MARALLE MESSRELIAN (SBN 316974)
maralle@mmlawapc.com
MM LAW, APC
500 N. Brand Blvd., Ste 2000
Glendale, CA 91203
Telephone (818) 810-7747
Facsimile (818) 230-9018

Attorneys for Plaintiffs,
BETHANY CLAYTON, YASMIN SOLTANI, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

(*UNLIMITED JURISDICTION*)

BETHANY CLAYTON and YASMIN SOLTANI, as "aggrieved employees" on behalf of themselves and other similarly situated "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

SALTIE GIRL LA LLC, a California limited liability company; and DOES 1 to 25, inclusive,

Defendants.

Case No.: 25STCV14374

NOTICE OF PLAINTIFFS' MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINT AND AUTHORITIES

Action filed: May 15, 2025
Hearing Date: September 2, 2025
Hearing Time: 8:30 a.m.
Hearing Dept: 36, Hon. Wendy Chang

Reservation Number: 075234161417

<u>Submitted Herewith Under Separate Cover:</u>
1. Memorandum of Point and Authorities;
2. Declaration of Maralle Messrelian;
3. Declaration of Bethany Clayton;
4. Declaration of Yasmin Soltani;
5. Declaration of Denise Islas; 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 September 2, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 36 of the Los Angeles County Superior Court, located at 111 N. Hill St. Los Angeles CA 90012, Plaintiffs Bethany Clayton and Yasmin Soltani ("Plaintiffs") will and hereby do move this Court for an Order:

1. Approving the Private Attorneys General Act Settlement Agreement ("the "Agreement" or "PAGA Settlement") entered into by Plaintiffs and Defendant Saltie Girl LA LLC.

2. Approving the Administration Expenses Payment;

3. Approving the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment;

4. Approving the Release by Aggrieved Employees and Plaintiffs;

5. Directing consummation of the Settlement pursuant to its terms and provisions;

6. Dismissing the Action with prejudice;

7. Entering Judgment approving the Settlement; and

8. Reserving continued jurisdiction over the Parties, Action, and Settlement solely for purposes of (i) enforcing the Settlement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the declarations Maralle Messrelian, Bethany Clayton, Yasmin Soltani, and Denise Islas, 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,

Dated: June 27, 2025

MM LAW, APC

By: Maralle Messrelian

Maralle Messrelian,
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Bethany Clayton and Yasmin Soltani ("Plaintiffs") submit this memorandum of points and authorities in support of their motion for approval of the PAGA (Private Attorneys General Act, Labor Code § 2698 *et seq*.) Settlement Agreement (the "Agreement" or "PAGA Settlement")[1] for the civil penalties claim they brought against Defendant SALTIE GIRL LA LLC ("Defendant" or "SALTIE GIRL") under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). Plaintiffs bring this motion because Labor Code section 2699, subdivision (*l*), of the PAGA requires Court-approval of any civil penalties sought as part of a proposed settlement agreement. Through this motion, Plaintiffs respectfully request for this Court to approve the PAGA Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

SALTIE GIRL first began to employ Plaintiff Bethany Clayton as a server on or around January 6, 2023 to work at its restaurant located at 8615 Sunset Blvd, West Hollywood, CA 90069. Plaintiff Clayton's employment ended on or around July 18, 2024. 14. SALTIE GIRL first began to employ Plaintiff Yasmin Soltani on or around May 4, 2024 to work as a host at its restaurant located at 8615 Sunset Blvd, West Hollywood, CA 90069. Plaintiff Soltani's employment ended on or around June 28, 2024.MM, ¶ 5.

A. Plaintiffs' Written Notice to the State of California

Plaintiffs complied with the procedures of Labor Code § 2699.3 for bringing this action under the PAGA. On September 18, 2024, Plaintiffs, on behalf of themselves and SALTIE GIRL'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 "PAGA Notice".) MM, ¶ 6, Ex. 3. The specific provisions

[1] The Agreement is attached as Exhibit ("Ex.") 1 to the Declaration of Maralle Messrelian ("MM"), which is submitted herewith under a separate cover.

alleged to have been violated in the PAGA Notice included Labor Code sections §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194, 1197, 1198, and 2802, and Industrial Welfare Commission Wage Order No. 5.

B. Mediation With Professional Neutral Steve Pearl

Upon mutual agreement of the parties, on January 15, 2025, the parties participated in a full-day early mediation session with Steve Pearl, Esq., an experienced and well-regarded neutral, who has considerable experience mediating complex wage and hour actions. MM, ¶ 7. The negotiations 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 SALTIE GIRL's policies, practices, operations, time and payroll information, and other topics. Specifically, Defendant provided Plaintiffs' counsel with information and documents relating to the Aggrieved Employees, including timekeeping and payroll data. Defendant also produced Plaintiffs' 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 pursuant to a mediator proposal. Now that the parties have finalized the PAGA Settlement, Plaintiffs submit the PAGA Settlement to this Court for approval. MM, ¶ 8.

C. Plaintiffs' Lawsuit

On May 15, 2025, per the Settlement Agreement, Plaintiffs filed a representative lawsuit with a single cause of action for recovery of civil penalties against Defendant in the Los Angeles County Superior Court (the "Lawsuit") pursuant to PAGA based on the same allegations set forth in their LWDA letter . Specifically, Plaintiffs alleged that Defendant had 1) failed to pay them 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 indemnify for business expenses; 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. MM, ¶ 9, Ex. 4; Agreement, ¶ 2.4.

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 Plaintiffs' lawsuit. MM, ¶ 10. Agreement, ¶ 2.5.

III. OVERVIEW OF SETTLEMENT

A. "Aggrieved Employees" Definition

The Aggrieved Employees are all individuals who are, or were, employed by Defendant as non-exempt employees in California during the PAGA Period. Agreement, ¶ 1.4. The PAGA Period means the period of time February 1, 2023, through January 15, 2025. Agreement, ¶ 1.19.

B. Monetary Terms Of The Settlement

Defendant has agreed to pay a total of $60,000 ("Gross Settlement Amount" or "GSA") to settle the PAGA claims from which all settlement payments to the Aggrieved Employees, to the State of California, for Court approved attorneys' fees and costs, and for settlement administration costs shall be paid. Agreement, ¶ 3.1-3.2. 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 of SALTIE GIRL in California during the PAGA Period. Agreement, ¶ 3.2.3.1. The GSA will be divided as follows:

1. PAGA Counsel's Fees Payment amounting to $20,000 (one third of the GSA),

2. PAGA Counsel's Litigation Expenses Payment in the amount of $11,043.89 (the Agreement provides up to $11,500);

3. Administration Expenses Payment of $2,500 to Simpluris, Inc. ("Simpluris" or "Administrator") to administer the Settlement (the Agreement provides up to $4,000);

4. Approximately $26,456.11 ("Net Settlement Amount"), divided as follows:
   a. $ 17,196.47 to the LWDA (65%); and
   b. $ 9,259.64 to the Aggrieved Employees (35%)

Agreement, ¶ 3.2.

C. Funding and Distribution of the Settlement

No later than 30 days after the later of 1) the Effective Date[2] or 2) the date the Settlement Administrator provides Defendant with wire instructions for depositing the Gross Settlement Amount, SALTIE GIRL shall deposit the GSA with the Administrator. Agreement, ¶ 4.3.

Not later than 30 days after the Settlement Administrator provides file transfer instructions for securely sending the Aggrieved Employee Data, Defendant shall provide the Administrator with the Aggrieved Employee Data, which states each Aggrieved Employee's full legal name, last-known mailing address, Social Security number, and number of PAGA Pay Periods. Agreement, ¶¶ 1.5, 4.2.

Within 14 days after SALTIE GIRL funds the GSA, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Agreement, ¶ 4.4.

The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid along with the Notice of PAGA Settlement (Exhibit 2 to MM Declaration). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Within seven days of receiving a returned check the Administrator must re-mail the returned check to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. Agreement, ¶¶ 4.4.1, 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. 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 PAGA

[2] "Effective Date" means date the Court has signed an order approving the motion for approval of this PAGA Settlement, and enters an order thereon.

Employee. Agreement, ¶ 4.4.1, 4.4.3. All PAGA Penalties paid to the Aggrieved Employees are deemed penalties and interest for which IRS Form 1099s shall be issued. Agreement, ¶ 3.2.3.2.

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, Plaintiffs and the Aggrieved Employees will be deemed to have released and forever discharged the Released PAGA Claims with respect to Defendant SALTIE GIRL and its present and former parents, subsidiaries, affiliates, affiliated entities, co-employers, officers, directors, trustees, employees, agents, representatives, members, managers, attorneys, and insurers (including but not limited to insurers and reinsurers), and/or any of their predecessors, successors and assigns, and each of them (the "Released Parties"). The Released PAGA Claims means:

> all claims for PAGA penalties that were alleged, or could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

Agreement, ¶¶ 1.25-1.26; 5.1-5.2.

IV. ARGUMENT

A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT

The Settlement of a PAGA claim requires court approval. *Lab. Code,* § 2699, subd. (*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 Lab. Code,* § 2699, subds. (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. MM, ¶ 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. <u>THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA</u>

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; *Lab. Code,* § 2699, subd. (i). The parties' Settlement so provides. MM, ¶ 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. *Lab. Code,* § 2699, subd. (*l*)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. MM, ¶¶ 13, 41, Ex. 7. As a result, Plaintiffs have 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. Plaintiffs 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 anonymized sampling of payroll and time punch data for Aggrieved Employees for the relevant period; and (3) Counsel for the Parties are experienced with PAGA cases. MM, ¶ 19. Moreover, neither Plaintiffs nor Plaintiffs' Counsel have any conflicts of interest with the absent Aggrieved Employees and there are no issues of ascertainability. MM, ¶ 19. For the reasons discussed below, this Court should approve the PAGA Settlement.

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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 informal discovery and arms' length negotiations between experienced attorneys, which included a full-day mediation with professional neutral Steve Pearl, Esq. At all times, the negotiations were adversarial and contentious, although still professional in nature. MM, ¶ 9.

Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding Plaintiffs' claims, the defenses thereto, and the Labor Code violations claimed by Plaintiffs. Plaintiffs' counsel is experienced in prosecuting PAGA lawsuits. Counsel for the Defendant is 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 Plaintiffs, the Aggrieved Employees, the State, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, especially in this post pandemic era, where businesses are struggling to remain afloat, much less prosper and make a large profit. MM, ¶ 11.

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

Plaintiffs considered various sources of information in the lead-up to and during the mediation of January 15, 2025 that enabled them to achieve the PAGA Settlement at issue. MM, ¶ 20. Among other things, Plaintiffs considered the following:

- Defendant produced and Plaintiffs' counsel reviewed Plaintiffs' personnel file.
- Plaintiffs' 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 those policies as part of its employee handbook.
- Plaintiffs' 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 Plaintiffs' counsel with a sampling of anonymized payroll and time punch data for Aggrieved Employees during the relevant PAGA Period. Plaintiffs' counsel examined the sample records to 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.

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

MM, ¶ 20.

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

Defendant estimated for purposes of mediation that there were approximately 72 Aggrieved Employees who worked approximately 3,533 weekly pay periods, which are the equivalent of 1,767 biweekly pay periods under amended Labor Code section 2699, subdivision (o) during the PAGA Period. Agreement, ¶ 8. Based on this information, Plaintiffs' counsel prepared an estimate of the maximum possible civil penalties under the PAGA. MM, ¶ 21. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period.

Under the civil penalty formulas applicable under PAGA, Plaintiffs' counsel estimated a maximum possible exposure of approximately $265,050 for civil penalties for Plaintiffs' strongest disputed claims of failure to provide meal and rest periods. Since the total number of bi-weekly pay periods in the PAGA period was 1,767, the maximum exposure for meal break violations would be $88,350, which is calculated as $50 penalty multiplied by 1,767 pay periods. The maximum exposure for rest break violations would equate to $176,700 ($100 penalty per pay period multiplied by 1,767 pay periods to consider). As such, the aggregate maximum exposure for meal break and rest break claims would be $265,050. The maximum exposure is based on a 100% violation rate and presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. MM, ¶ 22.

There are risks to Plaintiffs' meal and rest period claims. MM, ¶ 23. 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 parti7cular 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 Plaintiffs and the Aggrieved Employees worked during their meal periods will be a challenge. Additionally, Defendant provided evidence that employees sign a "Meal Period Waiver Less Than 6 Hours" agreement during onboarding. Moreover, SALTIE GIRL's Employee Handbook contains legally compliant meal period and rest break policies. MM, ¶ 23.

Defendant contends it provided its non-exempt employees with the opportunity to take rest breaks in accordance with California law, and, accordingly, that Plaintiffs' rest break claim has no support. Additionally, there are other risks to Plaintiffs' 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. MM, ¶ 24.

As it relates to Plaintiffs' 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 that when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. Moreover, Defendant provided overall strong written policies as it related to wage and hour practices and showed that Plaintiffs acknowledged the policies. There are also risks to Plaintiffs' claim for unreimbursed expenses. Plaintiffs allege that Defendant did not reimburse them or the other Aggrieved Employees for use of their personal phones for business-related purposes. Defendant contends that any personal phone use was minimal and pertaining only to scheduling. Moreover, there is a risk that the Court may consider Plaintiffs' claims as to Defendant's alleged failure to indemnify for business expenses to be individual in nature. As such, Plaintiffs' Counsel had to significantly discount the value of this claim during settlement negotiations. Plaintiffs' 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 analysis, a gross settlement in the amount of $60,000, which represents approximately <u>23%</u> of the maximum penalty calculation of $265,050, is a very good result, especially in light of the risk factors as discussed above. MM, ¶ 25.

Moreover, Plaintiffs' counsel is 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 Plaintiffs face is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes. Plaintiffs' counsel had to substantially discount the value of these claims in the settlement negotiations for this and a variety of other reasons. At best, Plaintiffs 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). MM, ¶ 26.

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 Plaintiffs' evidence of willful and intentional conduct. MM, ¶ 27. *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 $8,835 in PAGA penalties (1,767 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 Plaintiffs' allegations. Thus, the chance of Plaintiffs recovering a higher amount than the Gross Settlement Amount is uncertain. MM, ¶ 27.

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 Plaintiffs from continued litigation. MM, ¶ 28.

The settlement of the representative PAGA claim involves monetary relief to all Aggrieved Employees, Plaintiffs, their 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 they are bound by, Plaintiffs, considering the evidence they faced, achieved a good 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. MM, ¶ 29.

Furthermore, Plaintiffs recognize that continued litigation presents significant risks that support a significant downward departure from Plaintiffs' 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 Plaintiffs 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, Plaintiffs, 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. MM, ¶ 30.

As such, the settlement of PAGA penalties in the gross sum of $26,456.11, of which 65% of the net amount after attorney's fees, litigation costs, and settlement administration costs ($17,196.47) will be paid to the LWDA and 35% ($9,259.64) will be distributed to the Aggrieved Employees, is reasonable and appropriate under the circumstances. MM, ¶ 31.

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

Each PAGA Employee will receive a portion of the civil penalties on a pro-rata basis depending on the number of pay periods Defendant employed them for during the PAGA Period. Agreement, ¶ 3.2.3.1. With a total of 72 Aggrieved Employees, the average estimated Individual PAGA Payment for each Aggrieved Employee is approximately $128.61 (35% of the estimated PAGA Penalties of $26,456.11) / 72 Aggrieved Employees). This is a very good result given the uncertainties this lawsuit entails. MM, ¶ 32.

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

Plaintiffs' 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. *See* MM, ¶¶ 14-18, 38. Similarly, Defendant's counsel, Brandon Saxon and Amanda Herron of Gordon Rees Scully Mansukhani, have broad experience in handling employment matters and wage and hour litigation. MM, ¶ 38.

6. The Proposed PAGA Counsel Fees Payment and Expenses Payment Are Fair, Adequate, and Reasonable and Should Be Approved.

Of the $60,000 allocated towards the GSA, Plaintiffs' counsel requests $20,000 (one third of the GSA) in attorney's fees and $11,043.89 in litigation costs, which is fair and reasonable. MM, ¶ 36-37.

It is an accepted practice in wage and hour class action settlements to award attorneys' fees to Plaintiffs' 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.'" *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 Plaintiffs' Counsel's experience in wage and hour class and PAGA settlements. MM, ¶ 36.

Plaintiffs' 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. MM, ¶ 38. 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 great result Plaintiffs' Counsel has achieved for the Aggrieved Employees. *Id.*

In addition, Plaintiffs' Counsel incurred substantial costs, $11,043.89 to date, including the costs of a mediator, to aid in the representation of the Aggrieved Employees. MM, ¶ 39, Ex. 5. 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>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 Simpluris, Inc. ("Simpluris"), the Parties sought and reviewed bids from other reputable third-party administrators and Simpluris' bid was the lowest. MM, ¶ 40, Ex. 6. *See generally* Declaration of Denise Islas. Thus, the settlement administration costs provision should be given approval.

V. CONCLUSION

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

Respectfully submitted,

MM LAW, APC

Dated: June 27, 2025 By: Maralle Messrelian

Maralle Messrelian
Attorneys for Plaintiffs

Court Reservation Receipt

Reservation

Reservation ID: 075234161417	Status: RESERVED
Reservation Type: Motion re: (Approval of PAGA Settlement)	Number of Motions: 1
Case Number: 25STCV14374	Case Title: BETHANY CLAYTON, et al. vs SALTIE GIRL LA LLC
Filing Party: Bethany Clayton (Plaintiff)	Location: Stanley Mosk Courthouse - Department 36
Date/Time: September 2nd 2025, 8:30AM	Confirmation Code: CR-T9I4PPTQGNINWMRFX

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			**$0.00**

Payment

Amount: $0.00	Type: NOFEE

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