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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO
(*UNLIMITED JURISDICTION*)

ILSE HERNANDEZ,

Plaintiff,

vs.

PAVILIONS MANAGEMENT, LLC; ALADDIN SAMMAKIEH; and DOES 1 to 25, inclusive,

Defendants.

Case no.: CU24-07673

NOTICE OF PLAINTIFF'S MOTION AND UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Action filed:	October 2, 2024
Hearing Date:	May 11, 2027
Hearing Time:	9:00 a.m.
Hearing Dept:	3, Hon. Stephen Gizzi

Submitted Herewith Under Separate Cover:

1. Memorandum of Point and Authorities;
2. Declaration of Harout Messrelian;
3. Declaration of Maralle Messrelian;
4. Declaration of Ilse Hernandez;
5. Declaration of Lisa Mullins; and
6. [Proposed] Order and Judgment Approving PAGA Settlement.

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

PLEASE TAKE NOTICE that on May 11, 2027 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 3 of the Solano County Superior Court – Old Solano Courthouse located at 580 Texas Street, Fairfield, CA 94533, Plaintiff Ilse Hernandez ("Plaintiff" or "Hernandez") will and hereby does move this Court for an order approving the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement") and entering the [Proposed] Order and Judgment Approving PAGA Settlement.

The PAGA Settlement is on behalf of Hernandez and all individuals who are or were employed by Defendant Pavilions Management, LLC in California and classified as non-exempt employees at any time during the PAGA Period of June 28, 2023 to December 4, 2025 (the "Aggrieved Employees"). Plaintiff alleges that Defendants Pavilions Management, LLC and Aladdin Sammakieh ("Defendants" or "PAVILIONS") are liable to her and the other Aggrieved Employees for (1) failure to compensate for all hours worked, including minimum and overtime wages; (2) failure to provide accurate, itemized wage statements; (3) failure to pay all wages owed during and at the end of employment; (4) failure to maintain accurate records; (5) failure to give rest breaks and meal breaks; (6) failure to reimburse for business expenses; (7) unlawful collection of tips and gratuities; and (8) failure to provide accurate sick pay.

The Motion, unopposed by Defendants, is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the declarations of Harout Messrelian, Maralle Messrelian, Ilse Hernandez, and Lisa Mullins, the PAGA Settlement, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: October 12, 2026

By: Maralle Messrelian
Harout Messrelian
Maralle Messrelian (Of Counsel)
Attorneys for Plaintiff, Ilse Hernandez

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ilse Hernandez ("Plaintiff" or "Hernandez") submits this memorandum of points and authorities in support of her motion for approval of the PAGA Settlement Agreement (the "Agreement" or "PAGA Settlement")[1] for the civil penalties claim she brought against Defendants Pavilions Management, LLC and Aladdin Sammakieh ("Defendants") 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(s)(2) 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

Plaintiff started working for Defendants in or around June 2021 as a crew member at their McDonald's restaurant located at 1602 E. 2nd Street, Benicia, California 94510. Plaintiff's employment with Defendants ended on or around June 19, 2024. HM, ¶ 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 PAGA. On June 28, 2024, Plaintiff, on behalf of herself and Defendants' other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic submission 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 "PAGA Notice" or "LWDA Letter"). HM, ¶ 6, Ex. 3.

B. Plaintiff's Lawsuit

On October 2, 2024, Plaintiff filed a representative action under PAGA against Defendants alleging various wage and hour violations, including failure to pay minimum wages and for all hours worked (including "off the clock" work), failure to provide reporting time pay,

[1] The PAGA Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of Harout Messrelian ("HM"), which is submitted herewith under a separate cover.

failure to pay overtime and double time, failure to provide meal and rest breaks, failure to timely pay wages owed, failure to provide accurate itemized wage statements, failure to keep accurate payroll records, failure to timely pay wages due upon separation of employment, failure to reimburse for necessary business expenses, unlawful collection of tips and gratuities, failure to provide accurate sick pay, and failure to provide suitable rest break facilities. Specifically, Plaintiff sought civil penalties under California Labor Code section 2698, et seq. premised on alleged violations of California Labor Code sections 201, 202, 203, 204, 204b, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699 et seq., 2800, 2802, and the IWC Wage Order No. 5-2001 (the "PAGA Complaint," "Lawsuit," or "Action"). HM, ¶ 7, Ex. 4. On January 29, 2025, Defendants filed their Answer to Plaintiff's Lawsuit. Id., Ex. 5. Defendants contended that Plaintiff was bound by an arbitration agreement signed during her employment, and on August 6, 2025, the Court ordered the Action stayed pending arbitration of Plaintiff's individual claims. HM, ¶ 7. Prior to Plaintiff filing her Demand for Arbitration, the Parties agreed to attempt to resolve Plaintiff's claims through private mediation. Id.

C. Mediation With the Honorable David Brown (Ret.)

The parties met and conferred and agreed that it may be in their mutual interests to discuss Plaintiff's allegations informally, rather than through litigation, and scheduled private mediation. HM, ¶ 8. On November 4, 2025, the parties attended a full day mediation session with mediator Hon. David Brown (Ret.) of JAMS. At the mediation, the parties agreed to settle Plaintiff's PAGA Claim for violation of Labor Code § 2698, et seq. Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding Defendants' policies, practices, operations, time and payroll information and other topics. In advance of mediation, Defendants produced Plaintiff's personnel file, including her time and payroll data. Moreover, prior to the mediation, Defense counsel provided Plaintiff's counsel with information and documents relating to other Aggrieved Employees, including time and payroll data for a substantial sample of Aggrieved Employees. 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 it to this Court for approval. HM, ¶ 9.

Defendants deny 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. HM, ¶ 10.

III. OVERVIEW OF SETTLEMENT

A. "Aggrieved Employees" Definition

The Aggrieved Employees are all individuals who are, or were, employed by Defendant Pavilions Management, LLC in California and classified as non-exempt employees at any time during the PAGA Period of June 28, 2023, through December 4, 2025. Agreement, ¶ 1.4.

B. Monetary Terms Of The Settlement

Defendants have agreed to pay a total of $292,000.00 (the "Gross PAGA Settlement Amount," "Gross Settlement Amount," or "GSA") to settle the PAGA lawsuit. In consideration for the release of all claims of Plaintiff and the Aggrieved Employees against Defendants (described more fully below), Defendants agreed to pay $292,000.00 toward the GSA from which all settlement payments for the Aggrieved Employees, Court approved attorneys' fees and costs, Plaintiff's Enhancement Payment, and settlement administration costs shall be paid. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis calculated based on the total number of pay periods each Aggrieved Employee worked as a non-exempt hourly employee in California during the PAGA Period. Agreement, ¶ 1.15. The GSA will be divided as follows:

1. PAGA Counsel's Fees amounting to $102,200 (35% of the GSA), and PAGA Counsel's Litigation Costs in the amount of $7,259.81 (the Agreement provides up to $7,500);

2. Settlement Administrator's Costs in the amount of $5,750 (the Agreement provides up to $6,000.00) to ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to administer the Settlement;

3. Plaintiff's Enhancement Payment in the amount of $2,000.00 in recognition of her efforts and work in prosecuting this Action;

4. Approximately $174,790.19 ("Net Settlement Amount"), divided as follows:
   a. $ 113,613.62 to the LWDA (65%); and
   b. $ 61,176.57 to the Aggrieved Employees (35%)

Agreement, ¶¶ 3.1-3.2. The Net Settlement Amount is subject to increase under the Agreement's escalator clause, which Defendants have confirmed has been triggered. Agreement, ¶ 8; HM, ¶ 27.

C. Funding and Distribution of the Settlement

Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) days after the Effective Date.[2] Agreement, ¶ 4.3.

Within fifteen (15) days of when the Court enters the Judgment on its Order Approving the PAGA Settlement, Defendant will provide to the Settlement Administrator the Aggrieved Employee Data, which shall consist of each Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods. Agreement, ¶¶ 1.5, 4.2.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees and Litigation Expenses Payments, and the Enhancement Payment. Agreement, ¶ 4.4. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First-Class United States mail, postage prepaid. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Agreement, ¶ 4.4.1. Upon receiving a returned check, the Administrator must re-mail checks within seven (7) days to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. Agreement, ¶ 4.4.2.

D. Individual PAGA Payments and Uncashed Checks

The settlement checks issued to Aggrieved Employees will remain valid for one hundred eighty (180) days. The face of each check shall prominently state the void date, and the

[2] "Effective Date" means the date when the Court enters a Judgment on its Order Approving the PAGA Settlement and the Judgment is final. Agreement, ¶ 1.12.

Administrator will cancel all checks not cashed by the void date. Any settlement checks remaining uncashed after the void date will be transmitted to the California State Controller's Unclaimed Property Fund in the name of the Aggrieved Employee who failed to cash their check. Agreement, ¶¶ 4.4.1, 4.4.3. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator. Agreement, ¶ 3.2.4.

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

Effective on the date when Defendant fully funds the entire Gross PAGA Settlement Amount, Plaintiff and the Aggrieved Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Claims with respect to the Released Parties, defined in the Agreement as Defendant Pavilions Management, LLC, its present, former, or future owners, officers, members, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, subsidiaries, affiliates, related entities, and managing agents (including but not limited to Defendant Aladdin Dino Sammakieh), and any and all of their respective agents, legal representatives, and/or attorneys (the "Released Parties"). The "Released PAGA Claims" means:

> all claims for PAGA penalties that were alleged, based on the alleged violations of the California Labor Code, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice submitted by Plaintiff Hernandez to the LWDA, which occurred during the PAGA Period. The Released PAGA Claims expressly excludes all other claims, including Plaintiff's Individual Settlement Payment which is subject to a separate release, and PAGA claims outside of the PAGA period.

Agreement, ¶¶ 1.29, 1.30, 5.2.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The Settlement of a PAGA claim requires court approval. Lab. Code § 2699(s)(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. *See id.* at § 2699(e)(1)-(2), 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. HM, ¶ 12; *See, e.g.*, *Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval of PAGA settlements may be had where the statutory requirements of the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate). The established standards for evaluating whether class action 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. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

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

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B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA

PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here. First, since this action was brought after the PAGA reform effective on June 19, 2024, any civil penalties recovered, whether by judgment or settlement, must be distributed as follows: 65 percent to the LWDA, and the remaining 35 percent to the Aggrieved Employees. See Cal. Lab. Code § 2699(m). The parties' Settlement so provides. HM, ¶ 13, Ex. 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(s)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. HM, ¶¶ 13, 38, Ex. 7. As a result, Plaintiff has met all procedural statutory requirements for settling a PAGA action.

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

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

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

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

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 Defendants provided the number Aggrieved Employees, the total number of pay periods during the PAGA Period, all policies in effect during the PAGA Period, and pay and time records; and (3) Counsel for the Parties are experienced with PAGA cases. HM, ¶ 14. Moreover, neither Plaintiff nor Plaintiff's Counsel have any conflicts of interest with the absent Aggrieved Employees and there are no issues of ascertainability. *Id*. For the reasons discussed below, this Court should approve the PAGA Settlement.

1. <u>The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm's Length Negotiations Between The Parties.</u>

The PAGA Settlement was reached only after litigation and arms' length negotiations between experienced attorneys, which included a full day mediation with the Honorable David Brown (Ret.) of JAMS. At all times, the negotiations were adversarial and contentious, although still professional in nature. HM, ¶ 9.

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. Plaintiff's counsel is 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 Aggrieved Employees, the State, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, particularly given the ongoing challenges facing the restaurant industry, where businesses are struggling to remain afloat, much less prosper and make a large profit. HM, ¶ 11.

2. <u>The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement</u>

Plaintiff considered various sources of information in the lead-up to and during the mediation of November 4, 2025 that enabled her to achieve the PAGA Settlement at issue. HM, ¶ 15. Among other things, Plaintiff considered the following:

- Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.

- Plaintiff's counsel requested that Defendants 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 June of 2023. Defendants produced those policies as part of its employee handbook.

- Plaintiff's counsel requested that Defendants provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendants provided the answers to each of these questions.

- Defendants provided Plaintiff's counsel with a sampling of time and payroll data of its California non-exempt employees who worked 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.

HM, ¶ 15.

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

Defendants estimated for purposes of mediation there were approximately 474 Aggrieved Employees who worked approximately 19,763 pay periods during the PAGA Period. Based on this information and the time and payroll data produced by Defendants, Plaintiff's counsel's retained data analyst examined punch records spanning June 28, 2023 through August 31, 2025 for a sample of 93 employees, covering 20,247 shifts and 5,127 workweeks, and Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. HM, ¶ 16. 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.

Plaintiff's strongest disputed claims are her claims for failure to provide meal and rest periods. Plaintiff's analysis, which Defendants vehemently dispute, revealed a shift violation rate

of 12.6% for short, late, or no meal breaks for shifts that were 6 hours or greater. The data revealed that 67.6% of shifts in the sample were 6 hours or greater. As such, we are dealing with alleged violations covering 13,360 pay periods [19,763 total pay periods x 67.6%]. If you extrapolate the 12.6% shift violation rate, it amounts to 33.4% of pay periods having at least one meal period violation. As such, the maximum exposure for meal period violations in the PAGA period, which Plaintiff understands Defendants dispute, would be $223,100, which is calculated as follows: 13,360 pay periods x 33.4% equals 4,462 affected pay periods; 4,462 pay periods x $50/pay period (civil penalty) amounts to $223,100 in exposure. As it relates to Plaintiff's argument for rest break violations, rest breaks are owed for shifts of 3.5 hours or greater, and Plaintiff's data analysis revealed that 95.6% of shifts in the sample were 3.5 hours or greater. Rest periods are not subject to the meal period waivers and are triggered for shifts over 3.5 hours. Defendant's records reflect that no rest period premiums were ever paid to any Aggrieved Employee, and rest breaks were not tracked. As such, we are dealing with alleged violations covering 18,893 pay periods [19,763 total pay periods x 95.6%]. Because Defendants did not track rest periods, and applying the same pay-period violation rate reflected in the meal period analysis, approximately 33.4% of those pay periods would have at least one rest period violation. As such, the maximum exposure for rest period violations in the PAGA period, which Plaintiff understands Defendants dispute, would be $631,000, which is calculated as follows: 18,893 pay periods x 33.4% equals 6,310 affected pay periods; 6,310 pay periods x $100/pay period (civil penalty) amounts to $631,000 in exposure. As such, the combined maximum exposure for Plaintiff's strongest claims is approximately $854,100. 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. HM, ¶ 17.

There are risks to Plaintiff's meal and rest period claims. HM, ¶ 18. Defendants contend 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 Defendants' 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, Defendants provided evidence that they provide employees with the opportunity to take meal and rest breaks and paid meal premium payments during the PAGA Period. Moreover, meal period premium payments were observed in the sample records (178 hours of premium payments totaling approximately $3,515). In addition, Defendants contend that their policies regarding meal periods and rest breaks are legally compliant and that valid meal period waivers were in effect during the PAGA Period. Defendants further argued that the bulk of the apparent meal period violations reflected in the time records were situations where an employee was finishing his or her shift and simply clocked out for the day a few minutes late, rather than true meal period violations. HM, ¶ 18.

Defendants contend they provided their non-exempt employees with the opportunity to take rest periods in accordance with California law, and, accordingly, 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. HM, ¶ 19.

There are also risks to Plaintiff's claim for unreimbursed expenses. Plaintiff alleges that Defendants did not reimburse her or the other Aggrieved Employees for uniform items, including work shoes. Defendants, however, contended that they provided all required uniform items to employees. Moreover, there is a risk that the Court may consider Plaintiff's claims as to Defendants' 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. As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest period violations, there would be issues with proof. The time and pay records 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 6.8 hours, and the records showed that when employees worked over 8.0 hours, they were paid 1.5 times their regular rate and that daily and weekly overtime were paid correctly. Moreover, Defendants provided overall strong written policies as it related to wage and hour practices. 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 largely not be triggered since they are derivative claims, and no rounding/overtime issues were identified. Plaintiff's counsel further estimates a 50% likelihood of success on the meal and rest period claims at trial, reducing the estimated realistic value of the strongest claims from approximately $854,100 to approximately $427,050. This estimate assumes the accuracy of Plaintiff's calculations and further assumes that the Court would not exercise its discretion to reduce any civil penalties as unjust, arbitrary, oppressive, or confiscatory. In light of these considerations, the gross settlement amount of $292,000 represents approximately 34% of the maximum exposure of $854,100 for the strongest claims (the meal and rest period claims), and approximately 68% of the risk-adjusted value of $427,050 for those claims, and supports approval of the settlement as fair, reasonable, and adequate. HM, ¶ 20.

Moreover, Plaintiff's counsel is unaware of any California State court decision awarding a plaintiff and the other Aggrieved Employees she 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). HM, ¶ 21.

Additionally, PAGA states a court has discretion to award a lesser amount than the maximum penalty. *See* Lab. Code § 2699(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. HM, ¶ 22. *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 $98,815.00 in PAGA penalties (19,763 violations x $5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Moreover, because this action is governed by the PAGA as amended effective June 19, 2024, Defendants would also argue that any civil penalties should be capped at 15% or 30% of the applicable penalty amounts upon a showing that they took "all reasonable steps" to comply with the Labor Code. See Lab. Code § 2699(g)(1), (h)(1). 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. HM, ¶ 22.

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 Aggrieved Employees and Plaintiff from continued litigation. HM, ¶ 23.

The settlement of the representative PAGA claim involves monetary relief to all Aggrieved Employees, Plaintiff, her 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 she is bound by, Plaintiff, considering the evidence she 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 Defendants. The Settlement does not require them to opt out to do so. HM, ¶ 24.

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 Aggrieved Employees and thus, warrants approval. 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. HM, ¶ 25.

As such, the settlement of PAGA penalties in the gross sum of $292,000.00, of which 65% of the net amount ($113,613.62) (after attorney's fees, litigation costs, Plaintiff's Enhancement Payment, and settlement administration costs) will be paid to the LWDA, and 35% ($61,176.57) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. HM, ¶ 26.

4. <u>Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees</u>

Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis

depending on the number of pay periods Defendants employed them for during the PAGA Period. Agreement, ¶ 3.2.4. With a total of 474 Aggrieved Employees, the average estimated individual PAGA payment for each Aggrieved Employee is approximately $129.06 ($61,176.57 [35% of the estimated PAGA Penalties] / 474 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails. HM, ¶ 27. Prior to the filing of this Motion, Defendants notified Plaintiff's counsel that the Agreement's escalator clause has been triggered and that they elect to increase the Net Settlement Amount proportionally rather than shorten the release period. The resulting increase to the Net Settlement Amount will be confirmed by the Settlement Administrator. Agreement, ¶ 8; HM, ¶ 27.

5. Counsel for the Parties Are Experienced in Similar Litigation

Plaintiff's counsel has considerable experience in wage and hour litigation and is qualified to evaluate the PAGA claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Similarly, Defendants' counsel, Theodore E. Bacon and Claudia M. Coleman of FBT Gibbons LLP, have vast experience in handling employment matters and wage and hour litigation. *See* HM, ¶¶ 2, 30; Declaration of Maralle Messrelian ("MM"), ¶¶ 5-7.

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

Of the $292,000.00 allocated towards the GSA, Plaintiff's counsel requests $102,200.00 (35% of the GSA) in attorney's fees and $7,259.81 in litigation costs, which is fair and reasonable. HM, ¶ 28.

It is an accepted practice in wage and hour class action settlements to award attorneys' 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' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial*

California, Inc. (2000) 82 Cal.App.4th 19, 26-30.)

California courts have the discretion to employ (or decline to employ) a "lodestar cross-check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern*, *Inc*. (2016) 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made clear that this cross-check is not required and approved one-third of the class action settlement fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California class action cases...." *Id.* at 574. As other courts have acknowledged since *Laffitte, "*California courts routinely award attorneys' fees of one-third of the common fund." *Lopez v. Mgmt. & Training Corp*., 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not "engage in a full-blown lodestar analysis when the primary basis remains the percentage method…" The lodestar calculation is merely a "useful perspective on the reasonableness of a given percentage award." *Id. See also Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 ("Trial courts 'also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.'"[3] *Id.* (citing *Laffitte*)).

"[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 Plaintiff's Counsel's experience in wage and hour class and PAGA settlements. HM, ¶ 28.

Plaintiff's counsel investigated and prosecuted this matter vigorously. HM, ¶ 29. Plaintiff's counsel's previous experience in litigating wage and hour class and representative actions and the caliber of opposing counsel also support the reasonableness of the fee request. HM, ¶ 30, MM, ¶¶ 5-7. The award of attorneys' fees sought is also justified by the contingency

[3] The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to unpublished decisions from the lower federal courts. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn. 18 ["Citing unpublished federal opinions does not violate our rules."].) Like published decisions of the lower federal courts, unpublished decisions are not binding on us even on questions of federal law, but they are persuasive authority. (*Western Heritage Ins. Co. v. Frances Todd*, *Inc*. (2019) 33 Cal.App.5th 976, 989, fn. 6.)

nature of the attorney-client relationship, the risks of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the good results Plaintiff's Counsel has achieved for the Aggrieved Employees. HM, ¶ 31.

In addition, Plaintiff's Counsel incurred substantial costs, $7,259.81 to date, including the costs of a mediator and data analyst, to aid in the representation of the Aggrieved Employees. HM, ¶ 32, Ex. 6. As the evidence submitted herewith shows, all of these costs are documented and reasonably incurred. *Id*. Accordingly, they warrant the Court's approval.

7. <u>Plaintiff's Enhancement Payment is Fair, Adequate, and Reasonable and Should Be Approved.</u>

Plaintiff's Enhancement Payment of $2,000 is being paid to Plaintiff for her service to the State of California and the Aggrieved Employees in prosecuting the Lawsuit and for her release of claims. HM, ¶¶ 33-35, Agreement, ¶¶ 1.13, 3.2.1. *See also* Declaration of Ilse Hernandez ("Hernandez Decl.").

There is authority for the Enhancement Payment to Plaintiff. While the statutory language of the PAGA is silent on the issue of incentive awards to named Plaintiff, it nonetheless provides implicit support for incentive payments to named Plaintiffs. Moreover, language from the Ninth Circuit Court of Appeals and recent California district court caselaw indicates that such awards are permitted. HM, ¶¶ 33-35.

8. <u>The Proposed Settlement Administration Costs Are Fair and Reasonable and Should Be Approved.</u>

With regard to the settlement administration costs provision, it is reasonable. The Parties sought and reviewed bids from other reputable third-party administrators and ILYM Group, Inc.'s bid was the lowest ($5,750.00 – the Settlement provides up to $6,000.00). Agreement, ¶¶ 1.2, 1.3, 3.2.3, 7.1. HM, ¶¶ 36-37. Thus, the settlement administration costs provision should be given approval. The Declaration of Lisa Mullins, filed under separate cover, sets forth ILYM's qualifications and its "not to exceed" bid to administer the Settlement. Agreement, ¶ 6.1. See generally Declaration of Lisa Mullins. Thus, the settlement administration costs provision should be given approval.

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V. CONCLUSION

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

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: October 12, 2026

By: _____
Harout Messrelian
Maralle Messrelian (Of Counsel)
Attorneys for Plaintiff, Ilse Hernandez