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CANUL, JOSE WILBERT CUA, ALFREDO EDUARDO  
NIS SAENZ, JOSE CHAN, MARCOS SIERRA,  
WILBERTH INTERIAN, PEDRO HU MAY, ARTURO  
ACEVEDO, JAVIER HUMBERTO VALLE, LUIS  
DONALDO GALAVIZ ORTEGA.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

VICTOR ORLANDO CELIS CANUL, JOSE  
WILBERT CUA, ALFREDO EDUARDO NIS  
SAENZ, JOSE CHAN, MARCOS SIERRA,  
WILBERTH INTERIAN, PEDRO HU MAY,  
ARTURO ACEVEDO, JAVIER HUMBERTO  
VALLE, LUIS DONALDO GALAVIZ  
ORTEGA

Plaintiff,

-vs-

RICHARD DINGMAN, PAUL LANGLEY,  
LANGLEY ENTERPRISES and DOES 1-60  
inclusive,

Defendants.

Case No. CGC-23-604355

NOTICE OF MOTION AND MOTION  
TO APPROVE THE PAGA  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF CALROS JATO;  
PROOF OF SERVICE.

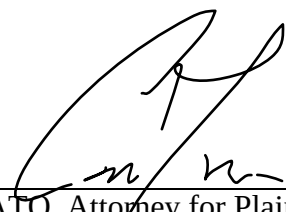
Date: February 2, 2024  
Time: 9:30 AM  
Dpt. 302

TO THE COURT, THE PARTIES AND THE LABOR WORKFORCE  
DEVELOPMENT AGENCY, YOU ARE HEREBY NOTIFIED THAT VICTOR ORLANDO  
CELIS CANUL, JOSE WILBERT CUA, ALFREDO EDUARDO NIS SAENZ, JOSE CHAN,  
MARCOS SIERRA, WILBERTH INTERIAN, PEDRO HU MAY, ARTURO ACEVEDO,  
JAVIER HUMBERTO VALLE, LUIS DONALDO GALAVIZ ORTEGA (hereinafter referred  
to as Plaintiffs) jointly move this Court on February 2, 2024 at 9:30 a.m. or as soon thereafter as

1 the matter can be heard in department 302 of the above entitled Court for an Order to Approve the  
2 Settlement of a cause of action filed under the Private Attorney General Act, Labor Code § 2698  
3 *et seq.* (“PAGA”) reached between the Plaintiffs and Defendants RICHARD DINGMAN, PAUL  
4 LANGLEY, LANGLEY ENTERPRISES (hereinafter “Defendants”).

5 The Court is requested to approve the PAGA settlement (inclusive of the PAGA  
6 attorney’s fees and litigation expenses) as reached by the parties which compares positively to  
7 other PAGA settlements approved by other courts. Notice of this motion and PAGA settlement  
8 has been provided to the LWDA via their online process as shown in the accompanying proof of  
9 service.

10  
11 Dated: January 8, 2024

  
\_\_\_\_\_  
CARLOS JATO, Attorney for Plaintiffs  
VICTOR ORLANDO CELIS CANUL, JOSE  
WILBERT CUA, ALFREDO EDUARDO NIS  
SAENZ, JOSE CHAN, MARCOS SIERRA,  
WILBERTH INTERIAN, PEDRO HU MAY,  
ARTURO ACEVEDO, JAVIER HUMBERTO  
VALLE, LUIS DONALDO GALAVIZ  
ORTEGA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION:**

3 Plaintiffs are ten former employees of Defendants. Plaintiffs worked for the defendants at their  
4 restaurant known as Harvey's in the Castro neighborhood of San Francisco, which closed its doors and  
5 ceased business in January 2023. The parties have reached a settlement for the individual Claims of the  
6 Plaintiffs. In addition, the settlement includes a settlement of the Plaintiffs' claim under the California  
7 Private Attorneys General Act, Labor Code §2698, *et seq.* ("PAGA").

8 In accordance with California Labor Code §2699(1), Plaintiffs now seek this Court's approval of  
9 the settlement of their PAGA cause of action. It is important to highlight that this is not a settlement of  
10 class action but only a settlement of a PAGA claim. The release does not release the individual claims  
11 of any employee other than the named Plaintiffs. Labor Code §2699(g)(1); *Iskansian v. CLS*  
12 *Transportation* (2014) 59 Cal.4th 348, 381.

13 A copy of the settlement agreement is attached to the Declaration of Carlos Jato as Exhibit A.  
14 Pursuant to Labor Code § 2699(l)(1), the proposed settlement has been submitted to the California  
15 Labor and Workforce Development Agency ("LWDA"). The Jato declaration also provides a summary  
16 of the claims, Defendants' defenses thereto, and an analysis of the potential damages and a breakdown  
17 of the amounts to be deducted from the PAGA settlement to compensate Plaintiffs' counsel for his legal  
18 services. *See*, Labor Code § 2699(g). As set forth in the Jato declaration, the settlement of Plaintiffs'  
19 PAGA claim is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor  
20 law violations, deter future ones, and to maximize enforcement of state labor laws, particularly since  
21 Harvey's business was on the brink of closure during the PAGA period and has since closed and ceased  
22 all operations.

23 The gross amount of the PAGA settlement is \$20,000.00. Jato Dec. Ex. A. The PAGA fees and  
24 costs requested amount to 1/3 of the PAGA settlement, or \$6,666.66. The remaining net amount of  
25 \$13,333.34 to be distributed as prescribed by Labor Code § 2699 is as follows: 75% (or \$10,000.00) to  
26 the LWDA and 25% (or \$3,333.34) to be distributed among the 33 aggrieved employees. Jato Dec. ¶  
27 10(d).

## II. FACTUAL BACKGROUND

Harvey's bar and restaurant, at the corner of Castro and 18<sup>th</sup> Street, was in operation for close to 30 years. According to Defendants, after struggling through the COVID pandemic, Harvey's closed and ceased all operations on January 23, 2023.<sup>1</sup> Jato Decl. ¶4. Prior to its closure, Plaintiffs were employed at Harvey's over different periods of time, some as far back as 1997 and others as recently 2022. *Id.* In this action, Plaintiffs allege Defendants failed to provide them with the law mandated meal and rest periods during their employment. In addition, Plaintiff Victor Orlando Celis Canul (categorized by defendants as Harvey's kitchen manager) has also alleged a claim for damages for being misclassified as an exempt employee. Jato Dec. ¶ 10(b).<sup>2</sup>

Plaintiffs filed their complaint on January 30, 2023, asserting eight causes of action and seeking back wages and labor code penalties (causes of action 1 through 8). Jato Dec. ¶¶5-6. After satisfying the prelitigation requirements of Labor Code§ 2698 *et seq.*, Plaintiffs amended their complaint on April 7, 2023, to allege a cause of action under PAGA on behalf of themselves and other aggrieved employees. *Id.*

The relevant time period covering Plaintiffs' individual claims is January 30, 2019 through January 23, 2023 (i.e., the date of Harvey's closure). The relevant time period for Plaintiffs' PAGA claim is January 30, 2022 through January 23, 2023. *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 839 ("The statute of limitations for PAGA claims is one year.")

During the course of litigation, Plaintiffs propounded discovery and reviewed documents Defendants produced related to Plaintiffs' and other allegedly aggrieved employees' employment at Harvey's. Jato Dec. ¶ 7. The parties agreed to mediate and mediation was conducted on November 13, 2023 before mediator Patricia Prince. *Id.* at ¶8. The case did not settle until after the mediation, on December 22, 2023. *Id.* at Ex. A. The settlement encompasses the individual claims of the named Plaintiffs and their representative PAGA claim.

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<sup>1</sup> See also, <https://hoodline.com/2023/01/end-of-an-era-castro-restaurant-bar-harvey-s-closes-after-27-years/>.

<sup>2</sup> No other misclassification claims are alleged in this action or as part of Plaintiffs' PAGA claim.

1 Through this motion, Plaintiffs respectfully request that the Court issue an order: (1) approving  
2 the proposed PAGA settlement, and (2) scheduling a hearing in late July 2024 to confirm disbursement  
3 of the PAGA settlement checks to the aggrieved employees and the LWDA.

4 **III. DEFENDANTS' EVIDENCE AND ARGUMENTS RE PLAINTIFFS' PAGA CLAIM**

5 During the litigation, Defendants submitted payroll and time records for the relevant PAGA  
6 period between January 30, 2022 and January 23, 2023 (when the restaurant closed) in order to allow  
7 plaintiff's counsel to consider the strength of the PAGA claim. Additionally, defendants have  
8 elaborated the following information relevant to the assessment of penalties under the PAGA claim:

- 9 • Havery's ceased business and closed on January 23, 2022.
- 10 • Prior to its closure and during the period of Plaintiff's employment Harvey's has contended  
11 that Harvey's did have meal and rest period policies and Harvey's contends that such  
12 policies provided the following:
  - 13 ○ That Harvey's provided employees who worked more than five hours in a day with  
14 an unpaid 30 minute, uninterrupted meal period starting no later than the end of the  
15 fifth hour of work. that Harvey's provided employees who worked more than 10  
16 hours in a day with a second unpaid 30-minute, uninterrupted meal period starting no  
17 later than the end of the 10th hour of work. That employees who worked no more  
18 than six hours in a day may waive the first meal period. That employees who worked  
19 no more than 12 hours in a day may waive the second meal period if they took their  
20 first meal period. That employees were entitled, encouraged, and expected to take  
21 all meal periods provided under this policy and not waived. Or that during meal  
22 periods, Harvey's would relieve employees of all duty and will not exercise control  
23 over employees' activities. Or that employees were free to spend their meal period  
24 time as they choose (consistent with any other Company policies that may apply  
25 during off-duty time) and are free to leave the worksite. Or that no supervisor or  
26 manager may impede or discourage employees from taking meal periods provided  
27 under this policy.  
28

1           ○ Harvey's claims that it authorized and permitted nonexempt employees working at  
2           least three and one-half hours in a day to take a ten-minute, off-duty paid rest period  
3           for each four hours worked or major fraction thereof. The 10 minutes do not include  
4           the reasonable time it takes to walk to and from a break area. Harveys also claims  
5           that employees who worked more than six hours in a day may take a second rest  
6           period. Or that employees who work more than 10 hours in a day may take a third  
7           rest period. Harveys also claims that it had a policy that called for employees to take  
8           their rest periods in the middle of each work period to the extent it is practicable to  
9           do so, and not combine them with meal periods or skip them to leave work early.

- 10       • According to Defendants, as a perk, Harvey's provided free meals to employees during their  
11       lunch breaks. Employees were not required to take their meal breaks at Harvey's though, if  
12       they did, they would eat their meals at the restaurant in the employee break room. As  
13       Harvey's paid employees for their meal periods, it did not require them to clock out.
- 14       • On March 16, 2020, Harvey's – like all other restaurants in the San Francisco – was forced  
15       to shut down due to the Covid-pandemic. The restaurant was completely closed through  
16       mid-June 2020.
- 17       • When Harvey's was finally permitted to reopen, the restaurant, according to Defendants,  
18       was take-out only and run by just a few managers and staff.
- 19       • According to Defendants, in the years that followed the pandemic, business was slow and  
20       the restaurant largely operated on a skeleton crew. Specifically, Defendants disclosed that,  
21       in the in the two years prior to the pandemic, Harvey's made close to \$1.3 million in food  
22       sales and was modestly profitable each year. After the pandemic, however, Defendants  
23       stated that Harvey's food sales plummeted to just over \$500,000 in 2020 and rose only  
24       slightly to about \$700k in 2021 and 2022. This amounted to a drop in sales of roughly 62%  
25       and 47% and established that Harvey's suffered steep losses of approximately \$260K in  
26       2020, \$200K in 2021, and \$400K in 2022, with its slowest and worse year being 2022  
27       which coincides with the relevant PAGA period.
- 28       • According to Defendants, after the pandemic, management kept staffing levels similar to

1 what they'd been before the pandemic, despite the downturn in sales, and labor costs  
2 relative to food sales increased, meaning, according to Defendants, the kitchen staff had less  
3 work to do.

- 4 • According to Defendant, the slow food sales meant the employees who worked at Harvey's  
5 during its final year had far more down time than prior to the pandemic, particularly in  
6 2022. As such, Defendants asserted that in their view, evidence would establish that  
7 employees had ample time to take meal and rest breaks.
- 8 • Defendants' time records further established that, during the last year of Harvey's operation  
9 in 2022, it was not uncommon for some of the allegedly aggrieved employees to work shifts  
10 of less than 5 hours, in which case they would not have been entitled to a meal period. Jato  
11 Decl. ¶¶9(a)-(i).

12 According to Defendants, the foregoing established that Harvey's meal and rest period policies  
13 complied with California law and stated that employees were free to spend their breaks as they chose.  
14 Defendants asserted that the evidence would show that Harvey's provided employees with free meals  
15 and that it paid employees for their meal periods. According to Defendants and the payroll records they  
16 produced, Harvey's business was drastically slower than it was before the pandemic, which (they  
17 contend) meant employees had ample opportunity to take their meal and rest breaks.

18 Though Plaintiffs' also asserted claims for unpaid minimum wage and overtime pay, Defendants'  
19 produced records suggesting that it paid its employees minimum wage and for overtime hours worked.  
20 Jato Decl. ¶9.k.

#### 21 **IV. TERMS OF THE PAGA SETTLEMENT**

22 The Settlement Agreement negotiated by the parties provides for a total PAGA payment of  
23 \$20,000.00.

24 Nothing in the proposed PAGA settlement is out of the allowed statutory framework of PAGA.  
25 The settlement provides for a deduction of fees and litigation costs incurred by Plaintiffs' counsel in  
26 prosecuting the PAGA claim. Jato Decl. ¶11. With the net proceeds to be paid out as provided by the  
27 statute: 75% to the LWDA and 25% to the Aggrieved Employees. *Id.* ¶10.c.

Each allegedly aggrieved employee will be entitled to a share from 25% of the PAGA settlement funds based in proportion to the number of pay periods they worked during the relevant PAGA period. Jato Dec. ¶10c. A check will be mailed to the last known addresses of each aggrieved employee with a cover letter stating in material respects as follows: You are receiving this payment as part of the settlement of a Private Attorney General Act claim alleged in the case of Canul et al. v. Dingman et al. pending in the San Francisco Superior Court, Case #CGC-23-604355.” *Id.* ¶10.d.

Attached as Exhibit B to the declaration of Jato is a chart setting forth the PAGA settlement payment for each employee. Jato Decl. ¶ 10.c. and Ex. B.

Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 120 days after issuance will be sent to the *cy pres* beneficiary Legal Aid at Work (180 Montgomery St. #600 San Francisco, CA). *Id.* ¶10.f).

The LWDA is being served with a copy of this motion and the Settlement Agreement through the online process as required by Labor Code § 2699(1) and therefore has notice of this PAGA settlement. *Id.* ¶9g.

**V. THE PARTIES REQUEST APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM REPRESENTS A POSITIVE OUTCOME OF THE PAGA CAUSE OF ACTION**

The \$20,000.00 PAGA payment is “fair, adequate, and reasonable” and therefore should be approved by the Court. *See, Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.th 56, 64 (setting forth standard for approval of PAGA settlements). During litigation, Defendants produced records showing there were a total of 25 pay periods during the relevant PAGA period and a total of 33 employees, including Plaintiffs, who worked during the PAGA period, with an average number of 19 employees working during each pay period. Jato Dec. ¶10.a. Assuming Plaintiffs could establish that each aggrieved employee suffered one meal period violation per pay period—which Defendants dispute as outlined above—that would amount to a \$100 penalty<sup>3</sup> for a total of \$1,900 in penalties per pay period (i.e., \$100 per employee at 19 employees), or \$47,500 over the course of 25 pay periods.<sup>4</sup> As such, the

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<sup>3</sup> *See*, Labor Code § 2699(f)(2).

<sup>4</sup> Defendants contested that Plaintiffs would have been entitled to the \$200 penalty set forth in Labor Code § 2699(f)(2), arguing that such a penalty could not be assessed unless and until Defendants were notified by the LWDA or a Court that they were in violation of the Labor Code—which Defendants asserted never occurred. *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-35.

1 portion of the settlement attributed to PAGA penalties equals a recovery of approximately 47% of the  
2 penalties Plaintiffs could have recovered for missed meal periods had they entirely prevailed on all their  
3 meal period claims. Assuming Plaintiffs could have also established each aggrieved employees  
4 suffered a rest or wage statement violation during the PAGA period, the total amount in recoverable  
5 PAGA penalties would have been approximately \$95,000, and the settlement represents a recovery of  
6 21% of that amount. Jato Dec. ¶10.a.

7 Notably, Defendants presented payroll records to dispute Plaintiffs' claims, including that in the  
8 year prior to Harvey's closure, the restaurant was slow, compared to 2019, and purportedly changed the  
9 meal and rest break policies in the last year Jato Dec. ¶¶9a.-k. Defendants also disputed that Plaintiffs  
10 would be permitted to "stack" PAGA penalties and cited case law for that proposition. Jato Dec. ¶9.l.  
11 *See, Hamilton v. Juul Labs, Inc.* (N.D. Cal., Nov. 16, 2021) 2021 U.S. Dist. LEXIS 221416 at \*27; *see*  
12 *also, Snow v. United Parcel Services, Inc.* (C.D. Cal April 1, 2020) 2020 U.S. Dist. LEXIS 58317, 2020  
13 WL 1638250, \*3 ("plaintiffs may only recover a set of civil penalties for each type of violation.");  
14 *Salazar v. PODS Enterprise, LLC* (C.D. Cal. May 8, 2019) 2019 U.S. Dist. LEXIS 78001, 2019 WL  
15 2023726, \*6 ("it is possible (although highly unlikely) that [plaintiff] could recover PAGA penalties for  
16 each separate type of Labor Code violation"); *Smith v. Lux Retail North America* (N.D. Cal. June 13,  
17 2013) 2013 U.S. Dist. LEXIS 83562, 2013 WL 2932243, \*4 (questioning whether it was "really  
18 plausible that we would pile one penalty on another for a single substantive wrong").

19 Defendants further asserted that, even if Plaintiffs recovered PAGA penalties, the Court would  
20 have discretion to reduce any penalty award that it deemed "unjust, arbitrary and oppressive, or  
21 confiscatory. Labor Code § 2699(e)(2). Defendants argued that such a reduction would be particularly  
22 appropriate in this case as it is no longer in operation and any remedial or deterrent effect of assessing  
23 penalties against it would be moot. As such, even if Plaintiffs prevailed on their claim, there is no  
24 guarantee Plaintiffs would have recovered the full amount of PAGA penalties for all alleged violations.  
25 Jato Dec. ¶9(j).

26 In sum, the PAGA payment negotiated as part of this settlement constitutes a recovery of 21%  
27 to 47% of the estimated PAGA penalties the aggrieved employees might have obtained if the case  
28 proceeded to trial and they were victorious on their claims. Jato Dec. ¶10.a. This PAGA settlement to

1 potential claims ratio is an excellent result and exceeds the recovery in similar PAGA cases involving  
2 similar claims as explained below.

3 Specifically, the amount of the PAGA penalties reached in this case greatly exceeds the  
4 amounts that have been approved by courts. For example, in *Chu v. Wells Fargo Investments, LLC*, No.  
5 C 2011 WL 672645, at \* 1 (N.D.Cal. Feb. 16, 2011) the court approved a PAGA settlement payment of  
6 \$7,500 to the LWDA to be distributed for as many as 2,754 class members. Similarly, in *Franco v. Ruiz*  
7 *Food Products, Inc.*, 2012 WL5941801 (E.D. Cal. 2012), the court approved a total PAGA penalty  
8 amount of \$10,000.00 with the \$2,500 employee portion divided between as many as 2,055 current and  
9 former employees. In *Schiller v. David's Bridal, Inc.* 2012 WL2117001 (E.D. Cal. 2012), the court also  
10 approved a PAGA penalty amount of \$10,000 with the \$2,500 employee portion divided between as  
11 many as 3,326 individuals. Here, the parties have agreed to a PAGA payment of \$20,000.00 with the  
12 25% employees' share (\$3,333.34) payable to 33 aggrieved employees based upon the number of pay  
13 periods they worked during the PAGA period. This, in comparison, is a very positive outcome for the  
14 PAGA cause of action.

15 As for Plaintiffs' individual settlements, it is noteworthy that Plaintiffs individual claims  
16 encompassed a much longer time period than the PAGA claim (four years as opposed to one year),  
17 during which—according to the records and information Defendants produced—the restaurant was  
18 much busier, and Plaintiffs worked more and longer hours in the period predating to the PAGA claim.  
19 Moreover, the individual claims include that of Victor Canul, who, unlike the other Plaintiffs and  
20 aggrieved employees, had a separate and independent claim for being misclassified as an exempt  
21 manager. Jato Dec. ¶10.b.

22 Given Defendant's potential defenses to the claimed Labor Code violations at issue, and the  
23 risks and costs of continued litigation, Plaintiffs endorse and support this PAGA settlement. Jato Dec.  
24 ¶12. The PAGA settlement was negotiated by experienced counsel (*Id.* ¶3) after propounding  
25 discovery, reviewing pay and time records. Then, the settlement was reached through arms-length  
26 negotiation and only after being able to evaluate the strengths and weaknesses of the PAGA claim. Jato  
27 Dec. ¶¶7-9.

As noted, the LWDA has been given notice of this motion (see POS attached hereto) and the decision of the LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent class members because this is not a class action. PAGA settlement requires none of the various findings required by C.C.P. § 382 and related case law. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 499 (“class action requirements do not apply to representative actions brought under the PAGA”) (citing, *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 984). As such, the entire pre-settlement judicial process and Court involvement in class actions is inapplicable to PAGA cases. *Id.* For example, there is no certification process or order, which frequently dominates most of the pre-settlement life of a typical class action. However, while in PAGA settlements there are no class members,<sup>5</sup> the LWDA is a beneficiary to the settlement and as part of this approval process the LWDA is given an opportunity to raise any objections to the settlement on or before the hearing of this motion. The absence of any such objection should militate further in favor of granting this motion, though should not control, particularly, as outlined above, the settlement is fair, adequate, and reasonable.

**VI. THE ATTORNEY’S FEES ARE REASONABLE UNDER THE CIRCUMSTANCES.**

This case has settled within 10 months of being filed with the court. Certainly, it could not have been reached without the extensive past experience of Plaintiffs’ counsel in wage and hour litigation.

It took 9 hours of attorney time to investigate, plead, evaluate, negotiate, settle and present the PAGA claims to this court for approval. *Id.* ¶11. Plaintiffs’ counsel requests to be compensated his reasonable fee of \$750.00/hr for what is an example of efficient work in litigation. Pursuant to the PAGA statute, plaintiffs seek approval of the fees (and litigation cost) incurred in the PAGA portion of the case of 1/3 of the PAGA settlement or \$6,666.66. *Id.*

Under the PAGA statute, prevailing employees are entitled to “reasonable attorney’s fees and costs.” Labor Code § 2699(g)(1). Further, it is proper to award from a fund attorney’s fees and costs “to a party who has recovered or preserved a monetary amount for the benefit of himself or herself and others.” *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 488-89. The “percentage of

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<sup>5</sup> The settlement does not release the individual Claims of absent employees other than the claims of the named Plaintiffs.

1 recovery” method is appropriate in common fund cases, because, among other reasons, it aligns the  
2 incentives of counsel and class, and it encourages early settlement. *Id.* at 490. This is especially true  
3 when a “lodestar cross-check” confirms that the fee amount is indeed fair and reasonable. *See Id.* at  
4 504.

5 Here, a thirty-three percent (33%) award is reasonable. California courts have consistently  
6 found fees in the 33% range appropriate. *See e.g. Laffitte*, 1 Cal.5th at 506 (affirming 33% award).  
7 A lodestar calculation is made “by multiplying the number of hours reasonably expended by counsel by  
8 a reasonable hourly rate.” *Laffitte*, 1 Cal.5th at 489 (internal quotation marks and citation omitted).  
9 Counsel’s 9 hours of work in the PAGA claim yields a lodestar of \$6,750.00. Checking this lodestar  
10 against the requested fees of \$6,666.66 further demonstrates that such a fee award is reasonable. *Id.* 11.

11 Finally, the lack of “clear sailing” agreement underlines the reasonableness of the fee request  
12 and the lack of collusion:

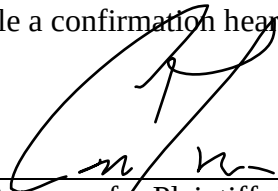
13 The fact that class counsel did not receive “red-carpet treatment” on fees (*Dunk, supra*,  
14 48 Cal.App.4th at p. 1808, 56 Cal.Rptr.2d 483) also justified diminished concern about  
15 collusion. Class action settlements frequently contain a “clear sailing” agreement,  
16 whereby the defendant agrees not to object to an attorney fee award up to a certain  
amount. (*See Consumer Privacy Cases, supra*, 175 Cal.App.4th at pp. 552–553, 96  
Cal.Rptr.3d 127.) Plaintiffs in this case obtained no such agreement.

17 *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1120 [104 Cal.Rptr.3d  
18 275, 283].

## 19 **VII. CONCLUSION**

20 Based on the foregoing, Plaintiffs respectfully request that this Court (1) approve the PAGA  
21 settlement and the Plaintiffs’ proposed allocation of settlement payments (including Plaintiffs’  
22 counsel’s PAGA fees) as detailed herein, and (2) schedule a confirmation hearing in late June 2024 to  
23 confirm distribution of the PAGA settlement funds.

24 Dated: January 8, 2024

25   
CARLOS JATO, Attorney for Plaintiffs VICTOR  
26 ORLANDO CELIS CANUL, JOSE WILBERT CUA,  
27 ALFREDO EDUARDO NIS SAENZ, JOSE CHAN,  
28 MARCOS SIERRA, WILBERTH INTERIAN, PEDRO HU  
MAY, ARTURO ACEVEDO, JAVIER HUMBERTO  
VALLE, LUIS DONALDO GALAVIZ ORTEGA.

PROOF OF SERVICE

My business address is 819 Eddy St. San Francisco, California 94109. I am employed in the County and City of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within case.

On January 8, 2024, following ordinary business practice, I caused to have served the foregoing document(s) described as:

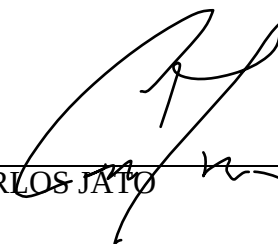
NOTICE OF MOTION AND MOTION TO APPROVE THE PAGA SETTLEMENT PURSUANT TO CALIFORNIA LABOR CODE SEC. 2699 et seq.; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CARLOS JATO.

On the parties listed below:

|                                                                                                                                                                                               |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Melton, Douglas <a href="mailto:dmelton@longlevit.com">dmelton@longlevit.com</a>                                                                                                              |  |
| Labor Workforce Development Agency                                                                                                                                                            |  |
| By transmitting a copy of the entire motion electronically on the day in this proof of service through the agency's portal at                                                                 |  |
| <a href="https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html">https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html</a> |  |

(x) (VIA ELECTRONIC SERVICE) by transmitting electronically via email the document(s) listed above to the recipient(s) set forth above (or as stated in the attached service list) on this date.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on January 8, 2024.

  
CARLOS JATO