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SEBASTIANA IXQUIACTAP, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA
(*UNLIMITED JURISDICTION*)

SEBASTIANA IXQUIACTAP, *Plaintiff*, vs. TWS RESTAURANT CORPORATION; COASTAL VALLEY ENTERPRISES; PAYRIGHT PAYROLL SERVICES INC.; and DOES 1 to 25, inclusive, *Defendants*.	Case no.: 24CV094320 **NOTICE OF PLAINTIFF'S MOTION AND UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Action filed: October 1, 2024 Hearing Date: May 14, 2026 Hearing Time: 2:30 p.m. Hearing Dept: 23, Hon. Ruben Sundeen <u>Submitted Herewith Under Separate Cover:</u> 1. Memorandum of Point and Authorities; 2. Declaration of Harout Messrelian; 3. Declaration of Maralle Messrelian; 4. Declaration of Sebastiana Ixquiactap; 5. Declaration of Lisa Mullins; and 6. [Proposed] Order and Judgment Approving PAGA Settlement. **Reservation ID: 300309306788**

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

PLEASE TAKE NOTICE that on May 14, 2026 at 2:30 p.m., or as soon thereafter as the matter may be heard, in Department 23 of the Alameda County Superior Court – Rene C. Davidson Courthouse located at 1225 Fallon Street, Oakland, CA 94612, Plaintiff Sebastiana Ixquiactap ("Plaintiff" or "Ixquiactap") 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 Ixquiactap and all persons within the State of California who are or were employed by Defendants TWS Restaurant Corporation and Coastal Valley Enterprises ("Defendants" or "TWS") during the PAGA Period of June 17, 2023 to October 27, 202 (the "Aggrieved Employees"). Plaintiff alleges that Defendants are liable to her and 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; and (6) failure to reimburse for business expenses.

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, Sebastiana Ixquiactap, 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: April 22, 2026

By: Maralle Messrelian ____________________

Harout Messrelian
Maralle Messrelian (Of Counsel)
Attorneys for Plaintiff, Sebastiana Ixquiactap

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sebastiana Ixquiactap ("Plaintiff" or "Ixquiactap") 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 TWS Restaurant Corporation and Coastal Valley Enterprises ("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 on or around September 11, 2021 as a cashier at their El Pollo Loco restaurant located at 24119 Mission Blvd., Hayward, California 94544. Plaintiff's employment with Defendants ended on or around June 5, 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 17, 2024, and July 13, 2024, Plaintiff, on behalf of herself and Defendants' other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the "LWDA Letters"). HM, ¶ 6, Ex. 3.

B. Plaintiff's Lawsuit

On October 1, 2024, Plaintiff filed a representation action under PAGA against Defendants alleging various wage and hour violations, including failure to pay minimum wages, failure to provide reporting time pay, failure to pay overtime, failure to provide meal and rest

[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.

breaks, failure to timely pay wage owed, failure to provide accurate itemized wage statements, failure to provide 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 sick leave, and failure to provide suitable seating. Specifically, Plaintiff sought civil penalties under California Labor Code section 2698, et seq. and was 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 30, 2025, Defendants filed their Answer to Plaintiff's Lawsuit. *Id*., Ex. 5. On January 28, 2025, the Parties agreed to submit Plaintiff's individual claims to arbitration in light of a binding Arbitration Agreement signed by Plaintiff during her employment, and to stay Plaintiff's representative PAGA claims in the Superior Court pending completion of her individual claims in arbitration. HM, ¶ 7. On February 4, 2025, the Court granted the Parties Joint Stipulation to Stay the PAGA Action pending completion of Plaintiff's individual claims in arbitration. *Id*. 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 Kevin Barnes

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 August 28, 2025, the parties attended a full day mediation session with mediator Kevin Barnes, Esq. 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. 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 all individuals who are, or were, employed by Defendants TWS Restaurant Corporation and Coastal Valley Enterprises as non-exempt employees in California during the PAGA Period of June 17, 2023, through October 27, 2025. Agreement, ¶ 12. [2]

B. Monetary Terms Of The Settlement

Defendants have agreed to pay a total of $125,000.00 ("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 $125,000.00 toward the GSA from which all settlement payments for the Aggrieved Employees, Court approved attorneys' fees and costs, 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, ¶ I.5. The GSA will be divided as follows:

1. PAGA Counsel's Fees amounting to $43,750 (35% of the GSA), and PAGA Counsel's Litigation Costs in the amount of $10,339.32 (the Agreement provides up to $10,500);

2. Settlement Administrator's Costs of $5,550.00 to ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to administer the Settlement;

3. Plaintiff's Service Award Payment in the amount of $5,000.00 in

[2] Prior to the filing of this Motion, Defendants represented that the Agreement's escalator provision has not been triggered.

recognition of her efforts and work in prosecuting this Action;

3. Approximately $60,360.68 ("Net Settlement Amount"), divided as follows:
   a. $ 45,270.51 to the LWDA (75%); and
   b. $ 15,090.17 to the Aggrieved Employees (25%)

Agreement, ¶ III.3-4.

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 forty-five (45) days after the Effective Date.[3] Agreement, ¶ I.4, III.2.

Within thirty (30) days of the Effective Date, Defendants will provide to the Settlement Administrator the information regarding the PAGA Settlement Employees, which shall consist of each Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods. The list shall also include the sum total of all pay periods worked by PAGA Settlement Employees during the PAGA Period. Agreement, ¶ IV.2.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee. Within five (5) calendar days of receiving the Gross Settlement Amount, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Settlement Employee, and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments. Agreement, ¶ IV.2. Within ten (10) court days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator will issue payments to: (a) PAGA Settlement Employees along with an explanatory letter (Exhibit 2 to HM Declaration) by First-Class United States mail; (b) the LWDA; (c) counsel; (d) Plaintiff; and (e) itself. Agreement, ¶ IV.3. Upon receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. Agreement, ¶ IV.4.

D. Individual PAGA Payments and Uncashed Checks

[3] "Effective Date" means the date upon which the Court enters its Order Approving the PAGA Settlement.

The settlement checks issued to Aggrieved Employees will remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty (180) days after issuance will be distributed to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Aggrieved Employee. Agreement, ¶ IV.4. 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, ¶ IV.6.

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

As of the Effective Date and subject to Defendants' fully funding the entire Gross 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 Defendants TWS Restaurant Corporation, Coastal Valley Enterprises and any and all parents, subsidiaries and affiliate entities, and each of their past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, benefit plans sponsored or administered by the Released Parties, any entities for whom Aggrieved Employees performed services through the employment relationship with Defendant or any of them, and any other person or entities acting on behalf of or in concert with any of the foregoing (the "Released Parties"). The Released Claims means:

> all claims, rights, demands, liabilities, and causes of action for PAGA civil penalties, arising from or reasonably related to the claims which were asserted in the Action and Complaint under PAGA based on facts alleged in the operative Complaint in the Action and LWDA Letters, including a PAGA claim against Defendant for civil penalties on behalf of Plaintiff and the LWDA based on the following underlying Labor Code violations: 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, 2800, 2802, and 2699 et seq., violation of the Industrial Welfare Commission Wage Order No. 5-2001, and any other claims asserted in the Action and operative Complaint.

Agreement, ¶¶ I.18, III.6.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

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. *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 Synocor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

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 brough prior to the PAGA reform on June 19, 2024, 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. 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(l)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. HM, ¶¶ 13, 38, Ex. 10. 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 Kevin Barnes, Esq. 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. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement

Plaintiff considered various sources of information in the lead-up to and during the mediation of August 28, 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 time and payroll data for all 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. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation

Defendants estimated for purposes of mediation there were approximately 400 Aggrieved Employees who worked approximately 8,544 pay periods during the PAGA Period. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. 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.

Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum possible exposure of approximately $968,550 for civil penalties for Plaintiff's strongest disputed claims of failure to provide meal and rest periods and failure to reimburse for business expenses. Plaintiff's analysis, which Defendants vehemently dispute, revealed a 10.4% violation rate (net of meal period premiums) for either late, short, or no meal periods for shifts over 6 hours. Plaintiff based the analysis on shifts over 6 hours due to valid meal period waivers in effect during the PAGA Period. Since the total number of pay periods in the PAGA period was 8,544 and since approximately 97.7% of the shifts in the sample analysis were over 3.5 hour and 61.5% of the shifts in the sample analysis were over 6 hours, the total number of pay periods to consider for potential meal break violations was 5,255 (61.5% x 8,544 pay periods) and for rest break violations was 8,347 (97.7% x 8,544 pay periods). As such, with the 10.4% violation rate, the maximum exposure for meal violations would be $27,350 , which is calculated as $50 penalty multiplied by 547 pay periods (10.4% of the 5,255 pay periods). Plaintiff extrapolated the same 10.4% rate for rest break violations, which would equate to a maximum exposure of $86,800 ($100 penalty per pay period multiplied by 868 pay periods, which is 10.4% x 8347 pay periods). For failure to reimburse business expenses, Plaintiff calculated a maximum exposure of $854,400 ($100 penalty per pay period multiplied by 8,544 pay periods). 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 throughout the PAGA Period. Moreover, meal period premium payments were observed in the sample records. In addition, Defendants' Handbook contains legally compliant meal period and rest break policies. 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 uniforms, use of personal cell phones for work purposes, and masks. Defendants, however, contended at mediation that they provided all required uniform and PPE items to employees and that any use of personal cell phones was limited to scheduling-related communications. 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 6.7 hours, which means that overtime pay was not an issue. Regardless, when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. Moreover, Defendants provided overall strong written policies as it related to wage and hour practices and showed that Plaintiff acknowledged the policies. 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. Plaintiff's counsel further estimates a 50% likelihood of success on the claims at trial, reducing the estimated value of the meal and rest claims and business expense reimbursement claims from approximately $968,550 to approximately $484,275. 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 $125,000 represents approximately 12.91% of the maximum potential exposure and approximately 25.81% of the risk-adjusted value of $484,275 for the strongest claims (the meal period, rest period, and business expense reimbursement 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 $42,720.00 in PAGA penalties (8,544 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. 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. *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. HM, ¶ 25.

As such, the settlement of PAGA penalties in the gross sum of $125,000.00, of which 75% of the net amount ($45,270.51)(after attorney's fees, litigation costs, Plaintiff's service award, and settlement administration costs) will be paid to the LWDA, and 25% ($15,090.17) 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, ¶ III.4.b. With a total of 400 Aggrieved Employees, the average estimated individual PAGA payment for each Aggrieved Employee is approximately $37.73 ($15,090.17 [25% of the estimated PAGA Penalties]) / 400 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails. HM, ¶ 27.

5. <u>Counsel for the Parties Are Experienced in Similar Litigation</u>

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, Gregory Iskander and Benjamin Sanchez of Littler Mendelson, have vast experience in handling employment matters and wage and hour litigation. *See* HM, ¶¶ 2, 30; Declaration of Maralle Messrelian ("MM"), ¶¶ 5-7.

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

Of the $125,000.00 allocated towards the GSA, Plaintiff's counsel requests $43,750.00 (35% of the GSA) in attorney's fees and $10,339.32 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.'"[4] *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 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, $10,339.32 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. Plaintiff's Service Award is Fair, Adequate, and Reasonable and Should Be Approved.

[4] 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.)

Plaintiff's Service Award of $5,000 is being paid to Plaintiff for her service to the State of California and the Aggrieved Employees in prosecuting the Lawsuit and for her General Release. HM, ¶ 33-35, Agreement ¶¶ I.16, III.3.c. *See also* Declaration of Sebastiana Ixquiactap ("Ixquiactap Decl.").

There is authority for the Service Award 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. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators which provided higher bids. HM, ¶¶ 36-37, Exs. 7-9. *See generally* Declaration of Lisa Mullins. Thus, the settlement administration costs provision should be given approval.

<u>V. CONCLUSION</u>

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: April 22, 2026

By: Maralle Messrelian

Harout Messrelian
Maralle Messrelian (Of Counsel)
Attorneys for Plaintiff, Sebastiana Ixquiactap

Court Reservation Receipt

Reservation

Reservation ID:
300309306788

Status:
RESERVED

Reservation Type:
Motion re: (Approval of PAGA Settlement)

Number of Motions:
1

Case Number:
24CV094320

Case Title:
IXQUIACTAP vs TWS RESTAURANT CORPORATION, et al.

Filing Party:
Sebastiana Ixquiactap (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 23

Date/Time:
May 14th 2026, 2:30PM

Confirmation Code:
CR-KY3T7BSYWHK4A5TRF

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			**$1.00**

Payment

Amount:
$1.00

Type:
MasterCard

Account Number:
XXXX8919

Authorization:
07635Q

Payment Date:
2026-02-22

< Back to Main

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