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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

(*UNLIMITED JURISDICTION*)

MARCOS O. RODRIGUEZ-CORONA, *Plaintiff*, vs. LA TAPATIA LLC, a California limited liability company; HUMBERTO CAMPOS, an individual; BARBARA HARO, an individual; and DOES 1 to 25, inclusive, *Defendant(s)*.	Case No.: 24STCV05326 **NOTICE OF MOTION AND PLAINTIFF'S UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINT AND AUTHORITIES** Action filed: September 17, 2025 Hearing Date: February 18, 2027 Hearing Time: 2:30 p.m. Hearing Dept: 2, Hon. Marc A. McCannon <u>Submitted Herewith Under Separate Cover:</u> 1. Memorandum of Point and Authorities; 2. Declaration of Maralle Messrelian; 3. Declaration of Marcos O. Rodriguez-Corona; 4. Declaration of Lisa Mullins; and 5. [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 February 18, 2027 at 2:30 p.m., or as soon before or thereafter as the matter may be heard, in Department 2 of the San Mateo County Superior Court, located at 1050 Mission Road, South San Francisco, CA 94080, Plaintiff Marcos O. Rodriguez-Corona ("Plaintiff" or "Rodriguez-Corona") will and hereby does move this Court for an Order:

1. Approving the Private Attorneys General Act Settlement Agreement ("the "Agreement" or "PAGA Settlement") entered into by Plaintiff and Defendants La Tapatia, LLC, Humberto Campos, and Barbara Haro (collectively "La Tapatia" or "Defendants").

2. Approving the Administration Expenses Payment;

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

4. Approving the Release by Aggrieved Employees and Plaintiff;

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, Marcos O. Rodriguez-Corona, 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,

Dated: May 1, 2026

MM LAW, APC

By: Maralle Messrelian

Maralle Messrelian,
Attorneys for Plaintiff, Marcos O. Rodriguez-Corona

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Marcos O. Rodriguez-Corona ("Plaintiff" or "Rodriguez-Corona") submits this memorandum of points and authorities in support of his unopposed 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 he brought against Defendants La Tapatia, LLC, Humberto Campos, and Barbara Haro (collectively "La Tapatia" or "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, subdivision (*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

La Tapatia operates a market and restaurant in South San Francisco. La Tapatia first began to employ Plaintiff on or around October 5, 2020 as a Factory Assistant at its restaurant/grocery store located at 411 Grand Ave., South San Francisco, CA 94080. Plaintiff later also held the title of Factory Cook. La Tapatia continuously employed Plaintiff until on or about September 18, 2024 when his employment ended. MM, ¶ 5.

A. Plaintiff's Written Notice to the State of California

Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing this action under the PAGA. On December 16, 2024, Plaintiff, on behalf of himself and La Tapatia'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 Defendants on or about December 16, 2024 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. The specific

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

provisions alleged to have been violated in the PAGA Notice included Labor Code sections 98.6, 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1102.5, 1174, 1194, 1197, 1198, 2802, and 6310, and Industrial Welfare Commission Wage Order Nos. 5/7.

B. Plaintiff's Lawsuit

On September 17, 2025, Plaintiff filed this action against Defendants in the San Mateo County Superior Court (the "Lawsuit"), asserting both individual claims and a representative claim for civil penalties under the California Private Attorneys General Act (Lab. Code, §§ 2698, et seq.). The operative Complaint includes, as its Eighth Cause of Action, a claim for PAGA penalties, which is the subject of the present motion. MM, ¶ 7, Ex. 3. On November 24, 2025, Defendants filed their Answer to Plaintiff's Complaint. MM, ¶ 7, Ex. 4.

C. Mediation With Professional Neutral David Sarnoff

Upon mutual agreement of the parties, on March 3, 2026, the parties participated in a full-day mediation session with David Sarnoff, Esq, an experienced and well-regarded neutral. MM, ¶ 8. The negotiations were adversarial as the claims and legal issues were heavily disputed. 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 La Tapatia's provided policies, practices, operations, time and payroll information, and a 20% sampling of the Aggrieved Employees as well as meet & confers taking place. Defendants also produced Plaintiff's personnel file, timekeeping records and earnings statements. Through extensive, arm's length negotiations at the mediation, and only after informal discovery and investigation were performed, the parties agreed to settlement terms. Agreement, ¶¶ D-E. Now that the parties have finalized the PAGA Settlement, Plaintiff submits the PAGA Settlement to this Court for approval. MM, ¶ 9.

To be clear, while Defendants have agreed to the PAGA Settlement, 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. Agreement, ¶¶ F-G. MM, ¶ 10.

III. OVERVIEW OF SETTLEMENT

A. "Aggrieved Employees" Definition

The Aggrieved Employees are all current and former non-exempt or hourly paid employees who worked for Defendants in California during the PAGA Period. Agreement, ¶ 2.4. The PAGA Period means the period of time from December 16, 2023 through June 30, 2026[2]. Agreement, ¶ 2.20.

B. Monetary Terms Of The Settlement

Defendants have agreed to pay a total of $35,000 ("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, ¶ 2.11. 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 La Tapatia 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 $11,666.67 (33 1/3% of the GSA),
2. PAGA Counsel's Litigation Expenses Payment in the amount of $4,774.89 (the Agreement provides up to $5,000);
3. Administration Expenses Payment of $3,500.00 to ILYM, Inc. ("ILYM" or "Administrator") to administer the Settlement;
4. Approximately $15,058.44 ("Net Settlement Amount"), divided as follows:
   a. $ 9,787.99 to the LWDA 675%); and
   b. $ 5,270.45 to the Aggrieved Employees (35%)

Agreement, ¶ 3.2.

C. Funding and Distribution of the Settlement

[2] The parties agreed that the escalator outlined in para. 4.1 of the Settlement Agreement would be triggered by June 30, 2026. Defendants chose to truncate the PAGA period as of this date rather than pay the increased amount of penalties given that the Court could not schedule and approve their PAGA settlement under February 2027.

No later than 30 days after the Effective Date[3], Defendants shall deposit the GSA with the Administrator. Agreement, ¶ 4.3.

Not later than 30 days after the Court issues the Order Granting Approval, Defendants 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, ¶¶ 2.5, 4.2.

Within 14 days after Defendants 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 transmitted to the Bay Area Legal Aid of San Mateo County ("Cy Pres Recipient"). Agreement, ¶ 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.

Effective on the date when Defendants fully fund the entire Gross Settlement Amount,

[3] "Effective Date" means the date by when the Court enters the Order granting Approval of the PAGA Settlement.

Plaintiff and the Aggrieved Employees will be deemed to have released and forever discharged the Released PAGA Claims with respect to Defendants La Tapatia, LLC, Humberto Campos, and Barbara Haro, and each of its former and present directors, partners, officers, shareholders, owners, members, employees, investors, managers, contractors, agents, heirs, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates (the "Released Parties"). The Released PAGA Claims means:

> all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the PAGA Notice and the Complaint that are alleged to have occurred during the PAGA Period.

Agreement, ¶¶ 2.25, 5.2.

<u>IV.</u> **<u>ARGUMENT</u>**

<u>A.</u> **<u>STANDARD FOR APPROVAL OF A PAGA SETTLEMENT</u>**

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. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA

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: 65 percent to the LWDA, and the remaining 35 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. (*s*)(2). Here, notice is being given to the LWDA concurrently with the filing of this motion. MM, ¶¶ 13, 40, Ex. 6. 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 intense, arm's-length bargaining with the aid of a respected mediator; (2) the parties conducted sufficient investigation and informal discovery to allow Counsel and the Court to act intelligently. Specifically, Plaintiff requested and Defendants provided the number of 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 its California non-exempt employees for the relevant period; and (3) Counsel for the Parties are experienced with PAGA cases. Agreement, ¶ H; MM, ¶ 19. Moreover, neither Plaintiff nor Plaintiff's Counsel have any conflicts of interest with the absent Aggrieved Employees and there are no issues of ascertainability. MM, ¶ 19. These factors, which are discussed below, warrant the approval of 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 informal discovery and arms' length negotiations between experienced attorneys, which included a full-day mediation with professional neutral David Sarnoff of Signature Resolution. At all times, the negotiations were adversarial and contentious, although still professional in nature. Agreement, ¶ D; MM, ¶ 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. Moreover, counsel for the Defendants 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 Plaintiff, the Aggrieved Employees, the State, and Defendants in light of all known facts and circumstances and the risks inherent in litigation. Agreement, ¶ E; MM, ¶ 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 March 3, 2026 that enabled him to achieve the PAGA Settlement at issue. MM, ¶ 20. Among other things, Plaintiff considered the following:

- Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file including all pay stubs and timecards.

- 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, if existed, about working conditions in effect during the relevant time period beginning in December of 2023. Defendants produced pertinent wage and hour policies, including those contained within their employee handbook.

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

- Defendants provided Plaintiff's counsel with a 20% sampling of anonymized payroll and time punch data for 11 of its California non-exempt employees during the PAGA Period, which constituted approximately a 20% sample.

- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine the records and determine whether or not there was any meal period violations, if there was any pay discrepancy in timesheet hours versus paid hours, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.

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

MM, ¶ 20.

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

Defendants estimated for purposes of mediation that, there were approximately 57 Aggrieved Employees who worked a total of 4,064 weekly PAGA Pay Periods, or 2,032 bi-weekly Pay Periods under amended Labor Code section 2699(o) between December 16, 2023 and June 30, 2026. Based on this information, Plaintiff's counsel prepared an estimate of the maximum possible civil penalties under the PAGA. MM, ¶ 21. The maximum possible civil penalties under the PAGA is the total number of pay periods with one or more violations multiplied by the maximum possible civil penalty amount per pay period.

Under the civil penalty formulas applicable under PAGA, Plaintiff's counsel estimated a maximum aggregate possible exposure of approximately $209,000 for civil penalties for Plaintiff's strongest disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendants strongly dispute, shows potential violations for either late, short, or no meal periods for shifts over 5 hours. 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 and that this happened every day that Plaintiff claims he worked. MM, ¶ 22.

There are risks to Plaintiff's meal and rest period claims. MM, ¶ 23. 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. Here, Defendants contend that any alleged meal period timing issues were driven by employee preference rather than employer control, and that compliant meal periods were made available. Moreover, determining from La Tapatia's time records the precise reasons why a meal period appears short or late would be difficult, and isolating instances in which Plaintiff or other aggrieved employees actually worked during meal periods would present additional challenges. Defendants further presented evidence at mediation that they implemented multiple corrective measures following receipt of the PAGA notice, including issuing a revised employee handbook effective January 1, 2025, obtaining employee acknowledgments, that they were provided and understood the law on meal periods and rest breaks reinforcing compliant meal period practices, continuing to pay meal period premiums. MM, ¶ 23. Plaintiff's post-PAGA notice data analysis reflects a noticeable reduction in meal period violation rates as evaluated by Plaintiff. *Id*.

These facts also implicate the amended penalty framework under the California Private Attorneys General Act. Under California Labor Code section 2699(h)(1), where an employer timely takes reasonable steps to achieve prospective compliance, recoverable civil penalties may be limited to 30 percent of the otherwise available amount. In light of Defendants' corrective actions and the corresponding reduction in alleged violations, there is a substantial risk that any PAGA penalties would be significantly reduced, thereby materially limiting Plaintiff's potential recovery. MM, ¶ 23.

Defendants also contend that they provided non-exempt employees with the opportunity to take rest breaks in accordance with California law, and therefore that Plaintiff's rest break claim lacks merit. Additionally, there are inherent evidentiary challenges associated with rest period claims. Unlike meal periods, employers are not required to record rest breaks, and such breaks are paid. As a result, there is typically no objective record establishing whether a rest period was missed or whether an employer failed to authorize and permit one, making such claims difficult to prove. MM, ¶ 24.

As to Plaintiff's remaining claims, and unlike the meal and rest period allegations, there are significant issues of proof that undermine their strength. The data analysis did not reveal any rounding practices, as employees' hours were recorded and paid to the second decimal point. With respect to overtime, the data reflects that the average workday was approximately 8.6 hours, and that when employees worked in excess of eight hours, they were compensated at one and one-half times their regular rate. In addition, Defendants maintained facially compliant written policies governing wage-and-hour practices, further weakening these claims. MM, ¶ 25.

There are also material risks associated with Plaintiff's unreimbursed business expense claim. Plaintiff alleges that Defendants failed to reimburse employees for uniform items, such as aprons, and for the use of personal cell phones for work-related purposes. However, Plaintiff acknowledged that the apron issue was unique to him, while other employees were provided with aprons, creating a substantial risk that the Court would view this aspect of the claim as individualized and not suitable for representative treatment. Defendants also had receipts for required or necessary items such as aprons. Similarly, Defendants presented evidence that they implemented a monthly cell phone stipend beginning in or around April 2025, further undermining the scope and value of the reimbursement claim. In light of these issues, Plaintiff's counsel discounted the potential value of this claim during settlement negotiations. MM, ¶ 25.

Finally, 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. MM, ¶ 25.

These risks are further compounded by La Tapatia's status as a small, family-owned business that has operated for decades, which may impact both the Court's assessment of penalties and Defendants' ability to withstand a larger judgment. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is uncertain especially in light of the Court's discretion to reduce PAGA penalties even further. Based on the above analysis, a gross settlement in the amount of $35,000, which represents 16.75% of the maximum penalty calculation, is a very good result, especially in light of the risk factors as discussed above. MM, ¶ 25.

Moreover, Plaintiff's 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 Plaintiff faces is that the Court would refuse to "stack" civil penalties arising under the various Labor Code statutes and Defendants strongly opposed any stacking. Plaintiff's counsel had to 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). 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 Plaintiff's 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 $10,160 in PAGA penalties (2,032 violations x $5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.

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, where further and extensive litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff, Plaintiff's attorneys, other Aggrieved Employees, and the State of California. MM, ¶ 28.

The settlement of the representative PAGA claim involves monetary relief to all Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a punishment statute. It provides for civil penalties only. In light of the risks presented by the evidence and the limitations inherent in PAGA, the result obtained represents a reasonable recovery for the Aggrieved Employees. MM, ¶ 29.

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. MM, ¶ 30.

As such, the settlement of PAGA penalties in the gross sum of $35,000, of which 65% of the net amount after attorney's fees, litigation costs, and settlement administration costs ($9,787.99) will be paid to the LWDA and 35% ($5,270.45) 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 Defendants employed them for during the PAGA Period. Agreement, ¶ 3.2.3.1. With a total of 57 Aggrieved Employees, the average estimated Individual PAGA Payment for each Aggrieved Employee is approximately $92.46 (35% of the estimated PAGA Penalties of $5,270.45) / 57 Aggrieved Employees). This is a great result given the uncertainties this lawsuit entails. MM, ¶ 32.

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. *See* MM, ¶¶ 14-18, 38. Similarly, Defendants' counsel, April S. Glatt, Esq. and Natalia Canas of Chauvel & Glatt, LLP, have broad experience in handling employment matters and wage and hour litigation. MM, ¶ 38.

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

Of the $35,000 allocated towards the GSA, Plaintiff's counsel requests $11,666.67 (33 1/3% of the GSA) in attorney's fees and $4,774.89 in litigation costs, which is fair and reasonable. MM, ¶ 35-36.

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 506. 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 Plaintiff's Counsel's experience in wage and hour class and PAGA settlements. MM, ¶ 35.

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. MM, ¶ 37. 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 results Plaintiff's Counsel has achieved for the Aggrieved Employees. *Id.*

In addition, Plaintiff's Counsel incurred substantial costs, $4,774.89 to date, including the costs of a data analyst and a mediator, to aid in the representation of the Aggrieved Employees. MM, ¶ 38, 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. **The Proposed Settlement Administration Costs Are Fair and Reasonable and Should Be Approved.**

With regard to the settlement administration costs provision, it is reasonable. The Parties selected ILYM Group, Inc. ("ILYM"), an experienced and well-qualified settlement administrator with substantial expertise in administering wage-and-hour class and representative actions. ILYM has provided an estimate of its anticipated fees, which are consistent with the scope of work required in this matter and fall within the range of costs typically approved in similar cases. MM, ¶ 39. *See generally* Declaration of Lisa Mullins, Ex. C. Thus, the settlement administration costs provision should be given approval.

V. CONCLUSION

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

Respectfully submitted,

MM LAW, APC

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