 pay periods to consider [15.2% of the 20,706 pay periods to consider for rest violations]. As such, the aggregate maximum exposure for meal break and rest break claims would be $466,500. Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. For the rest period violations, it also presumes that the meal and rest period violation rates were identical.

23. There are risks to Plaintiff's meal and rest period claims. Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." *Id*. at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. Id. "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Determining by a review of Defendant's time records the exact reasons why a meal period appears to be short or late would be difficult and pinpointing those days in which Plaintiff and the Aggrieved Employees worked during their meal periods will be a challenge. Additionally, Defendant provided evidence that their time keeping system includes attestations for employees to acknowledge taking daily meal and rest breaks. Based on the employees' attestations, Defendant pays automatic meal period premiums to its employees for any missed, short, or late meal periods. Defendant produced the attestation records for all its employees during the PAGA Period. Defendant also provided evidence of signed voluntary meal period waiver agreements. Furthermore, Defendant's Employee Handbook contains legally compliant meal period and rest break policies.

24. Defendant contends it provided its non-exempt employees with the opportunity to take rest breaks in accordance with California law and employees signed daily attestations regarding taking their rest breaks, and accordingly, that Plaintiff's rest break claim has no support. Additionally, there are other risks to Plaintiff's rest period claim. Employers are not required to record rest periods, and such periods are paid. Unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one.

25. As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest period violations, there would be issues with proof. The sampling did not reveal any rounding as hours were paid to the second decimal point. As it relates to any overtime issues, the data showed the average workday was 7.3 hours and when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. In addition, double time was also properly paid. Moreover, Defendant provided overall strong written policies as it related to wage and hour practices and showed that Plaintiff acknowledged the policies. There are risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that Defendant did not reimburse him or the other Aggrieved Employees for uniform items and personal phones for business-related purposes. Defendant provided evidence at mediation that it provided its employees with all uniform items, including shirts and pants, and that all employees signed Uniform Receipt Acknowledgment forms. Moreover, there is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature. As such, Plaintiff's Counsel had to significantly discount the value of this claim during settlement negotiations. Plaintiff's other claims for violations of Labor Code sections 203, 204, and 226 (for not being paid all wages owed every pay period or at the end of employment as well as not receiving accurate, itemized wage statements) would not be triggered since they are derivative claims, and no rounding/overtime issues were identified. Based on the above calculations, Plaintiff's aggregate exposure for the strongest disputed claims for meal and rest break violations would be $466,500. Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or

confiscatory. Based on the above analysis, a gross settlement in the amount of $252,000, which represents approximately 54% of the aggregate exposure, is a very good result, especially in light of the risk factors as discussed above.

26. Moreover, I am unaware of any California State court decision awarding a plaintiff and the other Aggrieved Employees he represents multiple civil penalties for the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes. Plaintiff's counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. At best, Plaintiff could hope to recover one penalty for each pay period (regardless of the different Labor Code violations that potentially occurred for the same employee, during the same pay periods).

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

here and assuming there was one violation during each pay period, the award of civil penalties could not exceed $105,000 in PAGA penalties (21,000 violations x $5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Defendants have also posed formidable defenses to the Labor Code claims underlying Plaintiff's allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is uncertain.

28. The Parties further recognize that the issues presented in the representative PAGA claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits to the PAGA Employees and Plaintiff from continued litigation.

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

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

negotiations between the Parties consistent with public policy and fully comply with applicable provisions of law.

31. As such, the settlement of PAGA penalties in the gross sum $252,000, of which 75% of the net amount after attorney's fees, litigation costs, and settlement administration costs ($111,571.34) will be paid to the LWDA and 25% ($37,190.45) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances.

Individual PAGA Payments

32. Defendants represent that at the time of mediation there were approximately 823 Aggrieved Employees during the PAGA Period. Agreement, ¶ 9. After deducting the requested Court-approved PAGA Counsel's Fees Payment ($84,000), PAGA Counsel's Litigation Expenses Payment ($13,013.21), and the Administration Expenses Payment ($6,225), the Net Settlement Amount will be approximately $148,761.79 allocated as PAGA Penalties. Seventy five percent (75%) of the PAGA Penalties will be paid to the Labor and Workforce Development Agency ("LWDA") ($111,571.34), and twenty five percent (25%) ($37,190.45) of the PAGA Penalties will be paid to the Aggrieved Employees on a pro-rata basis based upon their respective number of pay periods during the PAGA Period. Agreement, ¶ 3.2 (c)(i). With a total of 823 Aggrieved Employees, the average estimated Individual PAGA Payment for each Aggrieved Employee is approximately $45.19 (25% of the estimated PAGA Penalties of $37,190.45) / 823Aggrieved Employees). This is a good result given the uncertainties this lawsuit entails.

Plaintiff's Individual Settlement

33. Plaintiff negotiated an individual settlement agreement separate from the PAGA Settlement. The parties agreed that the consideration Plaintiff received pursuant to the individual settlement agreement was to settle his individual claims for hostile work environment harassment, retaliation, and wrongful termination in violation of public policy.

34. As part of this confidential agreement, Plaintiff also provided Defendant with a general release of all claims, whether known or unknown, including unknown claims covered by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent Aggrieved

Employees and is adequate to represent the Aggrieved Employees. Plaintiff has maintained contact with my office and helped me gather information and evidence to prove the alleged claims and has agreed to remain involved as a PAGA representative even if the Court does not approve the Settlement. While Plaintiff and I believe that Plaintiff's individual settlement has no bearing on his adequacy as a PAGA Representative, he is willing to present that Settlement to the Court *in camera* for review if the Court requests. It represents a fair resolution for Plaintiff's individual wage and hour claims and claims for harassment, retaliation, and wrongful constructive discharge. *See generally* Declaration of Lukas Javier.

35. The PAGA statute does not forbid service awards. Courts frequently award them in PAGA-only cases as well. *See Mancini v. W. & S. Life Ins. Co*. (S.D. Cal. Sept.18, 2018), 2018 WL 4489590, at *2 (approving an incentive award of $5,000 to named plaintiff in a PAGA-only settlement); *see also Kinney v. Harvest Al Mgmt. Sub LLC*, (E.D. Cal. Sept. 6, 2013) 2013 WL 12415482, at *3 (awarding an incentive award of $3,000 to a named plaintiff in a PAGA-only settlement). The work Plaintiff has done on this case includes hiring my firm, speaking with our office on many occasions by phone, explaining what his employment at Seabird was like, explaining what his employment at Seabird had in common with other employees who worked for Seabird, explaining his claims to me and my staff, having his deposition taken, participating in mediation, and communicating with me and my staff about the settlement agreement and related documents. Despite this, Plaintiff is **not** asking for a service award for his involvement and the time he spent assisting my firm with the PAGA action. *See generally* Declaration of Lukas Javier.

Attorneys' Fees and Costs

36. I represent Plaintiff on a straight contingency basis. My firm's request for $84,000 in attorney fees and $13,013.21 in litigation costs is fair and reasonable. "[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129

F.3d 1026, 1027 ("*MGM*") (awarding 33% of total fund amount).) This is also consistent with my experience in wage and hour class and PAGA settlements.

37. To date, I have investigated and prosecuted this matter vigorously, including reviewing the initial intake; researching the company and past lawsuits against it; drafting the LWDA letter; drafting the lawsuit and preparing the court filing forms; drafting informal discovery questions, reviewing Defendant's informal document production, including wage and hour policies; sending and receiving emails on the case with defense counsel, the legal assistants, and Plaintiff; multiple calls with Defense counsel; multiple calls and text messages with Plaintiff; sending the PAGA data to Plaintiff's expert for review/analysis and reviewing the expert's findings/conclusions; drafting a comprehensive mediation brief and PAGA exposure analysis; engaging in a full day mediation; reviewing the PAGA Settlement Agreement; obtaining bids from settlement administrators; and drafting this PAGA approval motion. I also expect to perform additional work on this case if the Court grants final approval of the Settlement, including supervision of the Administrator's disbursement of the settlement funds to the Aggrieved Employees.

38. My previous experience in litigating wage and hour actions also supports the reasonableness of the fee request. Based on past experience with similar matter, I was able to evaluate the strengths and weaknesses of this case and the reasonableness of the Settlement. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorney's fees of approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation, Brian Long, Michael Afar, and Sofya Perelshteyn of Seyfarth Shaw LLP, also supports the fairness and reasonableness of the requested fee award. The award of attorneys' fees sought is justified here by the contingency nature of the attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff's Counsel has achieved for the Aggrieved Employees while bearing the substantial burdens of contingency representation.

39. In addition, my firm incurred substantial costs, $13,013.21 to date, which consist

of mediator fees, data analysis fees, filing fees and attorney service fees. A true and correct summary of my firm's costs and expenses incurred to date is attached as **Exhibit 5** to this declaration. I will make detailed copies of such records available to the Court for *in camera* inspection upon its request. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. Accordingly, they warrant the Court's approval.

Settlement Administration Costs

40. I can attest that the settlement administration costs provision is reasonable. Before agreeing to Simpluris, Inc. ("Simpluris"), the parties sought and reviewed bids from other reputable third-party administrator and Simpluris' bid was the lowest. A true and correct copy of the bid from Simpluris is attached hereto as **Exhibit 6**. Furthermore, the Declaration of Michael Bui with attached exhibits, filed under separate cover, sets forth Simpluris' qualifications and costs to administer the settlement. *See generally* Declaration of Michael Bui, Ex. C. Thus, the settlement administration costs provision should be given approval.

Notice of Settlement to the LWDA

41. Pursuant to Lab. Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement with the LWDA at the same time the Settlement is being filed with the Court. True and correct copies of Plaintiff's submission with the LWDA and the confirmation email are collectively attached as **Exhibit 7** to this declaration.

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 on July 24, 2025 , at Glendale, California.

Maralle Messrelian

MARALLE MESSRELIAN,
Declarant